

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5034

59th Legislature
2005 Regular Session

Passed by the Senate April 20, 2005
YEAS 26 NAYS 20

President of the Senate

Passed by the House April 13, 2005
YEAS 56 NAYS 40

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5034** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5034

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Government Operations & Elections (originally sponsored by Senator Kastama; by request of Public Disclosure Commission)

READ FIRST TIME 02/03/05.

1 AN ACT Relating to disclosure of and restrictions on campaign
2 funding; amending RCW 42.17.020, 42.17.103, 42.17.110, 42.17.510,
3 42.17.530, and 42.17.660; reenacting and amending RCW 42.17.640; adding
4 new sections to chapter 42.17 RCW; creating a new section; repealing
5 RCW 42.17.505; providing effective dates; and declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **PART I - FINDINGS AND INTENT**

8 NEW SECTION. **Sec. 1.** The legislature finds that:

9 (1) Timely disclosure to voters of the identity and sources of
10 funding for electioneering communications is vitally important to the
11 integrity of state, local, and judicial elections.

12 (2) Electioneering communications that identify political
13 candidates for state, local, or judicial office and that are
14 distributed sixty days before an election for those offices are
15 intended to influence voters and the outcome of those elections.

16 (3) The state has a compelling interest in providing voters
17 information about electioneering communications in political campaigns
18 concerning candidates for state, local, or judicial office so that

1 voters can be fully informed as to the: (a) Source of support or
2 opposition to those candidates; and (b) identity of persons attempting
3 to influence the outcome of state, local, and judicial candidate
4 elections.

5 (4) Nondisclosure of financial information about advertising that
6 masquerades as relating only to issues and not to candidate campaigns
7 fosters corruption or the appearance of corruption. These consequences
8 can be substantially avoided by full disclosure of the identity and
9 funding of those persons paying for such advertising.

10 (5) The United States supreme court held in *McConnell et al. v.*
11 *Federal Elections Commission*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d
12 491 (2003) that speakers seeking to influence elections do not possess
13 an inviolable free speech right to engage in electioneering
14 communications regarding elections, including when issue advocacy is
15 the functional equivalent of express advocacy. Therefore, such
16 election campaign communications can be regulated and the source of
17 funding disclosed.

18 (6) The state also has a sufficiently compelling interest in
19 preventing corruption in political campaigns to justify and restore
20 contribution limits and restrictions on the use of soft money in RCW
21 42.17.640. Those interests include restoring restrictions on the use
22 of such funds for electioneering communications, as well as the laws
23 preventing circumvention of those limits and restrictions.

24 NEW SECTION. **Sec. 2.** Based upon the findings in section 1 of this
25 act, this act is narrowly tailored to accomplish the following and is
26 intended to:

27 (1) Improve the disclosure to voters of information concerning
28 persons and entities seeking to influence state, local, and judicial
29 campaigns through reasonable and effective mechanisms, including
30 improving disclosure of the source, identity, and funding of
31 electioneering communications concerning state, local, and judicial
32 candidate campaigns;

33 (2) Regulate electioneering communications that mention state,
34 local, and judicial candidates and that are broadcast, mailed, erected,
35 distributed, or otherwise published right before the election so that
36 the public knows who is paying for such communications;

1 (3) Reenact and amend the contribution limits in RCW 42.17.640 (6)
2 and (14) and the restrictions on the use of soft money, including as
3 applied to electioneering communications, as those limits and
4 restrictions were in effect following the passage of chapter 2, Laws of
5 1993 (Initiative No. 134) and before the state supreme court decision
6 in *Washington State Republican Party v. Washington State Public*
7 *Disclosure Commission*, 141 Wn.2d 245, 4 P.3d 808 (2000). The
8 commission is authorized to fully restore the implementation of the
9 limits and restrictions of RCW 42.17.640 (6) and (14) in light of
10 *McConnell et al. v. Federal Elections Commission*, 540 U.S. 93, 124
11 S.Ct. 619, 157 L.Ed.2d 491 (2003). The United States supreme court
12 upheld the disclosure and regulation of electioneering communications
13 in political campaigns, including but not limited to issue advocacy
14 that is the functional equivalent of express advocacy;

15 (4) Authorize the commission to adopt rules to implement this act.

