



March 18, 2025

Peter Frey Lavalley, Executive Director
Washington State Public Disclosure Commission
711 Capitol Way, Room 206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Petition for Amendment of WAC 390-17-030

Dear Mr. Lavalley:

The Washington State Democratic Party requests that the Public Disclosure Commission amend WAC 390-17-030, "Sample ballots and slate cards," to allow political parties and others to tell voters which ballot propositions they support or oppose on sample ballots that fall within the scope of RCW 42.17A.405(15).

The amendments we propose are to subsections (1), (2), (3), and (9) of the rule:

(1) **Intent.** Under certain conditions, expenditures for ~~slate cards and other candidate listings~~ sample ballots fall within the scope of RCW 42.17A.405(15) and are, therefore, exempt from contribution limits and eligible for payment with a bona fide political party's exempt funds. ~~Slate cards and other candidate listings~~ Sample ballots remain reportable under chapter 42.17A RCW and subject to the political advertising provisions of the act.

The purpose of this exemption from the contribution limits is to allow political parties, political committees, and other sponsors to tell the general public which candidates they support and which ballot propositions they support or oppose. The exemption is not intended as a device to circumvent the contribution limits and full reporting requirements.

(2) For purposes of RCW 42.17A.005(22) and 42.17A.405(15), "**sample ballots**" means slate cards, or other ~~candidate listings~~ of candidates or supported or opposed ballot propositions, whether written or oral, that satisfy the qualifying criteria specified in subsection ~~(10)~~ (9) of this section.

(The amendment above changing “(10)” to “(9)” fixes a typographical error in the rule.)

(3) (a) A bona fide political party may use contributions it receives pursuant to RCW 42.17A.405(15) to produce and distribute sample ballots.

(b) Expenditures for sample ballots do not count against a bona fide political party's contribution limit to the candidates listed on the sample ballot. Further, when reporting sample ballot expenditures, a bona fide political party is not required to attribute a portion of the expenditure to each of the ~~eandidates listed on election campaigns supported by~~ the sample ballot, but the names of the ~~eandidates~~ election campaigns must be reported along with the other information required by chapter 42.17A RCW and chapter 390-17 WAC.

(9) Qualifying criteria for sample ballots, slate cards and other candidate listings. In order not to count against a person's contribution limit to the candidates listed on a sample ballot and, in the case of a bona fide political party, in order to be eligible for payment with contributions received pursuant to RCW 42.17A.405(15), a sample ballot must satisfy all of the criteria in (a) through (d) of this subsection.

(a) The sample ballot must list the names of at least three candidates for election to public office in Washington state and be distributed in a geographical area where voters are eligible to vote for at least three candidates listed. The candidate listing may include any combination of three or more candidates, whether the candidates are seeking federal, state or local office in Washington.

(b) The sample ballot must not be distributed through public political advertising; for example, through broadcast media, newspapers, magazines, billboards or the like. The sample ballot may be distributed through direct mail, telephone, electronic mail, websites, electronic bulletin boards, electronic billboards or personal delivery by volunteers.

(c) The content of a sample ballot is limited to:

- The identification of each candidate (pictures may be used);
- The office or position currently held;
- The office sought;
- Party affiliation;
- For ballot propositions, a statement, check mark, or other indication of support or opposition; and
- Information about voting hours and locations.

Therefore, the sample ballot must exclude any additional biographical data on candidates and their positions on issues, statements about the sponsor's rationale for supporting or opposing a ballot proposition, as well as or statements about the sponsor's philosophy, goals or accomplishments. ~~The list must also exclude any statements, check marks or other indications showing support of or opposition to ballot propositions.~~

The Washington State Democratic Party respectfully submits that, for the reasons stated below, these amendments are in the public interest and will make voters more informed about the measures on their ballot without materially affecting the disclosure of campaign finance information.

Background

WAC 390-17-030 implements the portion of RCW 42.17A.405(15) that exempts sample ballot expenditures from the statutory limits on contributions to candidates. As stated in WAC 390-17-030(1), the purpose of the rule is “to allow political parties, political committees, and other sponsors to tell the general public which candidates they support.” The rule as written thus ensures that public disclosure laws do not inadvertently penalize political parties and others who support a slate of candidates.

