



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Government Compliance & Enforcement Division
PO Box 40100 • Olympia, WA 98504-0100 • (360) 664-9006

June 6, 2016

Evelyn Lopez, Executive Director
Public Disclosure Commission
PO Box 40908
Olympia, WA 98504-0908

**RE: Citizen Action Notice – Bring Back Our \$30 Car Tabs, political committee;
Tim Eyman; Jack Fagan; Mike Fagan; Barbara Smith**

Dear Ms. Lopez:

On May 25, 2016, the Attorney General received a notice from Washingtonians for Ethical Government through its counsel, Knoll Lowney alleging that the above-named political committee and individuals had violated provisions of RCW 42.17A. Specifically, it alleged that they violated state laws by failing to properly report expenditures made to oppose candidates and failed to include the proper disclaimer on their political advertising. A copy of the notice and attachments are provided with this letter. The 45 days under RCW 42.17A.765 will expire on July 9, 2016.

These allegations are being referred to your agency with a request for review and investigation as needed. My office will await the results of that review and any recommendation the Commission may have. I would request with the Commission's recommendation, a copy of any report of investigation or materials the Commission staff may produce when available.

I have been assigned the file in our office and am available to answer any legal questions you or the staff may have during the course of your review or investigation. If you have any questions, please do not hesitate to call me.

Sincerely,

LINDA A. DALTON
Senior Assistant Attorney General
(360) 753-0543

LAD:dg

Enclosure

cc: Shane Esquibel, Chief Deputy Attorney General
Darwin Roberts, Deputy Attorney General
Washingtonians for Ethical Government, through Knoll Lowney
Respondents (w/encl.)

Washingtonians for Ethical Government

2137 E John | Seattle, WA 98112

Complaint Against Tim Eyman and “Bring Back Our \$30 Car Tabs – VMWC – 2016” for Violations of RCW 42.17A

I. Respondents

Bring Back Our \$30 Car Tabs – VMWC – 2016
PO Box 18250, Spokane, WA 99228
Phone: 509-991-5295

Tim Eyman, Officer/Media Contact
11913 59th Ave W, Mukilteo, WA 98275
Phone: 425-493-9127; email: tim_eyman@comcast.net

Jack Fagan, Officer/Manager
7020 N Wall Street, Spokane, WA 99208
Phone: 509-991-4762; email: jakatak@comcast.net

Mike Fagan, Officer
1523 E Dalton Street, Spokane, WA 99207

Barbara Smith, Treasurer
PO Box 1093, Mead, WA 99021
Phone: 509-435-2160

II. Alleged Violations

On April 12th, 2016, Tim Eyman, who serves as the designated media contact for “Bring Back Our \$30 Car Tabs – VMWC – 2016” (ostensibly a ballot measure committee formed to promote I-1421, a 2016 initiative to the people) announced the launch of an online ad campaign targeted at fifty-four incumbent Democratic state legislators from twenty-one different legislative districts.

The campaign consists principally of a series of video advertisements which identify lawmakers from a given district by name and photograph, and subsequently urge viewers to “Vote Them Out”, after having assailed them for refusing to implement Respondents' previous initiative from 2015 (Initiative 1366, [struck down in January 2016 as unconstitutional in King County Superior Court](#)). The entire collection of ads was published to a website created for and dedicated to the ad campaign by a vendor, Campaign Grid.

The apparent costs of this ad campaign were disclosed in a C4 filing on April 11th, 2016 by “Bring Back Our \$30 Car Tabs – VMWC – 2016”, which states that Campaign Grid of Fort Washington, Pennsylvania, was paid \$42,000 on March 28th, 2016, for “Advertising Promotion for Initiative 1366”. On the same day, Anne Norwood of Gresham, Oregon was paid \$780.00 for “banner advertising”, while Mark Dodd of Vancouver, Washington was paid \$2,438 for “campaign computer advertising”.

RCW 42.17A.255 stipulates that a person or entity that makes an independent expenditure of more than one hundred dollars has five days to file an initial report with the Public Disclosure Commission documenting “all independent expenditures made during the campaign prior to and including such date”.