16 **PART II - ELECTIONEERING COMMUNICATIONS**

17 NEW SECTION. **Sec. 3.** (1) A payment for or promise to pay for any
18 electioneering communication shall be reported to the commission by the
19 sponsor on forms the commission shall develop by rule to include, at a
20 minimum, the following information:

21 (a) Name and address of the sponsor;

22 (b) Source of funds for the communication, including:

23 (i) General treasury funds. The name and address of businesses,
24 unions, groups, associations, or other organizations using general
25 treasury funds for the communication, however, if a business, union,
26 group, association, or other organization undertakes a special
27 solicitation of its members or other persons for an electioneering
28 communication, or it otherwise receives funds for an electioneering
29 communication, that entity shall report pursuant to (b)(ii) of this
30 subsection;

31 (ii) Special solicitations and other funds. The name, address,
32 and, for individuals, occupation and employer, of a person whose funds
33 were used to pay for the electioneering communication, along with the
34 amount, if such funds from the person have exceeded two hundred fifty
35 dollars in the aggregate for the electioneering communication; and

1 (iii) Any other source information required or exempted by the
2 commission by rule;

3 (c) Name and address of the person to whom an electioneering
4 communication related expenditure was made;

5 (d) A detailed description of each expenditure of more than one
6 hundred dollars;

7 (e) The date the expenditure was made and the date the
8 electioneering communication was first broadcast, transmitted, mailed,
9 erected, distributed, or otherwise published;

10 (f) The amount of the expenditure;

11 (g) The name of each candidate clearly identified in the
12 electioneering communication, the office being sought by each
13 candidate, and the amount of the expenditure attributable to each
14 candidate; and

15 (h) Any other information the commission may require or exempt by
16 rule.

17 (2) Electioneering communications shall be reported as follows:
18 The sponsor of an electioneering communication shall report to the
19 commission within twenty-four hours of, or on the first working day
20 after, the date the electioneering communication is broadcast,
21 transmitted, mailed, erected, distributed, or otherwise published.

22 (3) Electioneering communications shall be reported electronically
23 by the sponsor using software provided or approved by the commission.
24 The commission may make exceptions on a case-by-case basis for a
25 sponsor who lacks the technological ability to file reports using the
26 electronic means provided or approved by the commission.

27 (4) All persons required to report under RCW 42.17.065, 42.17.080,
28 42.17.090, and 42.17.100 are subject to the requirements of this
29 section, although the commission may determine by rule that persons
30 filing according to those sections may be exempt from reporting some of
31 the information otherwise required by this section. The commission may
32 determine that reports filed pursuant to this section also satisfy the
33 requirements of RCW 42.17.100 and 42.17.103.

34 (5) Failure of any sponsor to report electronically under this
35 section shall be a violation of this chapter.

36 NEW SECTION. **Sec. 4.** (1) An electioneering communication made by

1 a person in cooperation, consultation, or concert with, or at the
2 request or suggestion of, a candidate, a candidate's authorized
3 committee, or their agents is a contribution to the candidate.

4 (2) An electioneering communication made by a person in
5 cooperation, consultation, or concert with, or at the request or
6 suggestion of, a political committee or its agents is a contribution to
7 the political committee.

8 (3) If an electioneering communication is not a contribution
9 pursuant to subsection (1) or (2) of this section, the sponsor shall
10 file an affidavit or declaration so stating at the time the sponsor is
11 required to report the electioneering communication expense under
12 section 3 of this act.

13 NEW SECTION. **Sec. 5.** (1) The sponsor of an electioneering
14 communication shall preserve all financial records relating to the
15 communication, including books of account, bills, receipts, contributor
16 information, and ledgers, for not less than five calendar years
17 following the year in which the communication was broadcast,
18 transmitted, mailed, erected, or otherwise published.

19 (2) All reports filed under section 3 of this act shall be
20 certified as correct by the sponsor. If the sponsor is an individual
21 using his or her own funds to pay for the communication, the
22 certification shall be signed by the individual. If the sponsor is a
23 political committee, the certification shall be signed by the committee
24 treasurer. If the sponsor is another entity, the certification shall
25 be signed by the individual responsible for authorizing the expenditure
26 on the entity's behalf.

27 **PART III - AMENDMENTS TO AND REENACTMENT OF CURRENT LAWS**

28 **Sec. 6.** RCW 42.17.020 and 2002 c 75 s 1 are each amended to read
29 as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Actual malice" means to act with knowledge of falsity or with
33 reckless disregard as to truth or falsity.

