



State of Washington PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: March 21, 2013
SUBJECT: Continued Discussion of Campaign Activities on the Internet –
Draft Possible Amended Rules and Draft Possible New Rule in Title 390
WAC; Top 5 Rules Update – March 28, 2013 Meeting

Agenda Item

At its March 28 meeting, the Commission is scheduled to review draft possible amended rules and a draft possible new rule in Title 390 WAC to address campaign activities on the Internet. The Commission is also scheduled to hear from a speaker from Maryland, and perhaps from others who have been invited to or wish to address the Commission.

As detailed at the end of this memo, if the Commission approves proposed language at this meeting, a public hearing can be scheduled for the May 23 meeting, and if adopted, the rules would be effective prior to June 30. If the Commission determines the drafts need more work, the rules may or may not be effective before the June 30 deadline for the upcoming November election, depending upon how you decide to proceed.

Background

Since May 2012, the Commission has reviewed background materials and Interpretation 07-04 (*Campaign Activities on the Internet*), to consider possible updates reflecting current use of technology in state campaigns. In January, the discussion noted that several rules referenced in the interpretation could benefit from being updated. In February, the Commission agreed to consider updating several of its rules and discussed its approach in that rulemaking. A copy of the February memo is enclosed for ease of reference.

Guest Speakers

Jared DeMarinis, Director of the Maryland State Board of Elections Candidacy and Campaign Finance Division, is scheduled to address the Commission via Skype and answer any questions regarding that state's experiences. Maryland requires disclaimers in online political advertising and websites. Staff thought it would be useful to hear from Mr. DeMarinis. See enclosed excerpt from the Maryland board's website, summarizing that state's requirements.

In addition, staff has invited persons who work with online ads, and PDC stakeholders, to address the Commission. As of this writing, those additional speakers, if any, have not yet been confirmed.

Title 390 WAC - Draft Possible Amendments and Draft Possible New Rule; Top 5 Rules

Staff is providing draft possible amendments to four current rules and one possible new draft rule for Commission review, discussion, and possible approval of proposed language. The drafts are enclosed. Options and points that may need further discussion are highlighted in yellow. Here is a summary by topic and rule, and a summary of the status of the rules regarding Top 5 disclosures on ballot measures.

POLITICAL ADVERTISING

WAC 390-05-290 Definition - Political advertising. Currently, this rule explains what is not political advertising. *Draft amendments →*

- Explain what is political advertising under RCW 42.17A.005(36).
- Define the statutory phrase “mass communication” and describe other terms.
- Provide options: Staff is providing several options to describe the scope of a mass mailing (200, 500, 1,000 items), and to describe the time period in which those mailings occur (30-day period, calendar month). The draft includes emails and text messages in mass mailings.
- Update exclusions from what is political advertising (letters to the editor, other examples where payment is not normally required).

PERIODICAL

WAC 390-05-520 Periodical. Currently, this rule defines periodical. *Draft amendments →*

- Define “periodical” to include online publications, except for electioneering communications.
- Note that periodical for electioneering communications is defined in the rule as a communication “on paper.” Electioneering communications are made only via broadcast, cable, satellite television or radio transmission, U.S. postal service mailing, billboards, newspapers and periodicals. RCW 42.17A.005(19)(a).

ONLINE POLITICAL ADVERTISING

New Rule – WAC 390-18-XXX Online political advertising. This draft new rule would provide more information about disclaimers and other disclosure requirements in RCW 42.17A.320, as applied to online political ads. *The draft new rule would →*

- Explain that the disclaimer and other disclosure requirements apply to online ads, unless exempted by statute or rule.
- Explain that a candidate’s party preference is required to be included in online ads.

- Explain the requirements for ads that originally run in one format (paper, radio, TV) but are also disseminated online, or disseminated only online.
- Explain that the sponsor's name and address must be included on political committee websites, and other websites sponsored for the purpose of appealing, directly or indirectly, for votes or for financial or other support in an election campaign.
- Explain that small online ads can use automatic displays described in WAC 390-18-030 when ad size limits make full compliance with the required disclosures in RCW 42.17A.320 impracticable.

EXEMPTIONS FROM SPONSOR IDENTIFICATION

WAC 390-18-030 Advertising — Exemptions from identification. Currently, this rule provides a list of ads where sponsor ID is not required because it is impractical (skywriting, potholders, small newspaper ads, many others). *Draft amendments* →

- Add a reference to small online newspaper ads and other small online ads.
- Describe the criteria for alternative disclosures in online ads, where including all the information required by RCW 42.17A.320 in the ad is impractical due to the vendor's space or character limits. In preparing this draft, staff took into account prior Commission discussions to date, as well as the March 2013 Federal Trade Commission guidelines for online advertising disclosures (*.com Disclosures – How to Make Effective Disclosures in the Digital Advertising Age*), available at: <http://online.wsj.com/public/resources/documents/20130312disclosures.pdf>
- Provide options: Staff is proposing options, including options addressing the 1995 Commission interpretation of *McIntyre v. Ohio Elections Commission* for ads produced by individuals using their own modest resources. Those options address whether to include only the 1995 criteria (see list in the Political Committee Manual excerpt, enclosed), remove some criteria, and/or include other criteria.
- Add a reference to internal political communications. (Internal political communications are discussed in greater detail in Commission Interpretation 08-01).

