



State of Washington PUBLIC DISCLOSURE COMMISSION

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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 though 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)

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.

WAC 390-05-290

Definition — Political advertising.

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.

[Statutory Authority: RCW 42.17.370(1), 85-15-020 (Order 85-03), § 390-05-290, filed 7/9/85.]

WAC 390-05-520
Periodical.

"Periodical" means a publication on paper that is serial in nature and appears or is intended to appear indefinitely at regular or stated intervals.

[Statutory Authority: RCW 42.17.370 and 42.17.562. 06-11-132, § 390-05-520, filed 5/23/06, effective 6/23/06.]

WAC 390-18-010

Advertising, political advertising, electioneering communications, and independent expenditures.

(1) For the purposes of chapter 42.17A RCW and Title 390 WAC:

(a) "Sponsor of an electioneering communication, independent expenditure or political advertising" is defined in RCW 42.17A.005.

(b) Unless the context clearly provides otherwise, "advertising" or "advertisement" means political advertising, electioneering communications, or independent expenditures that are for political advertising and/or electioneering communications subject to the provisions of chapter 42.17A RCW and as defined in RCW 42.17A.005 or 42.17A.255.

(2) With advertising for which no payment is demanded or for which a cost is not readily ascertainable, the sponsor is the candidate, political committee or person who solicits or arranges for the advertising to be displayed or broadcast.

(3) If more than one person sponsors specific advertising, the identity of each sponsor must be shown. However, if a person contributes in cash or in-kind to a candidate or political committee to assist in paying the cost of advertising, that person is not deemed a sponsor provided the contribution is reported in accordance with applicable provisions of chapter 42.17A RCW and Title 390 WAC.

(4) Printed advertising shall clearly state, in an area set apart from any other printed matter, that it has been paid for by the sponsor (Example: (1) Paid for by the XYZ committee, mailing address, city, state, zip code; (2) Vote for John Doe, paid for by John Doe, mailing address, city, state, zip code). However, printed advertising undertaken as an independent expenditure or electioneering communication shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" and identification of the individual, corporation, union, association, or other entity that established, maintains, or controls the sponsoring political committee provisions of RCW 42.17A.320 and provide this information in an area set apart from any other printed matter. Political committees that sponsor independent expenditure or electioneering communication printed advertising are required to provide the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

(5)(a) Advertising consisting of more than one page but intended to be presented as a single item (e.g., 3-page letter with return envelope) must identify the sponsor on the first page or fold of the advertising. Identification on an enclosed return envelope or the envelope in which the advertising is sent is not sufficient.

(b) Advertising which is a collection of several items relating to more than one candidate or committee and distributed simultaneously must show the respective sponsor on the respective items.

(6) The name of the sponsor of all radio or television advertising shall be clearly spoken or identified as required in RCW 42.17A.320.

(a) All radio, telephone and television advertising undertaken as an independent expenditure as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.

(b) All radio and television advertising undertaken as an electioneering communication as defined in RCW 42.17A.005 shall comply with the "no candidate authorized this-ad" sponsor identification and, if relevant, the "top five contributors" provisions of RCW 42.17A.320 and this information shall be clearly spoken or identified as provided in RCW 42.17A.320.

(c) Political committees that sponsor independent expenditure or electioneering communication radio and television advertising are required to clearly speak or otherwise identify the "top five contributors" to that political committee pursuant to WAC 390-18-025; however, this requirement does not apply to bona fide political parties sponsoring independent expenditures.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-18-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 11-05-051, § 390-18-010, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. 06-11-132, § 390-18-010, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370. 03-12-034, § 390-18-010, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.370(1). 00-22-055, § 390-18-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. 93-16-064, § 390-18-010, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). 85-15-020 (Order 85-03), § 390-18-010, filed 7/9/85.]

WAC 390-18-030

Advertising — Exemptions from identification.

Pursuant to RCW 42.17A.320(6), 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, 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.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-18-030, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 11-05-051, § 390-18-030, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. 06-11-132, § 390-18-030, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). 04-12-057, § 390-18-030, filed 5/28/04, effective 6/28/04. Statutory Authority: RCW 42.17.390. 95-01-074A, § 390-18-030, filed 12/16/94, effective 1/16/95. Statutory Authority: RCW 42.17.370(1). 85-15-020 (Order 85-03), § 390-18-030, filed 7/9/85.]

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) Doorbell ringing or leaflet drops;
- (c) Mail handling (folding, stuffing, sorting and postal preparation);
- (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; and

(l) 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.

[Statutory Authority: RCW 42.17A.110. 12-03-002, § 390-17-405, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. 07-07-005, § 390-17-405, filed 3/8/07, effective 4/8/07. Statutory Authority: RCW 42.17.370(1). 98-12-037, § 390-17-405, filed 5/28/98, effective 6/28/98. Statutory Authority: RCW 42.17.390. 94-11-017, § 390-17-405, filed 5/5/94, effective 6/5/94.]

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.