



## PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission  
From: Nancy Krier, General Counsel  
Lori Anderson, Communications & Training Officer  
Date: May 16, 2013  
Re: Public Hearing – Rules – May 22, 2013 Meeting

### Agenda:

A May 22, 2013 public hearing is scheduled, during which proposed amendments to **WAC 390-18-010 Advertising, political advertising, electioneering communications, and independent expenditures** and **WAC 390-18-025 Advertising – Identification of “top five” contributors** will be presented to the Commission for consideration and possible adoption.

### Background:

Chapter 226, Laws of 2012, effective June 7, 2012, requires a political committee to include with sponsor identification its Top 5 contributors on any political advertisement about a ballot measure that costs \$1,000 or more. Prior to 2012, the Top 5 requirement existed only for independent expenditures related to candidates and electioneering communications; WACs 390-18-010 and 390-18-025 explained those requirements. June 30, 2012 amendments were made to these rules, on an emergency basis, to explain the new disclosure requirements for ballot measure ads. The emergency amendments expired October 28, 2012. Staff proposes that the same amendments now be adopted on a permanent basis.

The language for the proposed amendments was adopted by the Commission in May and June, 2012, at which time the Commission approved the language for both the emergency rules and permanent rules you are considering now. The current proposals were filed with the Code Reviser on April 8, 2013, along with notice of the May 22 public hearing. Notice was also given on the Commission’s website and Facebook page. No comments have been received.

**Staff requests the Commission adopt the proposed amendments to WACs 390-18-010 and 390-18-025.** Once adopted, the rules are effective 31 days after filing with the Code Reviser.

### 2013 Legislation:

The Top Five sponsor identification requirements for independent expenditures and electioneering communications contain aggregation provisions, whereas the 2012 law for ballot measure advertisements did not. Since the passage of the law in 2012, the Commission has secured passage of a clean-up bill in 2013 (SB 5258 (Chapter 138, Laws of 2013)) that, effective July 28, 2013, requires a sponsoring political committee to aggregate the cost of its ballot measure ads and include its Top 5 contributors when the ads’ cumulative value reaches \$1,000 or more. This clarification can be implemented without additional rule

Members, Washington State Public Disclosure Commission  
May 16, 2013  
Page 2

making, although the Commission may wish to add the clarification to WAC 390-18-010 after the November general election. Staff plans to inform stakeholders and others of this and other new laws impacting RCW 42.17A through notices and instructional materials that will be released a few weeks before the laws take effect.

Enclosures: Proposed Amended WAC 390-18-010  
Proposed Amended WAC 390-18-025

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

**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,~~)

(a) Political committees that sponsor political advertising costing one thousand dollars or more supporting or opposing a ballot measure must clearly state the "top five contributors" to that political committee pursuant to WAC 390-18-025.

(b) 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.

(c) 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) Political committees that sponsor political advertising costing one thousand dollars or more supporting or opposing a ballot measure shall comply with 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. The "top five" contributors shall be identified pursuant to WAC 390-18-025.

(b) 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))~~ (c) 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))~~ (d) 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.

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

**WAC 390-18-025 Advertising--Identification of "top five contributors."** (1) For purposes of RCW 42.17A.320 (2), (4) ~~((and)),~~ (5) and (6), "top five contributors" means the five persons, as defined in RCW 42.17A.005, giving the largest aggregate contributions exceeding seven hundred dollars during the twelve-month period preceding the date on which the advertisement is

published or otherwise presented to the public. If more than five contributors give an amount equal to the largest aggregate contribution exceeding seven hundred dollars and the funds are received during the relevant twelve-month period, the political committee sponsoring the advertisement shall select five of these contributors to identify as the top five contributors.

(2) For independent expenditure advertisements or electioneering communications, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees that make independent expenditures, including continuing political committees and out-of-state political committees subject to chapter 42.17A RCW other than a bona fide political party committee.

(3) For political advertisements supporting or opposing ballot measures costing one thousand dollars, the "top five contributors" identification requirement of RCW 42.17A.320 applies to all political committees.

(4) If a political committee keeps records necessary to track contributions according to the use intended by contributors, and the committee subsequently makes independent expenditures for advertisements supporting or opposing a candidate or slate of candidates or an electioneering communication identifying a specific candidate or slate of candidates, that committee may identify the top five contributors giving for that purpose, as opposed to identifying the overall top five contributors to the committee as is otherwise required by RCW 42.17A.320 and this section.

However, a contributor's contributions earmarked for independent expenditures supporting or opposing a specific candidate or slate of candidates or electioneering communications identifying a specific candidate or slate of candidates shall not be used with respect to a different candidate or slate of candidates without the contributor being identified as one of the top five contributors for the actual expenditure if that contributor is one of the top five contributors for that expenditure.