VOLUNTEER SERVICES

WAC 390-17-405 Volunteer services. Currently, this rule explains more details regarding volunteer services to a campaign. *Draft amendments* →

- Add website and online activities to the list of common campaign activities by volunteers.
- Provide options: Staff is providing options to address when an individual's volunteer website design or Internet advertising production for a campaign qualifies as a "volunteer" activity that is not an in-kind contribution.

Typically, by statute and unless otherwise addressed, to qualify as a volunteer service that is not an in-kind contribution, the individual must render uncompensated services of the sort "commonly performed by volunteer campaign workers" or

personally incur “incidental expenses” not exceeding \$50. RCW 42.17A.005(13)(b)(vi).

In addition, WAC 390-17-405(1)(k) further describes that to qualify as a volunteer service for *campaign consulting and advertising* and similar campaign services, the volunteer must not “ordinarily charge a fee” for the service. In 2007, in Interpretation 07-04, the Commission applied this provision to Internet advertising production, but not to website creation and design. At that time, the Commission described that it wanted to encourage campaigns to use websites but recognized many lacked the technological capability. On an interim basis, the Commission determined that volunteers who are not full-time website professionals and earn no more than \$10,000 per year from others for website design and creation (for example, for their schools, community groups, etc.) could still provide “volunteer” services to a campaign. In 2007, the Commission described it would begin rulemaking to address this in WAC 390-17-405.

The options in the draft query whether the Commission wants to take this same approach in 2013.

TOP FIVE

In May and June 2012, the Commission adopted language on an emergency basis in two rules, WAC 390-18-010 and WAC 390-18-025, to address Top 5 disclosures for ballot measures.

The Commission also approved that language as proposed permanent language, so that a public hearing could be held on the proposed permanent changes. The emergency rules have expired but a public hearing has not been held. Staff proposes to proceed with filing that language as permanent language and scheduling the public hearing at your May 23 meeting.

While WAC 390-18-010 was also listed in my February memo as one that could be reviewed in the Internet discussion, staff suggests holding off on other amendments to that rule at this time. Staff makes that suggestion in order to allow the Legislature to address the agency-request legislation concerning aggregation of contributions in the Top 5 ballot measures, and in light of the Commission’s Internet rulemaking discussion on the several other rules to be discussed at the March meeting, both which could impact the Top 5 rules and prompt other future amendments.

Calendaring Next Steps

As you may recall, the Commission’s statutory deadline at RCW 42.17A.110(1) for enacting rules that affect campaigns does not always neatly line up with rulemaking notice, hearing, effective dates for rules, and other procedural requirements in the Administrative Procedure Act, as well as Commission meeting dates.

In sum, if the Commission approves proposed rule language for some or all of the rules in March, the language can be filed with the Code Reviser and a public hearing

scheduled for the May 23 meeting.¹ Any rules adopted at the May 23 meeting can be in effect prior to June 30.

However, if the Commission determines any or all of the March drafts need more work, then your options are as follows:

(a) The discussion can continue at the April 25 *regular* meeting, or at other future meetings, if you are okay with the rules taking effect after the November general election. While any proposed rule language approved at those meetings can be scheduled for a public hearing beginning in June, the language cannot go into effect until after the general election.

OR

(b) The Commission could schedule a *special* meeting by April 15 to approve rule language so it could be filed with the Code Reviser and be considered for adoption at a May 23 public hearing, which would allow the rules to become effective before June 30 and therefore applicable to the 2013 elections.²

After the rulemaking, the Commission can also then turn back to Interpretation 07-04 (*Campaign Activities on the Internet*) to amend it so it is consistent with rule changes.

Enclosures: Maryland State Board of Elections Materials
February 23, 2013 Meeting Memo
Political Committee Manual Excerpt - *McIntyre v. Ohio Elections Commission*
Draft Possible Amended Rules and Draft Possible New Rule
Summary Chart

¹ May 23 is the last regular Commission meeting date by which permanent rules can be adopted prior to the June 30 cutoff in RCW 42.17A.110(1) for rules relating to campaign finance, political advertising, or related forms for the 2013 campaigns, until after the November general election. There is a 31-day delay between the date of adoption of permanent rules and the date they are effective.

² Under the Code Reviser's publication schedule for the *Washington State Register*, the April 25 regular meeting is too late to publish proposed rule language for a hearing at the May 23 regular Commission meeting. If proposed language is to be approved in April for filing with the Code Reviser and for a May 23 hearing, the language would have to be approved at a special meeting and filed with the Code Reviser by noon April 17.

Maryland
State Board of Elections

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Chapter 12 - Campaign Literature and Paraphernalia

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12.1 Authority Lines

1. Generally

Campaign material includes signs, buttons, letters, tickets, solicitations, radio and television advertisements, websites, bumper stickers, and paraphernalia such as pencils, hats, and t-shirts.

Each item of campaign material must include an authority line, set apart from the other printing or content of the campaign material. The authority line must state the name and address (unless the address is on file with the State Board) of the person who is responsible for the production and distribution of the campaign material.

- § 1-101(k) and § 13-401 of the Election Law Article

2. Campaign Materials Produced by a Political Committee

If the campaign material is produced by a political committee, the authority line must contain:

- The name of the treasurer; and
- The name of the campaign finance entity.

Example of authority line for a committee.

Committee to Elect Mary Smith, John Jones, Treasurer

Google Translate

Select Language



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If the material is too small to permit the inclusion of all required information in a legible manner, the material need only contain the name and title of the treasurer.

Example: John Jones, Treas.

The Office of the Attorney General has stated that almost no material is too small to permit inclusion of the complete authority line. Accordingly, every effort should be made to include the entire authority line.