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An independent expenditure is defined as “any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW [42.17A.220](#), [42.17A.235](#), and [42.17A.240](#).” [Guidelines published by the Public Disclosure Commission](#) define an independent expenditure as having five elements:

1. the ad supports or opposes a candidate for state, local, or judicial office;
2. the ad is paid for by someone other than a candidate, a candidate's committee or agent;
3. the sponsor does the advertising completely independently of any candidate support in the ad (or the opponent of the candidate opposed), or a candidate's committee or agent;
4. the sponsor did not received the candidate's encouragement or approval to produce the ad; and
5. the ad costs at least \$1,000, or the cost of the latest ad when combined with the cost of earlier ads supporting or opposing the candidate, totals \$1,000 or more.

The ads created by Campaign Grid for “Bring Back Our \$30 Car Tabs – VMWC – 2016” meet the definition of an independent expenditure. The ads oppose candidates for state House and Senate, were financed by a committee unaffiliated with a candidate, were produced without the approval or encouragement of a candidate, and collectively cost more than forty times more than the threshold of \$1,000.

Because the ads meet the definition of independent expenditures, they should contain the required statement “No candidate authorized this ad. It is paid for by (name, address, city, state)”. The PDC's guidelines unequivocally state that this statement “must be part of the ad”. For broadcast ads, the PDC's guidance states that the required disclosures “must be clearly spoken”. However, the ads in question do not contain this statement as the law requires. Nor were the ads properly reported as an independent expenditure as required by law. The PDC instructs makers of independent expenditures to “electronically file or otherwise deliver C-6 to the PDC within 5 days of spending \$100 or more”, unless they are political committees, in which case they are instructed to report their independent expenditures “only on the C-4 report”.

The instructions provided by the PDC that accompany the C-4 form state: “The question posted near the top of the first page of this form regarding independent expenditures applies to ALL POLITICAL COMMITTEES required to file C-4 reports, except ballot issue committees that neither contribute to candidates nor make independent expenditures regarding them and candidate committees (because they are prohibited from making expenditures that are not directly related to their own campaigns).”

“Bring Back Our \$30 Car Tabs – VMWC – 2016” is registered as a ballot issue committee, but its treasurer should nevertheless have answered “Yes” to the question “During this report period, did the committee make an independent expenditure (i.e., an expense not considered a contribution) supporting or opposing a state or local candidate?” because it **did** make independent expenditures opposing numerous candidates seeking reelection to the Washington State Legislature. The committee's treasurer then should have documented the independent expenditures as required using Schedule A or Part 3 of Schedule B to show:

- the date of the expense;
- the name and address of the vendor or recipient of the funds;
- if using Schedule A, an “I” in the Code column;
- the name and office sought of the candidate supported or opposed;
- an indication of support or opposition; and
- a brief description of the expense (e.g brochure mailed to absentee voters).

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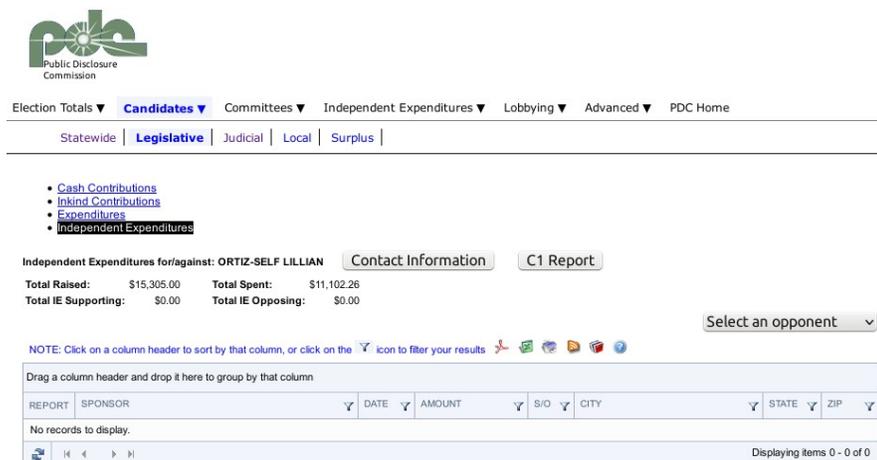


Figure 1: The Public Disclosure Commission website as seen on May 20th, 2016. No independent expenditures are listed for or against Lillian Ortiz-Self, one of the targets of the ads.

