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March 25, 2019

## VIA E-MAIL

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, WA 98504-0908

### **Re: Response to Complaint Filed by Andrew Saturn**

Dear Mx. Blackhorn:

I write on behalf of Facebook, Inc. (“Facebook”) in response to the Complaint filed by Andrew Saturn on March 1, 2019. The Complaint contends that a political advertisement appeared on Facebook’s platform and that Facebook did not respond to Mr. Saturn’s request to physically inspect its books pursuant to RCW 42.17A.345 (“the Disclosure Law”) and Washington’s Administrative Code 390-18-050.

Facebook is committed to advertising transparency, especially for political advertisements. To that end, it has adopted policies to increase transparency on its platform and promote responsible advertising. However, as of December 28, 2018, Facebook no longer accepts or allows political advertising targeted at the state of Washington that relates to Washington state or local elected officials, candidates, elections, or ballot initiatives (“Washington Political Ads”). For this and other reasons, the Public Disclosure Commission (“PDC”) should dismiss the Complaint. *First*, the advertisement that appears to be at issue is not covered by Washington’s Disclosure Law because it is not a “political advertisement” or an “electioneering communication,” as those terms are defined by statute. *Second*, even if the advertisement was covered, Facebook does not qualify as a “commercial advertiser” under Washington’s Disclosure Law because it is not accepting, providing, or selling Washington Political Ads. In fact, Facebook’s Advertising Policies prohibit users from purchasing Washington Political Ads,<sup>1</sup> and Facebook reviews and rejects them pursuant to that policy. *Third*, Mr. Saturn’s claims are preempted by federal law. Section 230 of the Communications Decency Act (“CDA”) bars claims that would impose liability on interactive

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<sup>1</sup> Facebook, *Advertising Policies - Restricted Content - 10.a Ads related to Politics or Issues of National Importance*, [https://www.facebook.com/policies/ads/restricted\\_content/political](https://www.facebook.com/policies/ads/restricted_content/political) (last visited Mar. 25, 2019).

## KIRKLAND & ELLIS LLP

Fox Blackhorn  
March 25, 2019  
Page 2

computer service providers like Facebook for decisions relating to the screening, monitoring, or removal of third-party content. 47 U.S.C. § 230. That is exactly what Mr. Saturn's Complaint does here: it seeks to hold Facebook liable for failing to adequately screen and remove certain pieces of Washington political advertising from its platform. Those claims are barred by CDA § 230. Moreover, even if the Disclosure Law applied here, it very likely would be preempted by § 2702(a) of the Stored Communications Act ("SCA") which requires Facebook to keep certain user information private. 18 U.S.C. § 2702(a). *Finally*, even if Facebook were subject to Washington's Disclosure Law, the PDC should exercise its discretion to decline to pursue Mr. Saturn's Complaint or dismiss Mr. Saturn's Complaint as unfounded or frivolous. The PDC should exercise its discretion to decline to pursue this Complaint because Facebook's good-faith efforts to comply with Washington law and increase transparency on its platform promote the policies and interests underlying the Disclosure Law. The PDC should also dismiss Mr. Saturn's Complaint as unfounded or frivolous because the advertisement is not even covered by the Disclosure Law and because Mr. Saturn himself placed the advertisement in question on Facebook (in violation of Facebook's policies, no less), meaning he already has the information about his ad that he seeks to have Facebook provide.

### **A. Issue and Background**

Mr. Saturn's Complaint arises from an ad he placed on Facebook. While Mr. Saturn says that he provided a copy of the advertisement in question, it appears not to have been included in his Complaint. It appears from Facebook's Ad Archive, however, that the advertisement at issue in his Complaint was likely one that began running on March 1, 2019.<sup>2</sup> That advertisement, which was posted in violation of Facebook's policy prohibiting Washington Political Ads, ran with a blog post that Mr. Saturn had authored in a separate publication discussing the Olympia City Council's consideration of potential changes to the City's minimum-wage law. Mr. Saturn's Facebook advertisement did not discuss or mention any upcoming election or political campaign. On March 1, 2019, Mr. Saturn filed this Complaint with the PDC. 3/1/19 Compl. at 1.<sup>3</sup>

### **B. Washington's Disclosure Law does not cover the advertisement at issue.**

The PDC should dismiss the Complaint because Mr. Saturn's advertisement is not covered by the Washington Disclosure Law. Under Washington law, "each commercial advertiser who has

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<sup>2</sup> See Ex. 1, Facebook Ad Archive, Andrew Saturn, *available at* [https://www.facebook.com/ads/library/?activestatus=all&adtype=political\\_and\\_issue\\_ads&country=US&q=Andrew%20Saturn](https://www.facebook.com/ads/library/?activestatus=all&adtype=political_and_issue_ads&country=US&q=Andrew%20Saturn).