3. Mailings

If there is more than one piece or item bearing the candidate's name in a mailing (for example, a brochure, a cover letter, a bumper sticker, a reproduction of a newspaper article), each piece must bear the authority line. An envelope that does not include the name of a candidate, the name of a campaign finance entity, or a campaign slogan need not contain an authority line.

4. Campaign Materials Produced by a Person

Campaign materials paid for by a person other than the political committee mentioned in the campaign materials are either an *in-kind contribution* to the political committee or an *independent expenditure*. This distinction dictates the contents of the authority line.

In-Kind Contribution: If an individual or an entity pays for a sign or other item in support of a candidate with the candidate's cooperation and coordination, the sign or other item should have the authority line of the candidate's campaign finance entity.

Independent Expenditure: If an individual or an entity pays for a sign, giveaway item or other campaign item in support of or in opposition to a candidate without the candidate's cooperation or coordination, the authority line should include the following statement.



"This message has been authorized and paid for by (insert). This message has not been authorized or approved by any candidate."

The name and address of the entity; and
The name and title of the president, treasurer, or person responsible for the campaign material.

Exception: According to the Attorney General of Maryland, an individual acting alone, i.e. without the use of vendors, consultants or other paid services, may create campaign materials without including an authority line.*

- §§13-102 and 13-401 of the Election Law Article

*80 Opinions of the Attorney General 110 (1995), the Attorney General applied, McIntyre v. Ohio Elections Commission to Maryland's election law. In McIntyre, the Supreme Court ruled that Ohio's law prohibiting anonymous campaign literature, as that law applied to an individual acting independently, was unconstitutional. Accordingly, the Attorney General concluded that the Court's decision does not invalidate prohibitions on anonymous campaign materials (or the requirement that disclosures be made on campaign materials) except as applied to an individual acting independently.

5. Campaign Material Produced by Multiple Political Committees

If campaign materials are produced jointly by more than one political committee (Committee A and Committee B), the authority line on the materials is as follows:

- If the committees each wrote a check to purchase the materials, the authority line of both Committee A and B must be included; or
- If Committee A paid for the materials, only Committee A's authority line is required. It should be noted that Committee A must show on its campaign finance report that an in-kind contribution was made to Committee B (and Committee B must report receiving an in-kind contribution).

NOTE: A political committee may not reimburse another political committee. Any monies received by a political committee from another political committee will be considered a transfer. Therefore, it is important when sharing an expense either to establish a slate or to write separate checks to the vendor.

6. Campaign Materials on Electronic Media

Social Network and Micro-Blog sites:

Maryland enables political committees that have established a social network or micro-blog account to comply with the authority line requirements of § 13-401 by placing an authority line on the home or landing page, or in the case of the micro-blog, where it is not feasible to place an authority line on the landing page, to register the account name with the State Board.

Electronic Media Advertisement:

Electronic media advertisement by a political committee is required to have an authority line. If the electronic media advertisement is too small for an authority line then:

- The ad must allow the viewer to click on the ad and take the viewer to a-home or landing page that displays the authority line; or
- Register the ad with the State Board.

Examples of electronic advertisements ads deemed too small:

- A paid text advertisement that is 200 characters or less in length
- A micro-bar
- A button ad

12.2 Copies of Campaign Materials

Each campaign finance entity responsible for publishing and distributing an item of campaign material is required to keep a sample copy of the item for at least 1 year after the general election next following the date when the item was published or distributed. For each item of campaign material disseminated through the Internet, the sample copy may be either a paper facsimile copy or an electronic copy that can be produced as a paper facsimile on request. These requirements do not apply to a billboard or a sign distributed by a political committee.

- § 13-403 of the Election Law Article

12.3 Placement of Campaign Signs

The State Board does not have regulatory authority over the placement or location of campaign signs. However, there are State and local laws that regulate where and when you can put up campaign signs.

Placement of signs on State roads and highways is regulated by the State Highway Administration.

County	SHA District Offices
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February Memo



State of Washington
PUBLIC DISCLOSURE COMMISSION

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Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdca.wa.gov

TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: February 21, 2013
SUBJECT: Continued Discussion of Interpretation 07-04, *Campaign Activities on the Internet* – Possible Rules Updates – February 28, 2013 Meeting

Agenda Item

At its February 28 meeting, the Commission is scheduled to continue a discussion regarding possible amendments to Interpretation 07-04, *Campaign Activities on the Internet*. The next step in this discussion focuses on whether several of the rules referenced in that interpretation need to be updated before the interpretation is amended. After reviewing the rules potentially involved and the scope of possible amendments, staff would like to confirm certain assumptions before presenting draft rule language at a future meeting.

Background

Since May, staff has provided the Commission background materials and Interpretation 07-04 for review. This activity is part of the Commission's updates to its interpretations following recodification from RCW 42.17 to RCW 42.17A. The Commission reviewed several possible draft updates to the interpretation, and discussed post-2007 evolution of campaign activities online. The Commission has also received stakeholder input.

In January, the discussion noted that several of the rules referenced in the interpretation could also be updated to reflect current campaign developments with respect to technology use. In 2007, when it issued Interpretation 07-04, the Commission had noted that both the interpretation and its rules may be updated in the future.

Amending Rules in Title 390 WAC

In preparing to draft amended or new rules for Commission review, staff is making certain assumptions listed below based upon Commission discussion to date. Because the assumptions impact which rules are to be considered, as well as options for draft rule language, staff seeks the Commission's confirmation or correction of these assumptions and input on additional assumptions, before drafting.