None of this information was provided as part of the C4 filed on April 11th, 2016, nor has it been provided since. The committee's failure to report this independent expenditure is an act of concealment. It constitutes an egregious violation of Washington's public disclosure law. Journalists, voters, candidates and observers rely on the Public Disclosure Commission's website to track independent expenditures, but because these ads have not been reported as required, only those who actually see the website, videos, or emails generated by respondents will be aware of their existence.

III. Evidence

Website

Each one of the ads created as part of the campaign may be viewed at this NationBuilder website set up by the vendor (URL: <http://www.two-thirds-to-raise-taxes.info>).

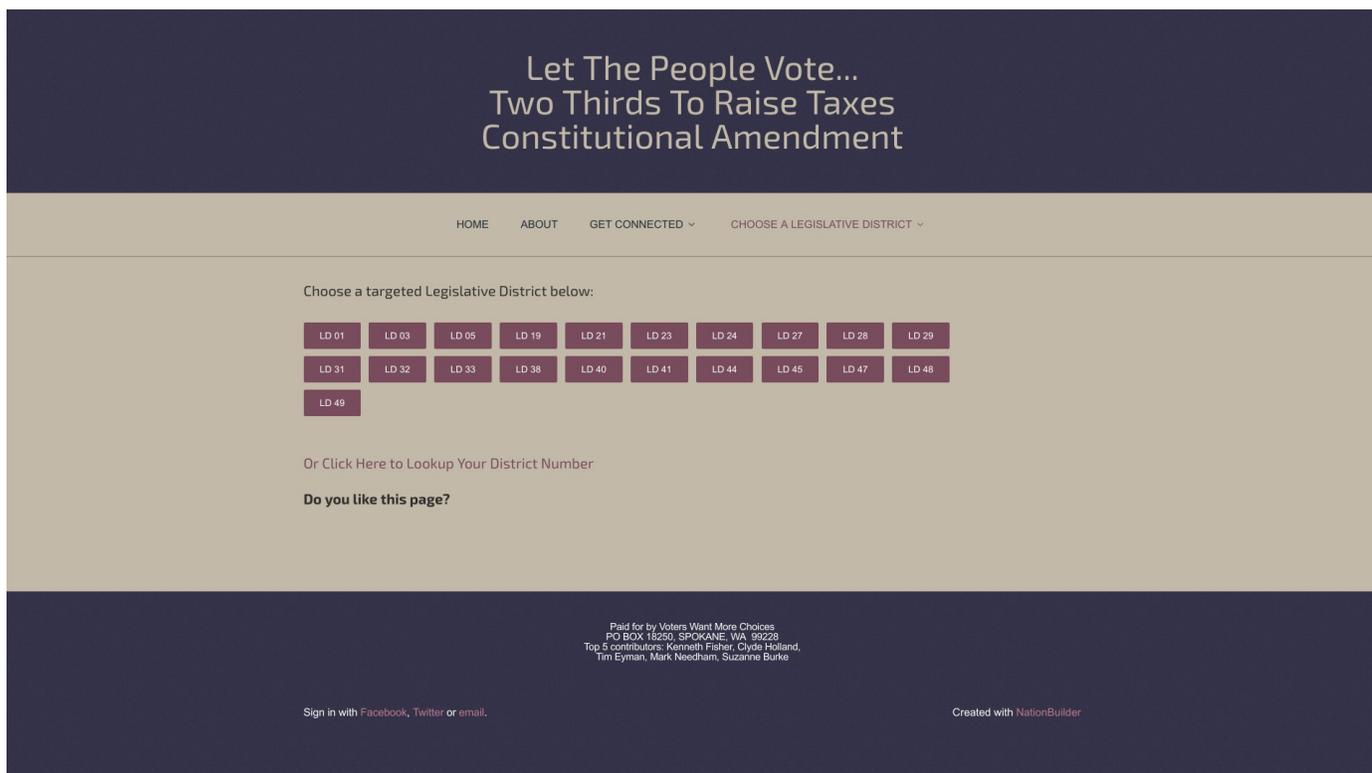


Figure 2: The front page of the NationBuilder website.

