



State of Washington PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112

TO: Members, Public Disclosure Commission
FROM: Nancy Krier, General Counsel
DATE: April 9, 2013
SUBJECT: Campaign Activities on the Internet – Revised Draft Proposed Amended Rules and Revised Draft Proposed New Rule in Title 390 WAC – April 11, 2013 Meeting

Agenda Item

On April 11, the Commission is scheduled to review revised draft proposed rule language to address Internet campaigning. If the Commission approves proposed language, staff will file the proposals with the Code Reviser and schedule a public hearing at the May 22 Commission meeting.

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 2013, 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.

In March, the Commission heard from a guest speaker from Maryland regarding that state's online disclosure requirements. The Commission also reviewed draft possible amended rules and a draft possible new rule in Title 390 WAC to address campaign activities on the Internet, and considered public comments received to date. The Commission suggested changes to the drafts, and scheduled a special meeting for April 11 to review revised drafts and possibly approve proposed language.

Title 390 WAC – Revised Drafts of Proposed Amendments and New Rule

Staff is providing revised draft proposed amendments to four current rules and one revised draft proposed new rule. See enclosures. Excerpts from RCW 42.17A and WAC 390 are also enclosed as a resource.

The revised drafts incorporate the Commission's March discussion regarding substantive changes. The revised drafts also include technical changes (such as using "advertising" rather than "ad" throughout, and standardizing the use of other terms). There may be other technical changes (capitalization, indentation, punctuation, citation format, spelling) that are also provided by the Code Reviser. Here is a summary of the revised drafts to date.

POLITICAL ADVERTISING

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

- Explain what is political advertising under RCW 42.17A.005(36).
- Define the statutory phrase “mass communication” and describe other terms.
- Define “online.”
- 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.
- Clarify that a periodical is issued at least once every three months.¹

ONLINE POLITICAL ADVERTISING

New Rule – WAC 390-18-015 Online political advertising. This draft proposed new rule would provide more information about disclaimers and other disclosure requirements in RCW 42.17A.320, as applied to online political advertising. *The draft proposed 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 distributed online, or distributed 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.

¹This clarification is more consistent with the publishing interval used by the Department of Revenue in RCW 82.04.280(2)(c), which provides: “Periodical or magazine’ means a printed publication, other than a newspaper, issued regularly at stated intervals *at least once every three months*, including any supplement or special edition of the publication.” Emphasis added. The DOR definition was also discussed by the State Supreme Court in *Bowie v. Department of Revenue*, 171 Wn.2d 1, 248 P.3d 504 (2011) and the same definition is used in the DOR rule at WAC 458-20-14(2)(c).

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 proposed 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 online provider's space or character limits.
- Provide examples of alternative disclosures in online ads.
- Describe the criteria that must be satisfied before sponsor ID is not required for individuals using their own modest resources to produce and distribute political advertising. The criteria are:
 - Expenditures. The individual spends less than \$100, or less than \$50 for online political advertising.
 - Independence. The individual acts independently and not as an agent of a candidate, political committee, corporation, union, business association, or other organization or entity; the advertising is not a contribution under RCW 42.17A.005(13)(a)(ii) [coordination] or (iii) [materials prepared by a campaign; republication],² or WAC 390-05-210 [coordination]³; the individual does not receive donations, contributions or payments from others for the advertising; and, the individual is not compensated for producing or distributing the advertising.
 - Format. The advertising is in listed formats (letter, flier, handbill, text, e-mail; or, posted on the individual's social media site, personal website, or similar online forum of the individual).
- Add a reference to internal political communications.⁴

² RCW 42.17.005(13)(a) defines "contribution." It describes that a contribution also includes:
(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;
(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent [.]

See enclosed Resource Materials.

³ WAC 390-05-210 is a rule further explaining what qualifies as a "contribution." The rule also further explains when duplicating political advertising, or coordinating with a campaign, results in a contribution. See enclosed Resource Materials.

⁴ 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 proposed amendments* →

- Add website and online activities to the list of common campaign activities by volunteers, so long as the individual does not ordinarily charge a fee for the service.

(Note that the revised draft adds online advertising activities by a volunteer into the current subsection (1)(k), rather than creating a new subsection as suggested in the March draft. The revised draft also does not specifically refer to the fact that volunteers cannot have incurred incidental expenses not in excess of \$50 paid by the volunteer since that restriction is addressed in statute. See the enclosed Resource Materials).

Enclosures: Draft Proposed Amendments and Draft New Rule
Resource Materials

Revised Drafts of Proposed Amended Rules & New Rule:

- **Political Advertising (WAC 390-05-290)**
- **Periodical (WAC 390-05-520)**
- **Online Political Advertising (New Rule – WAC 390-18-015)**
- **Exemptions from Sponsor Identification (WAC 390-18-030)**
- **Volunteer Services (WAC 390-17-405)**

AMENDATORY SECTION (Amending Order 85-03, filed 7/9/85)

WAC 390-05-290 ((Definition--)) Political advertising

definitions. (1) "Mass communication" means a communication intended to reach a large audience through any of the following methods:

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

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

(c) Radio or television presentations;

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

(e) Online or other electronic transmission methods;

(f) One hundred or more letters, e-mails, text messages or similar communications that are identical or substantially similar in nature, directed to specific recipients, and sent within a thirty-day period; and

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

(2) "Online" means disseminating through a network of interconnected computers or devices, such as the Internet or similar systems enabling electronic dissemination or exchange of communications. Examples include but are not limited to Internet web sites, web-based social media (such as Facebook, Twitter, and other electronic publishing platforms), e-mails, and text messages.