- ❖ **Intent.** The Commission intends to update its view from 2007 that most online political campaign activity is not subject to some regulation, given campaign and technological developments since then by candidates, campaigns, political committees, advertisers, and others. The Commission recognizes that a significant

amount of political advertising, including by committees, candidates, and others, is now occurring online.

- ❖ **Follow the Money.** The Commission assumes that many of these online campaign activities, including campaigns' and political committees' websites, have some payments, expenditures, costs or services associated with them, whether direct or in-kind. This is in addition to "paid" ads placed on websites. As a result, the Commission intends to provide more disclosure of those activities to the voters, so they can better "follow the money." However, there should also be a threshold for such disclosure for activities by individuals using their own modest resources (\$100 or \$50), and other exemptions should apply where appropriate.
- ❖ **Mass Communication.** The political advertising statutory definition uses the phrase "mass communication." The Commission intends to define the phrase in rule and to explain it includes online communications and mass emails.¹ Rule amendments should define other terms if necessary to confirm that the disclosure and reporting requirements apply to online activities. Example: Current definitions could be amended to explain that a "written" political advertisement includes online ads.
- ❖ **Sponsor Identification and Online Campaign Ads and Websites.** Sponsor identification and other disclosure information is required under RCW 42.17A.320. The Commission intends that draft rule amendments should assume that disclosure requirements apply to online political advertising and online websites that constitute political advertising, except where specifically excluded. To the extent possible, the sponsor identification and related disclosure information for online ads should mirror that provided in ads produced in other formats (paper publications, TV, radio).
- ❖ **Exceptions to Sponsor Identification; Activities by Individuals.**
 - **Disclosure Threshold.** Currently, all "written" political advertising must include the sponsor's name and address. A candidate's party preference must also be included. There are additional requirements (Top 5) for certain ads exceeding disclosure thresholds (\$900 or more for independent expenditures, \$1,000 or more for electioneering communications). The Commission intends to apply these requirements to websites and other online activities.

¹ For example, a definition of "mass communication" could read:

"Mass communication" means a communication by any method not excluded by chapter 42.17A RCW or commission rule, intended to reach a large audience, and which involves payment or expenditures (costs) for the ad or for producing or disseminating the ad, whether funded monetarily or through in-kind contributions or services. Methods include the following:

- (i) advertising displays, newspaper ads, billboards, signs;
- (ii) brochures, articles, tabloids, flyers;
- (iii) radio or television presentations;
- (iv) sample ballots (see WAC 390-17-030);
- (v) websites;
- (vi) mass letters, emails or similar communications directed to [200][500][1,000] or more specific recipients that are identical or substantially similar in nature and sent within a 30-day period; and,
- (vii) other mass means of sending and receiving political advertising, including in online formats.

- **Small Online Ads.** However, certain small or unusual ads (skywriting, potholders) are exempted from sponsor identification by statute and rule, where such disclosure is impractical. The Commission intends that a limited exception will also be made for sponsor identification and other disclaimers on small online ads where character space is limited, in which case automatic displays such as “pop-ups” would be permitted. Therefore, rules governing sponsor identification exemptions should be updated.
- **Activities by Individuals. Sponsor Disclosure.** In addition, in 1995, as a result of a U.S. Supreme Court decision, *McIntyre v. Ohio Elections Commission* (see next section) the Commission excluded from the sponsor identification requirement certain limited campaign activities concerning ballot measures by individuals using their own modest resources (**less than \$100**). The Commission intends to retain that exception, and perhaps to update it to reflect current campaign activities by individuals online.

Volunteer Services. Finally, by statute, volunteer services by individuals do not constitute a contribution or expenditure (including independent expenditure) when certain criteria are met, such as the volunteer has not expended **more than \$50**. Historically, such services have included envelope stuffing, doorbelling, mail handling, and other activities explained in rule. Today, volunteer services can include some website assistance (creation, design, posting). The Commission intends to update its rule to reflect those website activities may be considered volunteer services.

McIntyre v. Ohio Elections Commission

The sponsor identification and disclaimers statute is RCW 42.17A.320. It was formerly codified at RCW 42.17.510. In 1995, the Commission reviewed RCW 42.17.510 in light of the U.S. Supreme Court decision *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995). That case involved an individual, Mrs. McIntyre, who used her own modest resources including her “home computer,”² to design paper leaflets concerning a local bond measure. The leaflets did not include her sponsor identification. She then paid a local print shop to make copies and she distributed the paper fliers by hand. The Ohio Elections Commission charged her with violating Ohio’s statutory prohibition on anonymous campaign speech. The Court overturned the statute, finding that the First Amendment protected an individual who spends her own modest resources to express her political viewpoint in an election campaign, and who wishes to do so anonymously. But, the Court was also careful not to sweep too broadly in its ruling. “We do not thereby hold that the State may not in other, larger circumstances, require the speaker to disclose its interest by disclosing its identity.” (Ginsburg, J., concurring.)

Therefore, in 1995 the Commission determined that it would apply the *McIntyre* decision in a narrow set of circumstances most closely aligned with the facts in *McIntyre*, and would not enforce RCW 42.17.510 against individuals only when all those circumstances are satisfied. One of those circumstances is that the ad concerning the

² It is not known if the phrase “home computer” in the 1995 opinion means a computer with the capability to go online, or word processing equipment.

ballot measure produced by the individual is in writing, does not appear in a newspaper or other publication, and is not communicated electronically. Another circumstance is that the ad sponsor spends less than \$100. See enclosure.³

Query: In light of the current discussion concerning current online campaign activities since 1995, does the Commission still wish to describe that the *McIntyre* exemption for sponsor identification does not apply to “electronic” communications? Does the Commission want to retain all or some of the other criteria?

