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March 29, 2019

**VIA E-MAIL**

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Public Disclosure Commission  
711 Capitol Way, Suite 206  
P.O. Box 40908  
Olympia, WA 98504  
[pdcc@pdcc.wa.gov](mailto:pdcc@pdcc.wa.gov)

**Re: Google LLC's Response to Complaint of Eli Sanders, PDC Case No. 48424**

Dear Mx. Blackhorn:

We represent Google LLC ("Google") and write in response to the complaint filed against it by Mr. Eli Sanders on March 13, 2019. We thank the PDC for providing Google an opportunity to address the matter.

In June 2018, Google announced that its advertising platforms would no longer accept political advertisements targeting Washington State and local elections. The announcement received widespread local and national press attention. In addition, Google updated its Advertising Policies pages to reflect this change, and communicated it directly to advertisers. Since implementing its new policy, Google has also deployed robust measures to enforce it, and takes immediate action to remove any ads that users post in violation of its policies and in circumvention of its screening procedures.

The complaint alleges that Google was obligated under RCW 42.17A.345 and WAC 390-18-050 to maintain and provide Mr. Sanders with certain information because Google is a commercial advertiser who accepted political advertising directed at state or local elections in Washington. But, as described further below, because Google does not accept—and indeed explicitly rejects—these political advertisements, the recordkeeping and disclosure requirements cited in the complaint do not apply. In addition, federal law, 47 U.S.C. § 230, precludes the application of those requirements in this context. For these reasons, we respectfully request that the PDC dismiss the complaint.

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Public Disclosure Commission  
March 29, 2019  
Page 2

## I. Google Does Not Accept State or Local Political Advertising in Washington

On June 7, 2018, Google announced that it would no longer accept political advertisements targeting Washington State and local elections on its advertising platforms. Google updated its Advertising Policies website accordingly, which states “ads related to ballot measures and state and local elections in the state of Washington, U.S.A., will not be accepted.”<sup>1</sup> In addition to the public announcement, Google reached out to known political advertisers who had previously worked in Washington or may have planned to in the future to ensure they were aware of the policy. The announcement also received extensive press coverage.<sup>2</sup>

Since implementing this policy, Google has deployed robust technological measures to support it, including content blocks and keyword filters.<sup>3</sup> Although the policy is less than a year old, Google already has prevented hundreds of campaigns and committees from using its advertising platform to run state and local political advertisements. It has also blocked close to 1,000 different ads. Google’s technological measures are constantly evolving and improving as new campaigns and ads arise. And it solicits input from the public about ad violations via its feedback tool, available at <https://support.google.com/google-ads/troubleshooter/4578507>. If it learns that an ad has been posted in violation of its policies and in circumvention of those technical measures, Google takes prompt action to disable the political advertisement and advises the advertiser of the removal and violation.

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<sup>1</sup> Google Advertising Policies Help, Update to Political content policy (June 2018), [https://support.google.com/adspolicy/answer/9039396?hl=en&ref\\_topic=29265](https://support.google.com/adspolicy/answer/9039396?hl=en&ref_topic=29265); see also Google Advertising Policies Help, Political content, <https://support.google.com/adspolicy/answer/6014595> (see *State election ads in the United States: Washington restrictions*: “Ads related to ballot measures and candidates for state and local elections” are not allowed on Google’s platform).

<sup>2</sup> See, e.g., Jim Brunner & Christine Clarridge, *Why Google won’t run political ads in Washington state for now*, Seattle Times (June 7, 2018), <https://www.seattletimes.com/seattle-news/google-halts-political-ads-in-washington-state-as-disclosure-law-goes-into-effect/>; Eli Sanders, *Google Stops Accepting Political Ads from Washington State as New Disclosure Rules Take Effect*, The Stranger (June 7, 2018), <https://www.thestranger.com/slog/2018/06/07/27236365/google-stops-accepting-political-ads-from-washington-state-as-new-disclosure-rules-take-effect>; Emma Woollacott, *Google Pulls Washington Election Ads, Says It can’t Comply With New Rules*, Forbes (June 7, 2018), <https://www.forbes.com/sites/emmawoollacott/2018/06/07/google-pulls-washington-election-ads-says-it-cant-comply-with-new-rules/>.

<sup>3</sup> Google does not, in this public filing, include a more specific description of these measures in order to avoid providing a roadmap for those who might seek to evade our enforcement measures.

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Public Disclosure Commission  
March 29, 2019  
Page 3

## **II. Mr. Sanders' Complaint under RCW 42.17A.345**

On March 4, 2019, Mr. Sanders sent an email to Google's press team claiming that a political advocacy group called "Yes for Public Safety" had run advertisements on Google's platform encouraging citizens of Spokane to vote "yes" on Proposition 1 (a plan to increase funding for the city's police and fire services), which appeared on the February 12, 2019 special election ballot. Mr. Sanders requested that Google provide him "all the information that Google is legally required to disclose about such advertising under Washington State law (RCW 42.17A.345) and the Washington State Administrative Code (WAC 390-18-050)." Mr. Sanders filed his complaint with the PDC shortly thereafter.