<sup>3</sup> Mr. Saturn attached to his complaint a series of messages he exchanged with a representative from Facebook Advertiser Support. See Compl. at 2-6. In that exchange, Mr. Saturn appeared to take issue with the fact that Facebook's Ad Archive is limited to only paid advertising and does not also capture non-paid political content. To the extent Mr. Saturn continues to press that argument, the PDC can easily address it: Only paid advertising is subject to the Washington Disclosure Law. See WAC 390-18-050; RCW 42.17A.345.

## KIRKLAND & ELLIS LLP

Fox Blackhorn  
March 25, 2019  
Page 3

accepted or provided political advertising, or electioneering communications, as defined in RCW 42.17A.005, must maintain current books of account and related materials as required by this section.” WAC 390-18-050; *see also* RCW 42.17A.345. “Political advertising,” as defined by the statute, includes digital communications “used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.” RCW 42.17A.005. An “electioneering communication” refers to a communication that “[c]learly identifies a candidate for a state, local, or judicial office,” is “published within sixty days before any election . . . in which the candidate is seeking election,” and “has a fair market value of one thousand dollars or more.” *Id.*

Under the plain terms of the statute, Mr. Saturn’s advertisement for his blog post does not qualify as either “political advertising” or an “electioneering communication.” The advertisement is not “political advertising” because its purpose is not to appeal[] . . . for votes or for financial or other support . . . in any election campaign.” *Id.* Rather, Mr. Saturn’s advertisement is for his own blog post discussing minimum-wage policy. It does not in any way refer to an election campaign, let alone appeal for votes or other financial support for any election campaign. The advertisement also does not qualify as an “electioneering communication.” It does not identify any candidate for office, nor was it published within sixty days of an identified candidate’s election. *Id.* It also does not have a fair market value of one thousand dollars or more. *Id.*; Ex. 1. Because the advertisement at issue does not qualify as political advertising or an electioneering communication as defined by the statute, it is not subject to the disclosure requirements of Washington law.

### **C. Facebook does not qualify as a “commercial advertiser” subject to the disclosure requirements of Washington law.**

Even if the Washington Disclosure Law covered the advertisement at issue, the Complaint should still be dismissed because Facebook does not “accept[] or provide[] political advertising or electioneering communications” related to Washington’s state or local elected officials, candidates, elections or ballot initiatives in Washington. *See* RCW 42.17A.345. To the contrary, Facebook prohibits Washington Political Ads, and it therefore does not qualify as a “commercial advertiser” subject to the disclosure requirements of Washington law.

Before turning to Facebook’s policies in Washington specifically, it is worth noting that Facebook reviews and screens political advertising content nationally to increase transparency on its platform. Pursuant to Facebook’s policies, all advertisers must complete a verification process to post any political ads targeting the U.S. on the platform, and they must declare all ads containing political content as such when seeking to post them in the U.S. When an ad targets the U.S., Facebook also proactively reviews it for any U.S.-related political content. If such an ad is political but not declared as such by the advertiser, it will be rejected.

## KIRKLAND & ELLIS LLP

Fox Blackhorn  
March 25, 2019  
Page 4

As of December 28, 2018, Facebook no longer allows Washington Political Ads. If Facebook determines that an advertiser is attempting to place an ad that targets Washington state, and mentions a Washington state city, county, or state candidate, elected official, election or ballot initiative, Facebook rejects the ad. Facebook's policy prohibiting Washington Political Ads is clearly stated on its site.<sup>4</sup> Facebook also notifies advertisers who seek to post political ads that Facebook prohibits political advertisements targeting Washington. Thus, any Washington Political Ad that appears on Facebook is in violation of Facebook's policy.

While Facebook does not accept state and local political ads in Washington, advertisements posted in violation of this policy are nevertheless included in Facebook's Ad Archive. Facebook includes all ads that were delivered to ensure transparency in political advertising, even for those ads that are posted in violation of Facebook's policies. For example, here, although Mr. Saturn posted his own advertisement in violation of Facebook's policy, Facebook placed his advertisement in the Ad Archive. The Ad Archive provided Mr. Saturn with access to extensive information about his advertisement and any other advertisement in the Archive, including who paid for them, the content of the ads, whether the ads were active or inactive, the duration the ads were posted, and information regarding the number of impressions the ads received and the demographic and geographic composition of the users who saw the ads. Of course, for Mr. Saturn's advertisement, he already had most of this information because he himself posted the advertisement and was the source of some of the information that Facebook then included in the Ad Archive.

### **D. The Complaint is preempted by federal law.**

The PDC should also dismiss the Complaint because it is preempted by two federal statutes: the Communications Decency Act, 47 U.S.C. § 230, and the Stored Communications Act, 18 U.S.C. § 2702(a).