Possible Amendments

If these assumptions are correct, staff has identified at least five rules that could be amended (or portions moved to a new rule specifically addressing online activities). Copies are attached.

WAC 390-05-290 Definition–Political advertising. This rule explains what is not political advertising. *Draft amendments →*

- Could define “mass communication” and other terms.
- Could update exclusions from what is political advertising (letters to the editor, other examples where payment is not normally required).

WAC 390-05-520 Periodical. This rule defines periodical. *Draft amendments →*

- Could define “periodical” to include online publications, except for electioneering communications.

WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures. This rule explains the details of sponsor identification under RCW 42.17A.320. *Draft amendments →*

- Could add references to mass emails and to email addresses.
- Could explain sponsor identification and other disclaimers for online ads, and disclosure thresholds for individuals.
- Could add that disclosure of sponsor identification and other disclaimers for small online ads can be made by pop-ups or similar automatic mechanisms. (Could also be added to WAC 390-18-030).
- Could provide a cross-reference to WAC 390-18-030.

WAC 390-18-030 Advertising — Exemptions from identification. This rule provides a list of where sponsor ID is not required because it is impractical (skywriting, potholders, small newspaper ads, many others). *Draft amendments →*

- Could add a reference to small online newspaper ads and other small online ads.
- Could add a reference to the Commission interpretation of *McIntyre v. Ohio Elections Commission*.

³ While there was also discussion in 1995 of placing the factors in rule, the factors were listed in a brochure for several years, and are currently listed in the *Political Committee Reporting Manual*. The enclosure is the relevant page from that manual.

- Could add a reference to internal political communications. (Internal political communications are discussed in greater detail in Commission Interpretation 08-01).

WAC 390-17-405 Volunteer services. This rule explains more details regarding volunteer services to a campaign. *Draft amendments* →

- Could add website and online activities to the list of common campaign activities by volunteers, as reflected in Interpretation 07-04.

Next Steps

If the Commission decides it wishes to proceed with updating its rules, it can approve proposed amendatory language at a future meeting. The language will be filed with the Code Reviser and a public hearing will be scheduled. Once the rules are amended following a hearing, the Commission could update Interpretation 07-04 to reference the updated rules.

Timing. As a reminder, “any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election that year.” RCW 42.17A.110(1). Under the Administrative Procedure Act, except for emergency rules, there is a 31-day period between the time of adoption of a rule, and its effective date. Under the *Washington State Register* rule publication schedule and the Commission’s regular meeting schedule, if any of the rule changes are to be in effect by June 30, the Commission will need to (1) approve rule language at the March 28 regular meeting so notice can be filed in April, and (2) hold a hearing at the May 23 regular meeting.

This means that if there is additional stakeholder input or Commission discussion that needs to occur once the draft rules are proposed that require time beyond this timeline, it is possible that the Commission may need to schedule additional (special) meetings, or continue working on the rules with the recognition that amended or new rules would not go into effect until after the 2013 general election.

Enclosures: *McIntyre v. Ohio Elections Commission* Political Committee Manual
Excerpt
Current Rules
Summary Chart (June) (corrected)

Political Committee Manual
Excerpt Regarding
McIntyre v. Ohio Elections
Commission

more than one person or group, show the name and address of each sponsor. (No address if broadcast ad.) If one person pays for printing and another person pays for mailing, both persons should be shown as sponsors.

If a person contributes cash, goods or services to the campaign in order to assist in paying for an ad, it is not necessary to show this contributor's name as a sponsor provided the contribution is included on the appropriate disclosure report.

ID Size and Placement

On written or printed political advertising, the sponsor's name and address and the candidate's party preference must:

- appear on the first page of the communication in at least 10 point type; or
- for ads such as billboards or posters, appear in type at least 10% of the largest size type used in the ad; and
- not be screened or half-toned (i.e., not made lighter through some printing or photographic process), and
- be set apart from any other ad text.

[*Note: Advertising that qualifies as an "independent expenditure" is subject to different sponsor ID requirements, unless the sponsor is a political party. See Independent Expenditures & Electioneering Communications on page 17.]



Effect of US Supreme Court Decision in McIntyre v. Ohio Elections Commission. In June of 1995, the Commission found that there is a narrow set of circumstances under which it will not enforce the sponsor identification section of the law, RCW 42.17A.3201). As such, the sponsor's name and address may be left off of a political ad that meets ALL of the following criteria:

- The sponsor is an individual acting on his or her own behalf and independently of any candidate or authorized committee, political committee, bona fide political party or party organization, caucus political committee or any corporation, union, business, association, or other organization or entity;
- The sponsor personally produces and distributes the ad (or pays for it to be produced or distributed from personal funds) and he or she receives no donations, contributions or other payments from others for the production and distribution of the ad;
- The ad supports or opposes a state-wide or local ballot proposition (not a candidate);
- The sponsor spends less than \$100 in the aggregate to produce and distribute the ad;
- The ad is distributed no later than 10 days before the election at which the ballot measure is to be voted upon; and
- The ad is in writing (e.g., letter, flyer, etc.) but does not appear in a newspaper or other publication and is not communicated electronically.

Candidate Photos

Sponsors of political advertising that contains candidate photos must make sure that 1) at least one photo was taken in the last five years and 2) that it is no smaller than the largest photo in the ad.