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Choose a targeted Legislative District below:

LD 01	LD 03	LD 05	LD 19	LD 21	LD 23	LD 24	LD 27	LD 28	LD 29
LD 31	LD 32	LD 33	LD 38	LD 40	LD 41	LD 44	LD 45	LD 47	LD 48
LD 49									

[Or Click Here to Lookup Your District Number](#)

Figure 3: The legislative district selector on the NationBuilder website.

Video Advertisements

Alternatively, the videos can be viewed on Vimeo, the platform on which they were originally published. The specific web address for each video is listed below:

1. LD-01: Ad targeting Rosemary McAulifee, Derek Stanford, Luis Moscoso: <https://vimeo.com/160574845>
2. LD-03: Ad targeting Andy Billig, Timm Ormsby, Marcus Riccelli: <https://vimeo.com/160574846>
3. LD-05: Ad targeting Mark Mullet: <https://vimeo.com/161429482>
4. LD-19: Ad targeting Dean Takko, Brian Blake, and JD Rossetti: <https://vimeo.com/160574851>
5. LD-21: Ad targeting Marko Liias, Strom Peterson, Lillian Ortiz-Self: <https://vimeo.com/160574847>
6. LD-23: Ad targeting Christine Rolfes, Sherry Appleton, Drew Hansen: <https://vimeo.com/160574850>
7. LD-24: Ad targeting Jim Hargrove, Kevin Van De Wege, Steve Tharinger: <https://vimeo.com/160574849>
8. LD-27: Ad targeting Jeannie Darneille, Laurie Jenkins, and Jake Fey: <https://vimeo.com/160574853>
9. LD-28: Ad targeting Christine Kilduff: <https://vimeo.com/160574848>
10. LD-29: Ad targeting Steve Conway, David Sawyer, Steve Kirby: <https://vimeo.com/160574859>
11. LD-31: Ad targeting Christopher Hurst: <https://vimeo.com/160574860>
12. LD-32: Ad targeting Maralyn Chase, Cindy Ryu, and Ruth Kagi: <https://vimeo.com/160574862>
13. LD-33: Ad targeting Karen Keiser, Tina Orwall, and Mia Gregersen: <https://vimeo.com/160574863>
14. LD-38: Ad targeting John McCoy, June Robinson, Mike Sells: <https://vimeo.com/160574872>
15. LD-40: Ad targeting Kevin Ranker, Kristine Lytton, Jeff Morris: <https://vimeo.com/160574866>
16. LD-41: Ad targeting Judy Clibborn, Tana Senn: <https://vimeo.com/160574864>
17. LD-44: Ad targeting Steve Hobbs, Hans Dunshee: <https://vimeo.com/160574871>
18. LD-45: Ad targeting Larry Springer, Roger Goodman: <https://vimeo.com/160574867>
19. LD-47: Ad targeting Pat Sullivan: <https://vimeo.com/161429483>
20. LD-48: Ad targeting Cyrus Habib, Joan McBride, Patty Kuderer: <https://vimeo.com/160574869>
21. LD-49: Ad targeting Annette Cleveland, Jim Moeller, Sharon Wylie: <https://vimeo.com/160574868>

As of May 20th, 2016, most of the individuals named above filed to run for reelection with the Secretary of State and have active campaigns, according to reports filed with the Public Disclosure Commission.