Section 230 of the CDA bars any claim seeking to hold interactive computer service providers liable for decisions relating to the screening or removal of third-party content. 47 U.S.C. § 230(c)(1) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."). Mr. Saturn's claims fall squarely within the immunity afforded by § 230(c). An "important purpose of § 230 was to encourage service providers to self-regulate" material posted on their platforms by filtering and removing harmful or offensive third-party content. *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). Recognizing that it was "impossible for service providers to screen each of their millions of postings for possible problems," however, Congress provided broad immunity to service providers like Facebook that sought to do so. *Id.* Section 230 thus shields service providers from liability "when they remove[] some—but not all—offensive material from

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<sup>4</sup> See [https://www.facebook.com/policies/ads/restricted\\_content/political](https://www.facebook.com/policies/ads/restricted_content/political).

## KIRKLAND & ELLIS LLP

Fox Blackhorn  
March 25, 2019  
Page 5

their websites.” *Bennett v. Google, LLC*, 882 F.3d 1163, 1166 (D.C. Cir. 2018). As the Ninth Circuit has recognized, claims that a website “failed to review each user-created profile” to detect and remove unlawful content “is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230.” *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1171–72 (9th Cir. 2008) (en banc). The Complaint seeks to hold Facebook liable for explicitly protected activity—failing to detect and remove certain pieces of political advertising that were created and posted on the platform by third parties in violation of Facebook’s policies. Nor does the Washington Disclosure Law regulate pure commercial transactions divorced from any content. Rather, the entire regulatory regime turns on third-party content and requires Facebook to affirmatively monitor, review, and take action regarding that content. Mr. Saturn’s claims are thus indisputably barred by § 230. *See, e.g., Caraccioli v. Facebook, Inc.*, 700 F. App’x 588, 590 (9th Cir. 2017); *Sikhs for Justice, Inc. v. Facebook, Inc.*, 697 F. App’x 526, 526 (9th Cir. 2017); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014).

The Disclosure Law may also be preempted by the SCA, which generally prohibits “providers” of electronic communication services from disclosing the contents of communications stored through those services unless one of several express exceptions applies. 18 U.S.C. § 2702(a), (b). Facebook is thus generally prohibited from knowingly disclosing “a record or other information pertaining to a subscriber to or customer of such service . . . to any governmental entity” absent an exception. 18 U.S.C. § 2702(a)(3).

Washington’s law broadly mandates that some private user information and advertising content be disclosed to the government and members of the public without a formal legal process and not as part of a civil or regulatory investigation. *See* RCW 42.17A.345; WAC 390-18-050. Such a scheme cannot be squared with the SCA, which requires that, absent a subpoena, court order, or other exception not applicable in this case, providers must keep user information and advertising content private. The SCA thus conflicts with, and likely preempts enforcement of, Washington’s Disclosure Law. *See Arizona v. United States*, 567 U.S. 387, 399 (2012) (holding that conflict preemption applies where “compliance with both federal and state regulations is a[n] . . . impossibility” (citation omitted)). A federal court has also found that a statutory scheme with disclosure requirements similar to those in Washington’s Disclosure Law raises important First Amendment concerns. *See Washington Post v. McManus*, 355 F. Supp. 3d 272 (D. Md. 2019) (enjoining a similar statutory scheme on First Amendment grounds).

**E. Washington Political Ads are not permitted on Facebook and Mr. Saturn’s demand for information about his own advertisement should be dismissed as unfounded and inconsistent with Washington’s Disclosure Law.**

Additionally, the PDC should decline to pursue Mr. Saturn’s Complaint against Facebook because Facebook has made a good-faith effort to comply with Washington law and to increase political

## KIRKLAND & ELLIS LLP

Fox Blackhorn  
March 25, 2019  
Page 6

advertising transparency on its platform. The PDC has broad discretion to resolve matters or decline to take action when enforcement is unwarranted based on a number of factors. *See* WAC 390-37-060 to -061. This includes a party's good faith efforts where noncompliance is alleged. *See id.* As noted above, Facebook has prohibited Washington Political Ads since December 2018. To enforce that policy, Facebook has adopted screening processes designed to detect and reject political advertisements targeting Washington that were improperly submitted by advertisers in violation of Facebook's policy. Facebook continues to enhance its screening processes to increase enforcement on the platform.

Facebook also remains broadly committed to transparency in political advertising on its platform, and it is thus aligned with the PDC's "Mission" and "Vision." The PDC "was created and empowered by Initiative of the People to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates . . . ."<sup>5</sup> Facebook has adopted policies intended to increase transparency and responsible political advertising on its platform, including its policy that requires anyone seeking to run a political advertisement targeting the United States to go through an authorization process to post on the platform.<sup>6</sup> Facebook also created its Ad Archive for the purpose of providing timely and meaningful public access to accurate information about political advertising.