Political Advertising

WAC 390-05-290 Definition--Political advertising

definitions.

(1) "Political advertising" is defined at RCW 42.17A.005 to include a mass communication used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

(2) "Mass communication" means a communication intended to reach a large audience through any of the following methods:

(a) advertising displays, newspaper ads, billboards, signs;

(b) brochures, articles, tabloids, fliers, periodicals;

(c) radio or television presentations;

(d) sample ballots (see WAC 390-17-030);

(e) Internet websites or other forms of online web-based media, including mobile technologies using web-based media;

(f) [200] [500] [1,000] or more mass letters, emails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a [30-day period][calendar month]; and,

(g) other mass means of disseminating political advertising, unless excluded by chapter 42.17A RCW or commission rule.

(3) Political advertising does not include letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast where payment for the printed space or broadcast time is not normally required.

Periodical

WAC 390-05-520 Periodical.

For electioneering communications, "periodical" means a publication on paper that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals. For all other political advertising, "periodical" means a publication that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals.

Online Political Advertising

NEW SECTION. WAC 390-18-XXX Online political advertising.

(1) For the purposes of RCW 42.17A.320, the procedures in this rule apply to online political advertising unless otherwise exempted by chapter 42.17A RCW or commission rule.

(2) All online ads must include a candidate's party preference as described in RCW 42.17A.320(1).

(3) Ads distributed in a paper publication and reproduced in an identical manner in the online edition (such as an online edition of a newspaper), or produced only in an online edition of the publication must include the disclosures required in WAC 390-18-010(4).

(4) Independent expenditure ads prepared for radio, telephone and television that are reproduced in an identical manner online or prepared only for online distribution must provide the disclosures required in WAC 390-18-010(6)(a).

(5) Political committee websites, including political committee social media websites, must include the sponsor's name and address. Political committees sponsoring online independent expenditures ads must provide the disclosures required in WAC 390-16-010 (6)(c).

(6) Other websites, including social media websites, sponsored for the purpose of appealing, directly or indirectly, for votes or for financial or other support in an election campaign must include the sponsor's name and address.

(7) Small online ads may provide required disclosures by using an automatic display described in WAC 390-18-030 when ad character

or size limits imposed by the online provider makes full compliance with RCW 42.17A.320 impractical.

Exemptions from Sponsor Identification

**WAC 390-18-030 Advertising--Exemptions from identification;
other sponsor identification provisions.**

(1) RCW 42.17A.320 requires that political advertising must identify certain information. The commission is authorized to exempt advertising where the sponsor identification disclosures required by RCW 42.17A.320(1) and (2) are impractical. In addition, other political advertising is exempt from providing certain disclosures.

(2) Pursuant to RCW 42.17A.320(6), the The following forms of advertising need not include the sponsor's name and address, the "no candidate authorized this ad" sponsor identification, the "top five contributors," or the identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee as otherwise required by RCW 42.17A.320 (1) and (2) because such identification is impractical: Ashtrays, badges and badge holders, balloons, bingo chips, brushes, bumper stickers--size 4" x 15" or smaller, buttons, cigarette lighters, clothes pins, clothing, coasters, combs, cups, earrings, emery boards, envelopes, erasers, frisbees, glasses, golf balls, golf tees, hand-held signs, hats, horns, ice scrapers, inscriptions, key rings, knives, labels, letter openers, magnifying glasses, matchbooks, nail clippers, nail files, newspaper ads of one column inch or less (excluding online ads), noisemakers, paper and plastic cups, paper and plastic plates, paper weights, pencils, pendants, pennants, pens, pinwheels, plastic tableware, pocket

protectors, pot holders, reader boards where message is affixed in moveable letters, ribbons, 12-inch or shorter rulers, shoe horns, skywriting, staple removers, stickers--size 2-3/4" x 1" or smaller, sunglasses, sun visors, swizzle sticks, state or local voters pamphlets published pursuant to law, tickets to fund raisers, water towers, whistles, yard signs--size 4' x 8' or smaller, yo-yos, and all other similar items.

(3) Online political advertising must provide the same disclosures that apply to non-online ads [where technology permits] [to the extent practical]. As an alternative, small online ads with character or size limits imposed by the vendor in a manner that makes full compliance with RCW 42.17A.320 impractical may provide the required disclosures by using an automatic display with the ad that takes the reader directly to the required disclosures.

(a) These automatic displays must be clear and conspicuous, unavoidable, immediately visible, remain visible for at least four seconds, and display a color contrast as to be legible. Online ads that include only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include non-blockable pop-ups, roll-overs, a separate text box or link that automatically appear with or in the ad, or other similar mechanisms that automatically disclose the information required in RCW 42.17A.320.

(4) Political advertising created and distributed by an individual using his or her own modest resources is not required to provide the disclosures in RCW 42.17A.320, when all of the following

criteria are satisfied:

(i) the individual spends less than \$100 in the aggregate to produce and distribute the ad [or less than \$50 to produce and distribute an online ad];

(ii) the individual acts independently of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(iii) the individual does not receive donations, contributions, or payments from others for the ad, and is not compensated for producing or distributing the ad;

* * *

OPTION 1.A RE APPLICATION TO BALLOT PROPOSITIONS - RETAIN CURRENT CRITERIA AT (iv):

(iv) the ad supports or opposes a ballot proposition;

OPTION 1.B RE APPLICATION TO BALLOT PROPOSITIONS - DO NOT INCLUDE (iv).