Stills from the videos

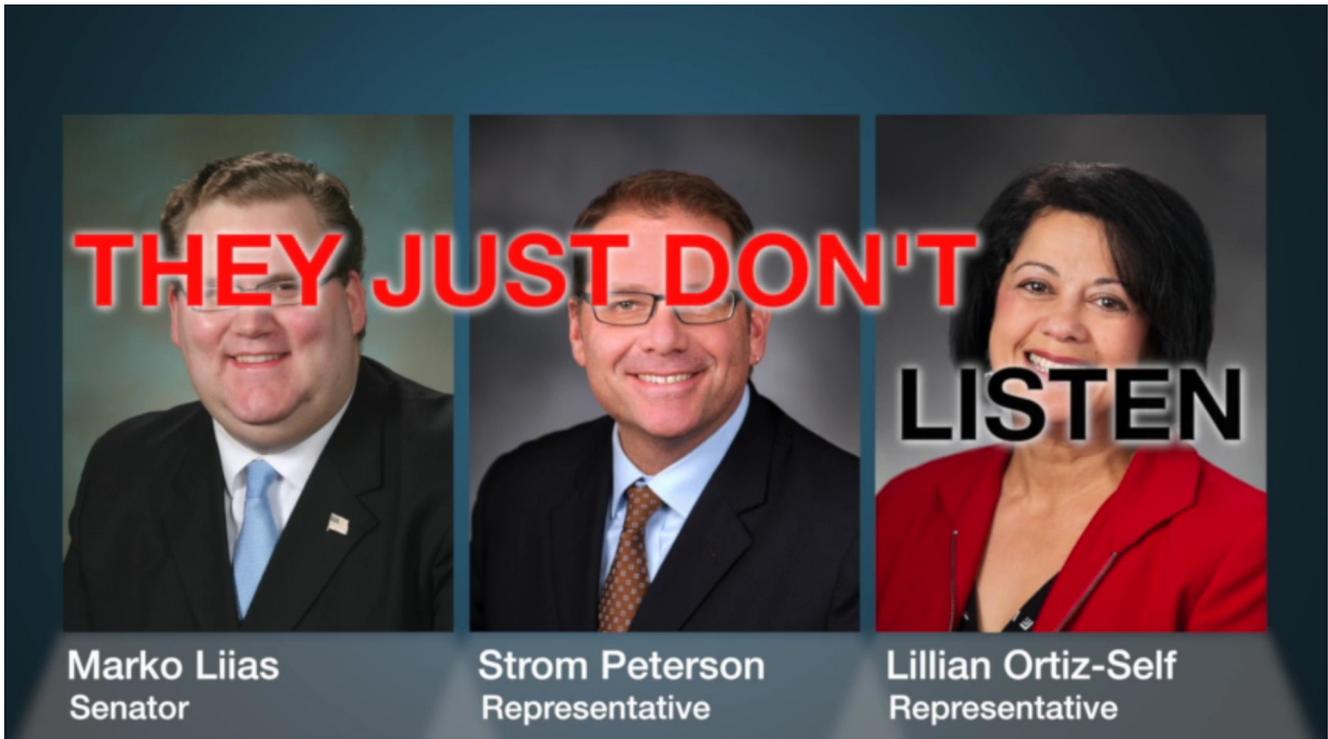


Figure 4: The still above is a scene from one of the ads (the 21st Legislative District version) identifying candidates by name and photograph.