Finally, the PDC should dismiss Mr. Saturn's Complaint as unfounded or frivolous pursuant to WAC 390-37-060 and the PDC's policies. The PDC is charged with the task of reviewing "each complaint to determine whether the complainant has provided sufficient information to support the allegations being made."<sup>7</sup> Further, the PDC is empowered, should it determine "that any complaint is obviously unfounded or frivolous," to "inform the complainant . . . why no further action is warranted." WAC 390-37-060. After a review of the allegations here, it is evident that they do not support a violation of the Disclosure Law with respect to Mr. Saturn. Mr. Saturn's advertisement does not qualify as "political advertising" or an "electioneering communication" as defined under Washington law. The advertisement is thus not even subject to Washington's disclosure requirements, and Mr. Saturn's Complaint is unfounded. Furthermore, Mr. Saturn is the very source of the advertisement about which he requested information under the Disclosure Law. He thus already knows the "name and address of the sponsoring person or persons actually paying for the advertising;" "[t]he total cost of the advertising or electioneering communication;"

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<sup>5</sup> *See* Public Disclosure Commission, *About the PDC*, <https://www.pdc.wa.gov/about-pdc> (last visited Mar. 25, 2019).

<sup>6</sup> *See* [https://www.facebook.com/policies/ads/restricted\\_content/political](https://www.facebook.com/policies/ads/restricted_content/political).

<sup>7</sup> Public Disclosure Commission, *Initial Review of Complaints*, <https://www.pdc.wa.gov/learn/publications/enforcement-guide/initial-review-complaints> (last visited Mar. 25, 2019).

## KIRKLAND & ELLIS LLP

Fox Blackhorn  
March 25, 2019  
Page 7

“[d]ate(s) the commercial advertiser rendered service;” and the audiences he targeted when creating the ad. *See* WAC 390-18-050. Other information Mr. Saturn requested is included in the Facebook Ad Archive. Demands like this—where the complainant is seeking information he *already has* about ads *he himself placed*—create unnecessary expense, burden, and distraction for the PDC, and do not serve the purposes of the statute. Moreover, the advertisement at issue here was placed in violation of Facebook’s clear policies with no harm to the public. Information relating to this inadvertently displayed advertisement, including information prescribed under Washington’s Disclosure Law, also remains accessible to the public in Facebook’s Ad Archive.<sup>8</sup>

\* \* \*

For these reasons, Facebook requests that the PDC dismiss Mr. Saturn’s Complaint.

Sincerely,

/s/ Craig S. Primis

Craig S. Primis

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<sup>8</sup> *See* Ex. 1; *see also* Facebook, *About the Ad Archive*, <https://www.facebook.com/business/help/2405092116183307> (last visited Mar. 25, 2019).

# **EXHIBIT 1**



**Andrew Saturn**

Sponsored • Paid for by Andrew Saturn

Coming to the table with a compromise is not how you begin negotiations.

Jim Cooper proposes we wait until 2021 to push for \$15/hr, and Lisa Parshley believes there's "no need" to go beyond \$12/hr.



Olympia Councilmember Jim Cooper proposes \$1 minimum wage increase

Last week, Olympia City Councilmember Jim Cooper shared a proposal with his council colleagues of...

[Learn More](#)

MEDIUM.COM



**Andrew Saturn**

View more ads from this Page

Paid for by **Andrew Saturn**

When an advertiser categorizes their ad as being related to politics or issues of national importance, they are required to disclose who paid for the ad. [Learn more](#)

[See additional disclaimer information](#)

**Ad Performance**



● Inactive

Mar 1, 2019 - Mar 8, 2019

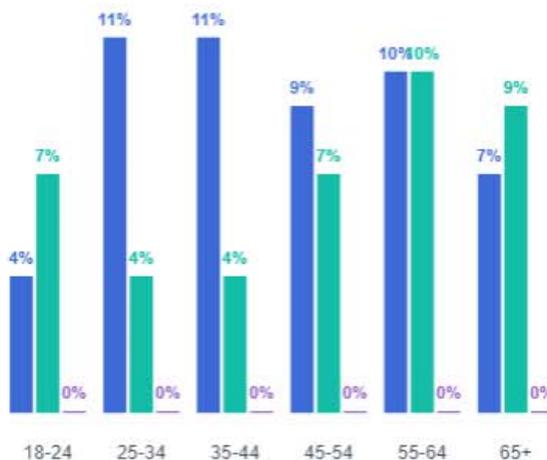
1K - 5K  
Impressions

<\$100  
Money spent (USD)

**Audience Breakdown**

**Age and Gender**

Men Women Unknown



**Location**



**Additional Disclaimer Information**

Advertisers provide this information voluntarily.

● Disclaimer  
Andrew Saturn

● Address  
PO Box 1052, Olympia, WA 98507