* * *

OPTION 2.A RE TIMING - RETAIN CURRENT CRITERIA AT (v):

(v) the ad is distributed no more than 10 days before an election upon which the measure is to be voted upon;

OPTION 2.B RE TIMING - DO NOT INCLUDE (v) OR MODIFIY (v).

* * *

OPTION 3.A RE *DISTRIBUTION OF ADS* - RETAIN CURRENT CRITERIA ONLY:

(vi) the ad is

- a flier, handbill, letter, etc. distributed by the individual,
- does not appear in a newspaper or other similar mass
publication, and,
- is not communicated electronically.

OPTION 3.B RE *DISTRIBUTION OF ADS* - RETAIN CURRENT CRITERIA & ADD
TEXT OR EMAIL:

(vi) the ad is

- a flier, handbill, letter, text or email distributed by an
individual,
- does not appear in a newspaper or other similar mass
publication, and,
- is not otherwise communicated electronically.

OPTION 3.C RE *DISTRIBUTION OF ADS* - RETAIN CURRENT CRITERIA & ADD
TEXT OR EMAIL, & INDIVIDUAL'S SOCIAL MEDIA SITE OR PERSONAL WEBSITE:

(vi) the ad is either

- a letter, flier, handbill, text or email from an individual
and that document does not appear in a newspaper or other similar
mass publication, or,
- posted on the individual's social media site, personal website,
or similar electronic form where information is produced and
distributed only by the individual.

OPTION 3.D RE *DISTRIBUTION OF ADS* - DO NOT REFERENCE ANY METHODS OF
DISTRIBUTION - DO NOT INCLUDE (vi)

(5) Political advertisements that are internal political communications to members are not required to separately include the disclosures in RCW 42.17A.320 where the sponsor's name is otherwise apparent on the face of the communication.

Volunteer Services

WAC 390-17-405 Volunteer services. (1) In accordance with RCW 42.17A.005 (13)(b)(vi), an individual may perform services or labor for a candidate or political committee without incurring a contribution, so long as the individual is not compensated by any person for the services or labor rendered and the services are of the kind commonly performed by volunteer campaign workers. These commonly performed services include:

- (a) Office staffing;
- (b) Doorbelling or leaflet drops;
- (c) Mail handling (folding, stuffing, sorting and postal preparation, processing emails to and from the campaign);
- (d) Political or fund raising event staffing;
- (e) Telephone bank activity (conducting voter identification, surveys or polling, and get-out-the-vote campaigns);
- (f) Construction and placement of yard signs, hand-held signs or in-door signs;
- (g) Acting as a driver for candidate or candidate or committee staff;
- (h) Scheduling of campaign appointments and events;
- (i) Transporting voters to polling places on election day;
- (j) Except as provided in subsection (2) of this section, preparing campaign disclosure reports required by chapter 42.17A RCW and otherwise helping to ensure compliance with state election or public disclosure laws;
- (k) Campaign consulting and management services, polling and survey design, public relations and advertising, or fund-raising

performed by any individual, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service;

(l) Website creation, design, posting and maintenance, so long as the individual does not incur incidental expenses for the campaign personally paid by the individual exceeding \$50 and

OPTION 1.A - CONSISTENT WITH 2007 INTERPRETATION:

does not receive more than \$10,000 in compensation per calendar year providing similar services to others (non-campaigns);

OPTION 1.B - CONSISTENT WITH OTHER SUBSECTIONS IN RULE:

does not ordinarily charge a fee or receive compensation for providing similar services to others;

(m) Internet advertising production (such as producing an online video) so long as

OPTION 2.A - CONSISTENT WITH 2007 INTERPRETATION AND OTHER SUBSECTIONS IN RULE:

the individual does not incur expenses personally paid by the individual exceeding \$50 for the campaign and does not ordinarily charge a fee or receive compensation for providing the service;

OPTION 2.B - ADDRESS THE SAME AS WEBSITE CREATION ABOVE?

and

(n) All similar activities as determined by the commission.

(2) An attorney or accountant may donate his or her professional services to a candidate, a candidate's authorized committee, a political party or a caucus political committee, without making a

contribution in accordance with RCW 42.17A.005 (13) (b) (viii), if the attorney or accountant is:

(a) Employed and his or her employer is paying for the services rendered;

(b) Self-employed; or

(c) Performing services for which no compensation is paid by any person. However, neither RCW 42.17A.005 (13) (b) (viii) nor this section authorizes the services of an attorney or an accountant to be provided to a political committee without a contribution ensuing, unless the political committee is a candidate's authorized committee, political party or caucus political committee and the conditions of RCW 42.17A.005 (13) (b) (viii) and (a), (b) or (c) of this subsection are satisfied, or unless the political committee pays the fair market value of the services rendered.

Summary Chart

SUMMARY CHART

June 2012

(corrected)

Internet

Governing Statute or Rule

Question or Issue

Paid Political Advertising



Is a video paid "political advertising" when it is posted on the Internet via YouTube or other means that often allows postings for free but instead the sponsor pays to target an audience?

- * Does it matter if someone originally produced the video for free, or if they instead paid for production costs?
- * Does it matter if the video was first published somewhere else, or if it was specifically made only for YouTube?
- * Does it matter if the video was posted with or without the knowledge of the creator?

When there is payment to a website host or carrier to direct viewers to a campaign website (and move online search responses up higher on the list of responses a viewer sees), is the website link and one-line description considered "political advertising"?