Political parties, by their nature, support multiple candidates, and often do so by distributing sample ballots. Expenditures on sample ballots are an exempt activity under RCW 42.17A.405(15), and so WAC 390-17-030 specifies that parties may use exempt funds to pay for them. The rule also specifies that parties may report sample ballots as party expenditures, rather than dividing the cost of a sample ballot into per-candidate fractions and reporting a separate in-kind donation to each candidate listed. If not for this rule, political parties would be required to submit a mountain of additional paperwork to the Commission—paperwork that would not disclose any additional information, but would instead take the information the party is already disclosing and require the party to report it in a more repetitive and labor-intensive way.

In recent elections, however, the Washington State Democratic Party has had to scale this mountain of paperwork in order to tell the general public which ballot propositions we support or oppose. Ballot propositions, and especially statewide ballot propositions, are increasingly partisan in nature: It is now common for a party to support or oppose a ballot proposition, and to have the same level of interest in telling the public our stance on ballot propositions that we have in telling the public which candidates we support. However, WAC 390-17-030, as currently written, does *not* prevent public disclosure laws from imposing a significant and unnecessary burden on political parties that support or oppose ballot propositions. Instead, the rule as written makes it impractical for political parties to communicate their positions on ballot propositions via sample ballots.

In 2024, for example, political parties’ use of the sample ballot exemption was limited by the need to communicate with the public regarding four partisan initiatives on the ballot. The Washington State Democratic Party partially overcame this limitation by distributing

initiative campaign literature in parallel to our sample ballots, and then filing a mountain of PDC reports to disclose our communicating about both candidates and initiatives as separate “in-kind donations” to each of the respective campaigns. Meanwhile, the Washington State Republican Party overcame this limitation by cheating. (See PDC enforcement case #146593, in which the WSRP illegally donated \$100,000 in exempt funds to an initiative campaign.) While we do not condone the WSRP’s violations of Commission rules, we note that both major political parties sought to communicate their positions on these ballot initiatives to the public, and that neither party could use the WAC 390-17-030 sample ballot exemption to do so. This hindered both parties’ ability to inform voters without providing any benefit to the public.

While 2024 is the most recent example, the problems caused by WAC 390-17-030’s exclusion of ballot propositions from sample ballots are not unique to a particular year. In 2012, for example, the Washington State Democratic Party endorsed a “yes” vote on Referendum 74 in support of marriage equality, and in 2014, the Washington State Republican Party endorsed a “no” vote on Initiative 594 to reduce gun violence. There are several other examples of ballot propositions supported or opposed by political parties, and the number of such propositions has been increasing over time. Amending WAC 390-17-030 to allow political parties to communicate their positions on these ballot propositions via sample ballots, without having to create separate “exempt” and “non-exempt” sample ballots or file a separate disclosure report for each candidate and ballot proposition mentioned, would be in the public interest.

The PDC has the authority to amend WAC 390-17-030 to allow exempt sample ballots to address the entire ballot, and may do so without conflicting with any statute or rule and without materially affecting the information disclosed to the public. RCW 42.17A.405 specifies that sample ballot expenditures are an exempt activity, but RCW 42.17A does not further define “sample ballot” or limit sample ballot content: The definition and content limits are instead found in WAC 390-17-030 itself. (RCW 29.04.008 includes a definition of “sample ballot,” but only in the context of what a county auditor produces.) These proposed amendments therefore do not conflict with RCW 42.17A, since the statute is silent on the question of sample ballot content. The proposed amendments would also preserve the public disclosure of information with regard to parties supporting or opposing ballot propositions.

As written, WAC 390-17-030 acknowledges the public interest in allowing political parties to tell the general public which *candidates* they support, and in allowing the parties to communicate their support via sample ballots using exempt funds and without having to file disclosure reports in triplicate. Amending this rule to allow parties

to also tell the general public which *ballot propositions* they support or oppose via sample ballots would further serve the public interest in these communications, and would reduce an unnecessary burden on political speech without disturbing the public interest in transparency. The Washington State Democratic Party therefore respectfully requests that the Commission adopt these proposed amendments.

Respectfully submitted,

Scott Forbes
Executive Director