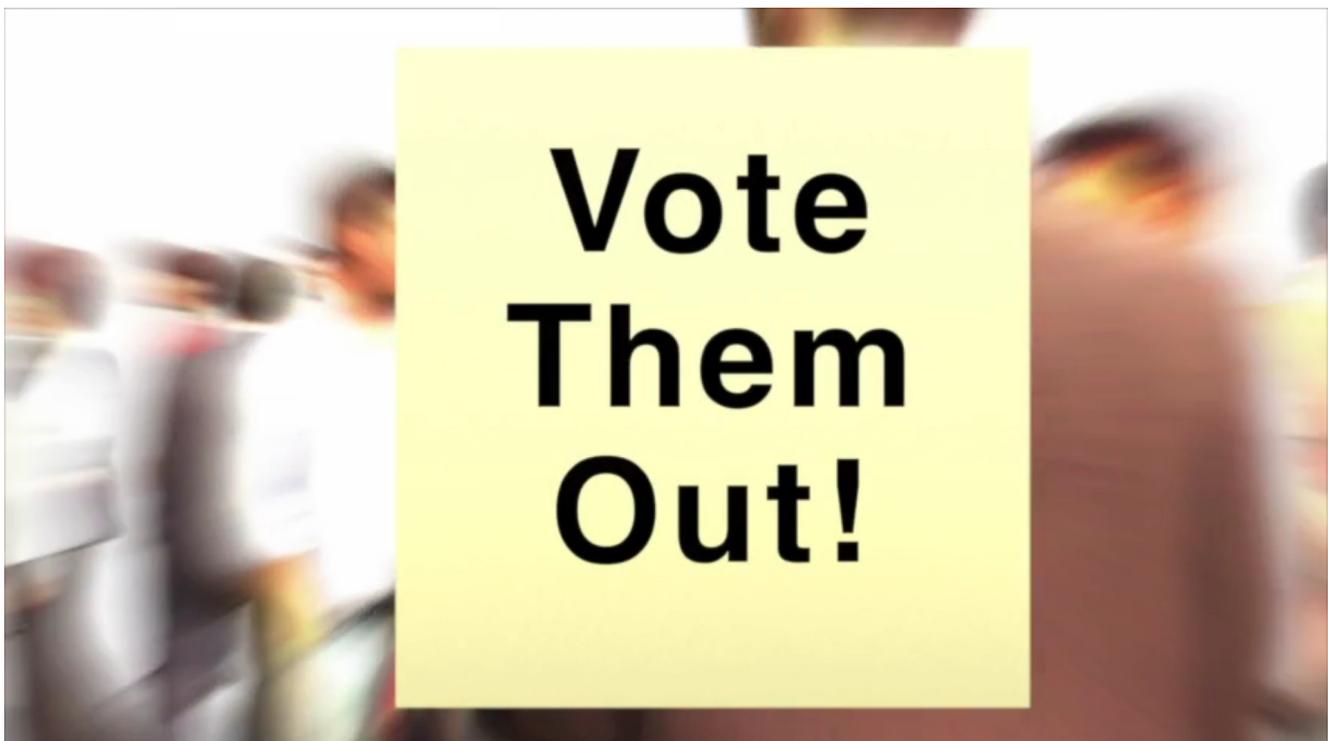


Figure 5: This still depicts the scene from the ads where viewers are urged to "Vote Them Out!" This scene is the same in every one of the twenty-one ads. As the words above appear on screen, the ad's voiceover intones: "Tell them you're going to hold them accountable at the next election."

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Figure 6: Immediately following the “Vote Them Out” scene, the names and faces of the ad’s targets are shown a second and final time, prior to the final scene in the ad. The above is an example – again from the 21st District ad.