## **III. RCW 42.17A.345 Does Not Apply Because Google Does Not Accept Political Advertising**

As Google explained to Mr. Sanders, his request under RCW 42.17A.345 is not well taken. The information maintenance and disclosure requirements under RCW 42.17A do not apply to any and all "commercial advertisers." Rather, they apply only to those advertisers who "accepted or provided political advertising or electioneering communications during [an] election campaign." RCW 42.17A.345(1); *see also* WAC 390-18-050(3) ("Pursuant to RCW 42.17A.345, each commercial advertiser *who has 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." (emphasis added)). As demonstrated above, Google does not accept, and in fact actively rejects, political advertising targeting Washington state and local elections. Accordingly, RCW 42.17A.345 does not apply.

It is still possible for third parties to violate Google's policies and circumvent its technological measures. That appears to have been what happened with the "Yes for Public Safety" ad, unbeknownst to Google. And immediately upon hearing from Mr. Sanders about the ad, the ad was removed and the advertiser was notified of the policy violation.

A third party's illicit requisition of Google's platform to distribute an advertisement in violation of its express policies does not constitute acceptance of that advertisement by Google and does not trigger the obligation for Google to collect or provide detailed information about the ad under RCW 42.17A.345 or WAC 390-18-050.

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Public Disclosure Commission  
March 29, 2019  
Page 4

#### IV. Section 230 of the Federal Communications Decency Act Applies

Mr. Sanders' effort to enforce RCW 42.17A.345 against Google is also barred by the federal statutory immunity afforded to online services under 47 U.S.C. § 230(c)(1). Section 230 states that “[n]o 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.” 47 U.S.C. § 230(c)(1). The statute further states that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” *Id.* § 230(e)(3).

Courts throughout the country agree that the CDA “specifically proscribes liability” for claims based upon an online service provider acting as a “publisher” or “distributor” of third-party content, especially claims which seek to hold an online service “liable for decisions relating to the *monitoring, screening, and deletion* of content from its network—actions quintessentially related to a publisher’s role.” *Green v. Am. Online (AOL)*, 318 F.3d 465, 471 (3d Cir. 2003) (emphasis added). Simply put, Section 230 immunizes Google from claims, like the complaint Mr. Sanders makes, that seek to impose a duty upon it to monitor and screen its online services for unwanted or unlawful content supplied by someone else.<sup>4</sup>

Mr. Sanders would impose upon Google precisely the sort of monitoring obligation that Section 230 prohibits. In his view, if, unbeknownst to Google, a third party posts a political ad in violation of Google’s express policies and in circumvention of its technical measures, Google would be instantly and strictly subject to statutory recordkeeping and disclosure obligations. That is an obligation that Section 230 squarely preempts.<sup>5</sup>

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<sup>4</sup> See, e.g., *Weerahandi v. Shelesh*, No. 3:16-CV-06131-BRM-TJB, 2017 U.S. Dist. LEXIS 163910, at \*18-20 (D.N.J. Sept. 29, 2017) (dismissing claim that Google failed to prevent unlawful content from being posted onto its YouTube service, because “[p]ursuant to the CDA, Plaintiff cannot assert a claim against Google or YouTube for ‘decisions “relating to the monitoring, screening, and deletion of content from its network”’” (citations omitted)); *Obado v. Magedson*, 612 F. App’x 90, 93-94 (3d Cir. 2015) (dismissing claim that Google failed to prevent unlawful content from appearing in its search results, because Section 230 “proscribes liability in situations where an interactive service provider makes decisions ‘relating to the monitoring, screening, and deletion of content from its network’” (citation omitted)); *Goddard v. Google, Inc.*, No. C 08-2738 JF (PVT), 2008 U.S. Dist. LEXIS 101890, at \*9 (N.D. Cal. Dec. 17, 2008) (dismissing claims that Google failed to protect consumers from fraudulent ads posted to its platform because its “failure to intervene is immunized” by Section 230); *Bennett v. Google, Inc.*, No. 1:16-cv-02283 (TFH), 2017 U.S. Dist. LEXIS 95708, at \*4-6 (D.D.C. June 21, 2017) (rejecting argument that CDA does not immunize Google where it allegedly fails to enforce policies prohibiting the content at issue, because “[i]t would be impossible for service providers to screen each of their millions of postings for possible problems” (quoting *Zeran*, 129 F.3d at 331)), *aff’d*, 882 F.3d 1163 (D.C. Cir. 2018).

<sup>5</sup> Google’s concerns about attempts to enforce Washington’s political advertising laws in this context go beyond Section 230. Because online platforms are used by advertisers all over the country and the world, the imposition of the

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Public Disclosure Commission  
March 29, 2019  
Page 5

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Google shares Washington's interest in promoting election integrity and transparency. It has devoted significant financial and engineering resources to developing mechanisms to serve that interest. Google, however, does not believe that Mr. Sanders' complaint that Washington's recordkeeping and disclosure requirements apply here is well-founded given that Google explicitly prohibits political advertising in the state and actively enforces that prohibition. It further does not believe that Washington's statutory regime is properly invoked here in light of Section 230. For these reasons, Google respectfully requests that the PDC dismiss Mr. Sanders' complaint.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

*/s David H. Kramer*

David H. Kramer

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specific, localized obligations that Mr. Sanders envisions would appear to unduly burden interstate commerce. In addition, Washington's laws in this area present serious First Amendment problems. *See Wash. Post v. McManus*, 355 F. Supp. 3d 272, 298-305 (D. Md. 2019) (plaintiff newspapers likely to succeed on claim that Maryland's mandatory disclosure laws for political advertising violate their First Amendment rights), *appeal docketed*, No. 19-1132 (4th Cir. Feb. 4, 2019). Given the issues we have already noted, however, there is no need to delve into these constitutional infirmities at present.