(3) "Political advertising" is defined under 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.

~~((3))~~ (4) 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.

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

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, issued ((at)) regularly or at stated intervals at least once every three months. For all other political advertising, "periodical" means a publication that is serial in nature and appears or is intended to appear indefinitely, issued ((at)) regularly or at stated intervals at least once every three months.

NEW SECTION

WAC 390-18-015 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 advertising must include a candidate's party preference as described in RCW 42.17A.320(1).

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

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

(5) Political committee web sites and other online forums created by a political committee must include the sponsor's name and address. Political committees sponsoring online independent expenditures advertising must provide the disclosures required in WAC 390-18-010 (6)(c).

(6) Other online political advertising 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.

4/9/13 [1]

(7) Small online advertising may provide required disclosures by using an automatic display described in WAC 390-18-030 when advertising character or size limits imposed by the online provider makes full compliance with RCW 42.17A.320 impractical.

AMENDATORY SECTION

WAC 390-18-030 Advertising--Exemptions from identification.

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

4/9/13 [1]

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 advertising to the extent practical. As an alternative, small online advertising with character or size limits imposed by the provider 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 advertising 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 advertising that includes only audio must include the disclosures in a manner that is clearly spoken.

(b) Examples include nonblockable pop-ups, roll-overs, a separate text box or link that automatically appear with or in the advertising, or other similar mechanisms that 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:

(a) The individual spends less than one hundred dollars in the aggregate to produce and disseminate the advertising or less than fifty dollars to produce and disseminate online political advertising.

(b) The individual acts independently and not as an agent of a candidate, authorized committee, political committee, corporation, union, business association, or other organization or entity;

(c) The advertising is not a contribution under RCW 42.17A.005(13)(a)(ii) or (iii) or WAC 390-05-210;

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

(e) The advertising is either:

- A letter, flier, handbill, text or e-mail from the individual that does not appear in a newspaper or other similar mass publication (except for letters to the editor and similar communications addressed in WAC 390-05-290(4)), or
- Disseminated on the individual's social media site, personal web site, or an individual's similar online forum where information is produced and disseminated only by the individual.

(5) Political advertising that is internal political

communications to members is 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.

4/9/13 [4]

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

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 e-mails 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 (including online 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))~~

(1) Creating, designing, posting to and maintaining a candidate or political committee's official campaign web site or online forum, so long as the individual does not ordinarily charge a fee or receive compensation for providing the service; and

(m) 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.

Resource Materials

RCW 42.17A.005 – Definitions.

(13)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent;

...

(b) "Contribution" does not include:

...

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this subsection, means services or labor for which the individual is not compensated by any person;

...

(36) "Political advertising" includes 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.

...

(42)(a) "Sponsor" for purposes of an electioneering communications, independent expenditures, or political advertising means 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.320 – Identification of sponsor – Exemptions.

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name for the sponsor of electioneering communications, independent expenditures, or political advertising shall be unlawful. For partisan office, if a candidate has expressed a party or independent preference on the declaration of candidacy, that party or independent designation shall be clearly identified in electioneering communications, independent expenditures, or political advertising.

(2) In addition to the information required by subsection (1) of this section, except as specifically addressed in subsections (4) and (5) of this section, all political advertising undertaken as an independent expenditure or an electioneering communication by a person or

such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(8) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet.

WAC 390-05-210 Definition — Contribution.

(1) The term "contribution" as defined in RCW 42.17A.005 shall be deemed to include, among other things, furnishing services or property or rights on a discriminatory basis or at less than their fair market value as defined in WAC 390-05-235, for the purpose of assisting any candidate or political committee. When such in-kind contribution of goods or services is provided, it shall be reported at its fair market value per WAC 390-05-235 and, pursuant to RCW 42.17A.405 and 42.17A.410, the fair market value is the amount of the contribution to be allocated to the contributor in determining compliance with the contributor's contribution limit.

(2) Duplicating political advertising. The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee is a contribution to the candidate or political committee.

(3) Consulting with a state, local or judicial candidate. An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:

(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or

(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or

(d) The expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(4) Consulting with a caucus political committee. An expenditure, that does not qualify as a contribution to a candidate under subsection (3) of this section, made by a person in

with, or at the request or suggestion of the bona fide political party, a political committee financed, controlled, or operated by a bona fide political party or their agents, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

(6) **Consulting with other political committees.** An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee is a contribution to such political committee. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee when:

(a) Any arrangement, coordination or direction by the political committee, its agent or another political committee financed, controlled or operated by the committee is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or prior to an expenditure being made by that person benefiting that political committee; or

(b) An expenditure is made based on information about the political committee's plans, projects or needs provided to the expending person by the political committee or its agent with a view toward having an expenditure made; or

(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the political committee or another political committee financed, controlled or operated by the committee; or

(d) An expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the political committee, its agent or another political committee financed, controlled or operated by the committee. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a political committee or its agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW 42.17A.005 and WAC 390-05-243.

WAC 390-05-190 Agent — Definition.

"Agent," as that term is used in chapter 42.17A RCW and Title 390 WAC, means a person, whether the authority or consent is direct or indirect, express or implied, oral or written, who:

(1) Is authorized by another to act on his or her behalf; or

(2) Represents and acts for another with the authority or consent of the person represented;

or

(3) Acts for or in place of another by authority from him or her.

(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.