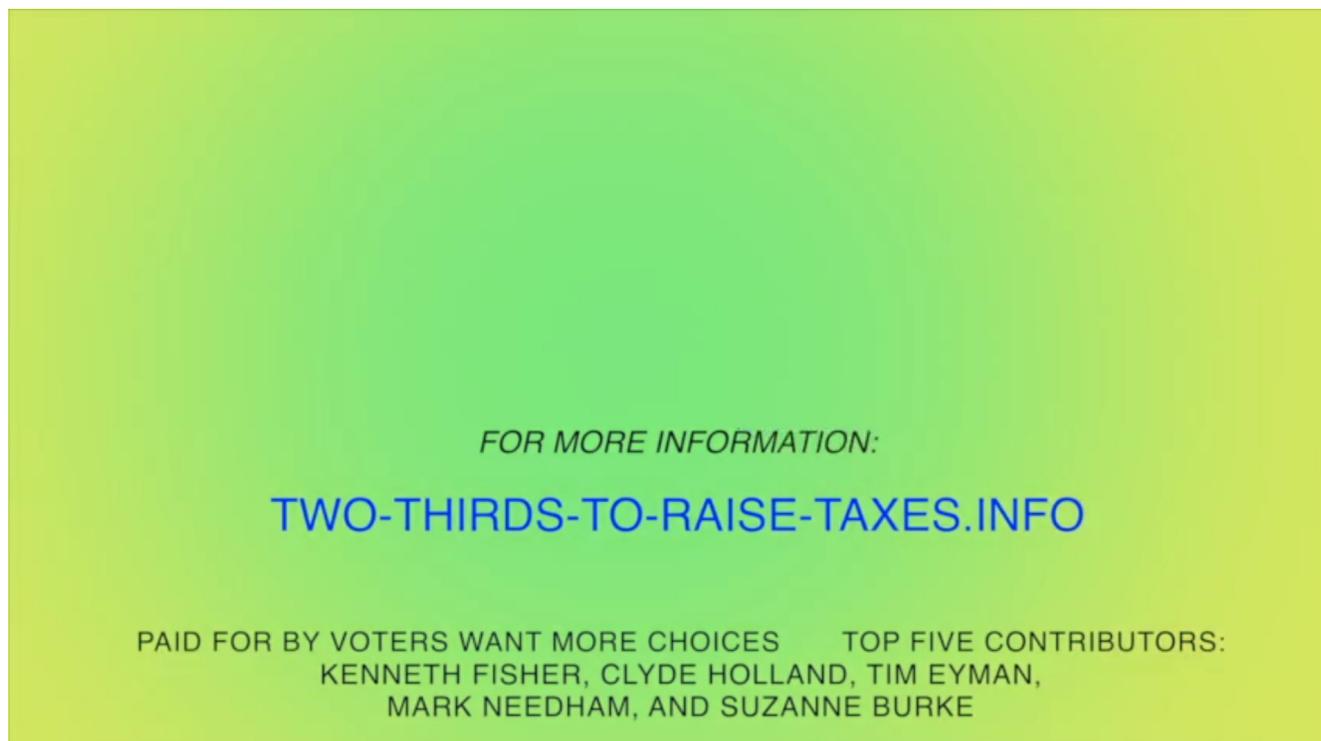


Figure 7: The final scene from the ads states who is responsible for the ad, including the top five contributors, but fails to include the required disclosure “No candidate authorized this ad...”

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Screenshot of one of the web ads created to promote the videos

The screenshot shows the top portion of a web page from The New Yorker. The navigation bar includes links for NEWS, CULTURE, BOOKS, SCIENCE & TECH, BUSINESS, HUMOR, CARTOONS, MAGAZINE, AUDIO, VIDEO, ARCHIVE, and SUBSCRIBE. The article title is "ARIZONA CONFRONTING AWKWARD REALIZATION THAT GAY PEOPLE HAVE MONEY, BUY STUFF" by Andy Borowitz. A video advertisement is overlaid on the right side of the page, featuring a woman speaking at a podium. The ad text reads: "Politicians in Olympia IGNORED YOU & a Majority of Washington Voters! Push Back NOW! > 2/3's to Raise Taxes!". The ad is circled in red.

Figure 8: A web ad promoting the video ads documented above, running on the website of The New Yorker

Email Messages

Communications sent by Tim Eyman promoting the videos listed above and urging the defeat of the candidates targeted by the illegal independent expenditure may be viewed here in reverse chronological order:

- 05/02/2016 - [We scored a scalp! For weeks we've been bashing Democrats -- one of them "retired" last week](#)
- 04/26/2016 - [On taxes, all Democrat legislators are Seattle-centric clones](#)
- 04/20/2016 - [It's the House and Senate Democrats fault that I-1366 wasn't implemented](#)
- 04/15/2016 - [Most overwhelming response we've ever had -- our ads against Dems are YUGE!](#)
- 04/12/2016 - [Powerful video and ads calling out undemocratic Democrats who disrespected voters](#)

Reports filed with the Public Disclosure Commission

Enclosed with this complaint is the C1-PC and most recent C4s for "Bring Back Our \$30 Car Tabs – VMWC – 2016", which document that these independent expenditures were made but not correctly reported.

IV. Witnesses

Persons or entities with knowledge of the creation of this independent expenditure include the following:

- Officers of "Bring Back Our \$30 Car Tabs – VMWC – 2016": Tim Eyman, Jack Fagan, Mike Fagan, and Barbara Smith (Treasurer) – addresses listed in Part 1
- Mark Dodd, vendor (PO Box 953, Vancouver, WA 98666)
- Anne Norwood, vendor (1312 SW 15th Court, Gresham, OR 97080)
- Campaign Grid, vendor (414 Commerce Drive Suite 100, Fort Washington, PA 19034)