Is a website paid "political advertising" when it collects and processes contributions only for "one side" of a campaign, deducts a processing fee, and advertises this service on the website?

Is a paid "mass e-mail" a "mass communication" that is "political advertising"?

Currently, a political committee does not need to include disclaimers on its website under Interpretation 07-04. Should that same answer apply in 2012?

Currently an individual does not need to include disclaimers on his/her website page supporting or opposing a candidate under Interpretation 07-04. Should that same answer apply to Facebook?

Definitions - RCW 42.17A.005

• "Sponsor" is "the person **paying for** the electioneering communication, independent expenditure, or **political advertising**. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor". RCW 42.17A.005(42).

• "Political advertising" is "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 or opposition** in any election campaign." RCW 42.17A.005(36).

* In PDC Interpretation 08-01 (Internal Political Communications and Sponsor Identification) the Commission recognized the phrase "**mass communication**" has a common understanding which implies an external communication to a large population of an unspecified number through a mass form of media intended to reach a broad audience.

* In *Human Life of Washington v. Brumsickle*, the Court gave the phrase "**mass communication**" its ordinary dictionary meaning. The Court said "mass" is defined as directed at or reaching a large number of people and "communication" is defined as "the exchange of ideas, messages, or information, as by speech, signals or writing" or "a system for sending and receiving messages, as by mail, telephone or television." The court concluded the "telemarketing campaign" at issue in that case constituted mass communication that qualified as political advertising.



Character & Space Limits for Online Paid Political Ads

If a website or Internet site/carrier only permits limited characters or limited space for a paid ad, how should the ad provide sponsor ID, and where required, Top 5 or party preference?

* Should an ad sponsor be permitted to provide the required information via a link to a landing page or website, or through a rollover, mouse-over or pop-up?

* Or, should the Commission find these ads are equivalent to other items currently exempted from sponsor ID requirements because requiring such disclaimers and disclosures would be "impractical" (such as for small newspaper ads)?

Sponsor ID & Other On-Ad Disclosure Requirements – RCW 42.17A.320, WACs 390-18-010, 390- 18-020, 390-18-025, 390-18-027

● RCW 42.17A.320 requires all written political advertising to **"include"** the sponsor's name and address. That information must be on the "first page" of the advertisement in a certain size. RCW 42.17A.320; WAC 390-18-010.

● Party preference must be "clearly identified in" electioneering communications, independent expenditures or political advertising." Independent expenditures and electioneering communications must **"include as part of the communication"** the statement "No candidate authorized this ad. It is paid for by (name, address, city, state)." RCW 42.17A.320; WAC 390-18-010; WAC 390-18-020.

● The "Top 5 Contributors" disclosure for political committees doing independent expenditure ads and electioneering communications must include a **"statement"** of the Top 5, **"followed by a listing"** of those contributors. For a medium that includes a **visual image**, Top 5 must be **"clearly spoken"** or **"appear in print and be visible for at least four seconds"**, along with other size requirements. If the medium does not include a visual image (currently radio for EC's, and radio and telephone for IE's), the disclosure must be **clearly spoken**, followed by a **listing** of the Top 5. If the sponsor is a political committee, the sponsor's name must be included. RCW 42.17A.320; WAC 390-18-010; WAC 390-18-025; WAC 390-18-027.

● Ballot measure ads of \$1,000+ sponsored by a political committee must **"include"** Top 5. RCW 42.17A.320.

● Certain political advertising is **exempt** from the disclaimer and disclosure requirements because of its **size or form**. For example, political yard signs of a certain size, campaign buttons, balloons, pens, pencils, skywriting, inscriptions, "and other forms of advertising where identification is **impractical**" as identified by the Commission in rule are exempt. RCW 42.17A.320.

* WAC 390-18-030 provides an additional list of exemptions, including but not limited to bumper stickers 4"x15" or smaller, **newspaper ads of one column inch or less**, others.



Becoming a Candidate by Publicly Announcing for Office

Does a person's Tweet, group text or Facebook posting that s/he is running for office constitute a public announcement, for the purpose of determining when a person becomes a candidate subject to RCW 42.17A?

Definitions – RCW 42.17A.005

- "Candidate" is defined at RCW 42.17A.005(7) as "any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:
 - (a) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office;
 - (b) **Announces publicly or files for office;**
 - (c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or
 - (d) **Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.**

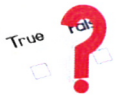


Media Exemption

Does the "media exemption" (for what communications do not qualify as a contribution, or political advertising) apply to social media?

Media Exemptions – RCW 42.17A.005 & WAC 390-05-290

- Under RCW 42.17A.005(13)(b)(iv), a contribution does not include: "A **news item, feature, commentary, or editorial** in a **regularly scheduled news medium that is of primary interest to the general public**, that is in a news medium **controlled by a person whose business is that news medium**, and that is not controlled by a candidate or a political committee."
- See also media exemptions at RCW 42.17A.005(19)(b) (electioneering communications) and 42.17A.610(3) (lobbying).
- Under WAC 390-05-290, "political advertising" does not include "letters to the editor, news or feature articles, editorial comment or replies thereto in a regularly published newspaper, periodical, or on a radio or television broadcast **where payment for the printed space or broadcast time is not normally required.**"



False Political Advertising

How does the false political advertising prohibition apply to online ads?

False Political Advertising - RCW 42.17A.335

- Under RCW 42.17A.335, it is a violation of RCW 42.17A for a person to sponsor, with actual malice, political advertising or electioneering communications that constitute libel or defamation under the circumstances defined in the statute.