

Chapter 390-18 WAC

POLITICAL ADVERTISING

WAC

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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).

(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.

(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.

(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.

[Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-010, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-010, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 11-05-051, § 390-18-010, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and

42.17.562. WSR 06-11-132, § 390-18-010, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370. WSR 03-12-034, § 390-18-010, filed 5/29/03, effective 6/29/03. Statutory Authority: RCW 42.17.370(1). WSR 00-22-055, § 390-18-010, filed 10/27/00, effective 11/27/00. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-18-010, filed 7/30/93, effective 8/30/93. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-010, filed 7/9/85.]

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.

(7) Small online advertising, defined as online advertising where character or size limits make full compliance with RCW 42.17A.320 impractical, may provide required disclosures by using an automatic display described in WAC 390-18-030.

[Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-017, § 390-18-015, filed 5/24/13, effective 6/24/13.]

WAC 390-18-020 Advertising—Political party identification. (1) According to RCW 42.17A.320, sponsors of advertising supporting or opposing a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(2) According to RCW 42.17A.320, sponsors of electioneering communications identifying a candidate who has expressed a party or independent preference on the declaration of candidacy must clearly identify the candidate's political party or independent status in the advertising.

(3) To assist sponsors in complying with this requirement, the commission shall publish a list of abbreviations or symbols that clearly identify political party affiliation or independent status. These abbreviations may be used by sponsors to identify a candidate's political party.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-020, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-020, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 99-12-067, § 390-18-020, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-18-020, filed 7/30/93, effective 8/30/93. Statutory Author-

ity: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-020, filed 7/9/85.]

WAC 390-18-025 Advertising—Identification of "top five contributors." (1) For purposes of RCW 42.17A.-320 (2), (4), (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.

[Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-015, § 390-18-025, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-025, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-08-044, § 390-18-025, filed 3/28/07, effective 4/28/07. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-025, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 02-12-007, § 390-18-025, filed 5/23/02, effective 6/23/02.]

WAC 390-18-027 Medium that does not include a visual image. (1) For electioneering communications identifying sponsors and top five contributors as required by RCW 42.17A.320 a "medium that does not include a visual image" means radio.

(2) For independent expenditures identifying sponsors and top five contributors as required by RCW 42.17A.320 a

"medium that does not include a visual image" means radio or telephone transmissions.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-027, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-027, filed 5/23/06, effective 6/23/06.]

WAC 390-18-030 Advertising—Exemptions from identification and alternatives for online advertising. (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 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 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 appears with or in the advertising that automatically takes the reader directly to the required disclosures upon being clicked once, 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 in the aggregate less than one hundred dollars to produce and distribute the advertising or less than fifty dollars to produce and distribute 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 email 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 390-05-490(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.

[Statutory Authority: RCW 42.17A.110 and 42.17A.320. WSR 13-12-017, § 390-18-030, filed 5/24/13, effective 6/24/13. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-030, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 11-05-051, § 390-18-030, filed 2/10/11, effective 3/13/11. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-030, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 04-12-057, § 390-18-030, filed 5/28/04, effective 6/28/04. Statutory Authority: RCW 42.17.390. WSR 95-01-074A, § 390-18-030, filed 12/16/94, effective 1/16/95. Statutory Authority: RCW 42.17.370(1). WSR 85-15-020 (Order 85-03), § 390-18-030, filed 7/9/85.]

WAC 390-18-040 Use of the terms "reelect," "retain," and "return." (1) The term "reelect" when used in an advertisement represents that the candidate is presently holding the office being sought, was elected to it, and is seeking another term in that same office in the same district or political subdivision.

(2) The term "reelect" may be used in an advertisement by a nonincumbent candidate who has previously been elected to the office being sought provided that in the same advertisement it is clearly stated that the candidate is not the incumbent.

(3) The term "retain" in an advertisement represents that the candidate is the incumbent but does not imply that the candidate attained the office by election.

(4) The term "return" in an advertisement represents that the candidate now holds, or has previously held, the office being sought, but does not represent that the office was attained by election.

(5) Whenever the boundaries of a district or political subdivision are officially altered through redistricting, consolidation or other official procedures, the candidate holding an office in the affected district or political subdivision may, in an advertisement, use the term "reelect," "retain" or

"return," as appropriate, if the candidate is seeking the same office in the revised district or political subdivision.

[Statutory Authority: RCW 42.17A.110. WSR 16-22-046, § 390-18-040, filed 10/28/16, effective 11/28/16. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-040, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 02-03-018, § 390-18-040, filed 1/4/02, effective 2/4/02. Statutory Authority: RCW 42.17.370. WSR 92-12-037, § 390-18-040, filed 5/29/92, effective 6/29/92. Statutory Authority: RCW 42.17.370(1). WSR 88-14-064 (Order 88-02), § 390-18-040, filed 7/1/88; WSR 86-12-059 (Order 86-03), § 390-18-040, filed 6/3/86.]

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) Pursuant to RCW 42.17A.345, any person, without reference to or permission from the public disclosure commission, is entitled to inspect a commercial advertiser's political advertising or electioneering communications documents and books of account.

(2) No commercial advertiser shall be required to make available for public inspection information regarding advertising or electioneering communications prior to the time when the advertisement or communication has initially received public distribution or broadcast.

(3) The documents and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345(1) are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) The name and address of the person who sponsored the advertising or electioneering communication;

(c) The total cost of the advertising or electioneering communication, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and

(d) Date(s) the commercial advertiser rendered service.

(4) In addition to subsection (3) of this section and pursuant to RCW 42.17A.345 (1)(b), the documents and books of account open for public inspection must include a description of the major work components or tasks, as specified in (a) through (f) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some

type of record evidencing such additional services must be available.

[Statutory Authority: RCW 42.17A.110(8). WSR 15-12-058, § 390-18-050, filed 5/28/15, effective 6/28/15. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-18-050, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-050, filed 5/23/06, effective 6/23/06. Statutory Authority: RCW 42.17.370(1). WSR 99-12-068, § 390-18-050, filed 5/27/99, effective 6/27/99. Statutory Authority: RCW 42.17.370. WSR 93-04-072, § 390-18-050, filed 1/29/93, effective 3/1/93.]

WAC 390-18-060 Electioneering communication reporting threshold and sponsors. (1) A "sponsor of an electioneering communication" is defined in RCW 42.17A.-005(43).

(2) For the purposes of RCW 42.17A.005 (19)(c), an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW 42.17A.005 (19)(a) and (b) or commission rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of \$1,000 or more; and

(d) Is not a communication exempted from reporting under RCW 42.17A.005(20) or commission rule.

(3) When the electioneering communication or communications - Including radio or television transmissions, mailings, billboards, newspapers and/or periodicals - Reach the \$1,000 threshold, the sponsor shall electronically report to the commission as required by RCW 42.17A.305 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

(4) Once the \$1,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW 42.17A.305 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the \$1,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration shall be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

[Statutory Authority: RCW 42.17.130 and 42.17.093. WSR 12-01-047, § 390-18-060, filed 12/14/11, effective 1/14/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-18-060, filed 5/23/06, effective 6/23/06.]