



December 20, 2021

Submitted electronically to [elections.sos@oregon.gov](mailto:elections.sos@oregon.gov)

The Hon. Shemia Fagan  
Oregon Secretary of State  
255 Capitol Street NE, Suite 501  
Salem, Oregon 97310

Dear Secretary Fagan,

Campaign Legal Center (“CLC”) respectfully submits these written comments to the Oregon Secretary of State’s Office (“Secretary”) regarding the Notice of Proposed Rulemaking for O.A.R. 165-012-0525, which would further clarify the campaign advertising disclosure requirements under O.R.S. § 260.66, including the statute’s requirement for sponsors of political advertising to list their top five donors on their ads.<sup>1</sup>

CLC is a nonpartisan, nonprofit organization that advances democracy through law at the federal, state, and local levels of government. Since its founding in 2002, CLC has participated in every major campaign finance case before the U.S. Supreme Court, and in numerous other federal and state court cases. Our work promotes every American’s right to an accountable and transparent democracy.

CLC continues to support the Secretary’s efforts to clarify the disclaimer requirements for political communications under O.R.S. § 260.266. Last January, CLC submitted public comments and recommendations to the Secretary regarding the proposed rule that became O.A.R. 165-012-0525.<sup>2</sup> Similar to our prior comments, the following comments are aimed at ensuring the amended rule will continue to apply flexibly to a wide range of political

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<sup>1</sup> See Office of the Sec’y of State, Notice of Proposed Rulemaking (Oct. 31, 2021), <https://sos.oregon.gov/elections/Documents/103121-165-012-0525-PERM-NoticeFilingTrackedChanges.pdf>.

<sup>2</sup> See Comments from CLC to Shemia Fagan, Or. Sec’y of State (Jan. 25, 2021), available at <https://campaignlegal.org/sites/default/files/2021-01/CLC%20Comments%20on%20Proposed%20Rule%20for%20ORS%20260.266.pdf>.

communications, especially different types of digital media, and provide Oregon’s regulated community with clear guidance on the law’s disclaimer requirements.

**The Secretary Should Maintain the “Majority of Text” Standard for the Minimum Font Size in Digital Disclaimer Statements.**

The proposed rule would amend the font-size requirement for “digital statements” in O.A.R. 165-012-0525(4)(c) by broadly specifying that the font size for all disclaimer statements must appear, at a minimum, “in letters at least one-fourth the size as the rest of the text in the communication.” This significantly differs from the font specifications currently in the rule, which state in relevant part that “[t]he font size for a digital statement shall be in letters at least as large as the majority of text in the communication.”

CLC recommends keeping the existing font-size requirement for digital disclaimer statements, which establishes a clear and flexible “majority of text” standard to help ensure the legibility of disclaimers on all digital communications, regardless of their size or format. Indeed, recent federal election bills, including the Freedom to Vote Act and the For the People Act (H.R. 1/ S. 1), would incorporate this standard as a safe harbor for required “clear and conspicuous” disclaimers on digital election ads.”<sup>3</sup> By contrast, the proposed amendment to O.A.R. 165-012-0525(4)(c), notwithstanding the separate requirement for a printed or digital statement to utilize “no smaller than 10 point font,”<sup>4</sup> would permit the inclusion of smaller—and therefore less visible—disclaimer statements on many common varieties of digital communications, such as mobile advertising and small banner ads. The proposed amendment also would make it more difficult for members of the public to see the “active link” included on digital ads in order “to immediately

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<sup>3</sup> See Freedom to Vote Act, S. 2747, 117th Cong. § 6107(b) (2021), <https://www.congress.gov/bill/117th-congress/senate-bill/2747/text#HD2389611D98A470297EBC4062829E979>; For the People Act, H.R. 1, 117th Cong. § 4302(a) (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1/text>. California’s Political Reform Act also uses a “majority of text” standard for disclaimers that must appear on electronic mailings. See Cal. Gov’t Code 84305 (“A candidate, candidate controlled committee established for an elective office for the controlling candidate, or political party committee shall not send a mass electronic mailing unless the name of the candidate or committee is shown in the electronic mailing preceded by the words “Paid for by” in at least the same size font as a majority of the text in the electronic mailing.”).

<sup>4</sup> Or. Admin. R. 165-012-0525(4)(c). As CLC noted in prior comments submitted to the Secretary in January, a minimum font size of 10-points may be suitable for most printed communications, but it is likely not compatible with smaller digital advertising formats. See Comments from CLC to Shemia Fagan, *supra* note 2, at 4.

view the remainder of the information required under ORS 260.266,” i.e., the top contributor/donor statements.<sup>5</sup>

Accordingly, we urge the Secretary to retain the existing “majority of text” standard for the minimum font size required in digital disclaimer statements.

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Thank you for your consideration of CLC’s comments. We would be happy to provide additional information to assist the Secretary in finalizing the amendments to O.A.R. 165-012-0525.

Respectfully submitted,

/s/ Austin Graham

Austin Graham  
Legal Counsel

/s/ Patrick Llewellyn

Patrick Llewellyn  
Director, State Campaign Finance

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<sup>5</sup> Or. Admin. R. 165-012-0525(7). The proposed rule would require a digital communication’s “active link” to “meet the same requirements for legibility set forth in ORS 260.266 and this rule.”