34 (2) "Agency" includes all state agencies and all local agencies.
35 "State agency" includes every state office, department, division,

1 bureau, board, commission, or other state agency. "Local agency"
2 includes every county, city, town, municipal corporation, quasi-
3 municipal corporation, or special purpose district, or any office,
4 department, division, bureau, board, commission, or agency thereof, or
5 other local public agency.

6 ((+2)) (3) "Authorized committee" means the political committee
7 authorized by a candidate, or by the public official against whom
8 recall charges have been filed, to accept contributions or make
9 expenditures on behalf of the candidate or public official.

10 ((+3)) (4) "Ballot proposition" means any "measure" as defined by
11 RCW ((29-01-110)) 29A.04.091, or any initiative, recall, or referendum
12 proposition proposed to be submitted to the voters of the state or any
13 municipal corporation, political subdivision, or other voting
14 constituency from and after the time when the proposition has been
15 initially filed with the appropriate election officer of that
16 constituency prior to its circulation for signatures.

17 ((+4)) (5) "Benefit" means a commercial, proprietary, financial,
18 economic, or monetary advantage, or the avoidance of a commercial,
19 proprietary, financial, economic, or monetary disadvantage.

20 ((+5)) (6) "Bona fide political party" means:
21 (a) An organization that has filed a valid certificate of
22 nomination with the secretary of state under chapter ((29-24)) 29A.20
23 RCW;

24 (b) The governing body of the state organization of a major
25 political party, as defined in RCW ((29-01-090)) 29A.04.086, that is
26 the body authorized by the charter or bylaws of the party to exercise
27 authority on behalf of the state party; or

28 (c) The county central committee or legislative district committee
29 of a major political party. There may be only one legislative district
30 committee for each party in each legislative district.

31 ((+6)) (7) "Depository" means a bank designated by a candidate or
32 political committee pursuant to RCW 42.17.050.

33 ((+7)) (8) "Treasurer" and "deputy treasurer" mean the individuals
34 appointed by a candidate or political committee, pursuant to RCW
35 42.17.050, to perform the duties specified in that section.

36 ((+8)) (9) "Candidate" means any individual who seeks nomination
37 for election or election to public office. An individual seeks
38 nomination or election when he or she first:

1 (a) Receives contributions or makes expenditures or reserves space
2 or facilities with intent to promote his or her candidacy for office;
3 (b) Announces publicly or files for office;
4 (c) Purchases commercial advertising space or broadcast time to
5 promote his or her candidacy; or
6 (d) Gives his or her consent to another person to take on behalf of
7 the individual any of the actions in (a) or (c) of this subsection.
8 ~~((9))~~ (10) "Caucus political committee" means a political
9 committee organized and maintained by the members of a major political
10 party in the state senate or state house of representatives.
11 ~~((10))~~ (11) "Commercial advertiser" means any person who sells
12 the service of communicating messages or producing printed material for
13 broadcast or distribution to the general public or segments of the
14 general public whether through the use of newspapers, magazines,
15 television and radio stations, billboard companies, direct mail
16 advertising companies, printing companies, or otherwise.
17 ~~((11))~~ (12) "Commission" means the agency established under RCW
18 42.17.350.
19 ~~((12))~~ (13) "Compensation" unless the context requires a narrower
20 meaning, includes payment in any form for real or personal property or
21 services of any kind: PROVIDED, That for the purpose of compliance
22 with RCW 42.17.241, the term "compensation" shall not include per diem
23 allowances or other payments made by a governmental entity to reimburse
24 a public official for expenses incurred while the official is engaged
25 in the official business of the governmental entity.
26 ~~((13))~~ (14) "Continuing political committee" means a political
27 committee that is an organization of continuing existence not
28 established in anticipation of any particular election campaign.
29 ~~((14))~~ (15)(a) "Contribution" includes:
30 (i) A loan, gift, deposit, subscription, forgiveness of
31 indebtedness, donation, advance, pledge, payment, transfer of funds
32 between political committees, or anything of value, including personal
33 and professional services for less than full consideration;
34 (ii) An expenditure made by a person in cooperation, consultation,
35 or concert with, or at the request or suggestion of, a candidate, a
36 political committee, or their agents;
37 (iii) The financing by a person of the dissemination, distribution,
38 or republication, in whole or in part, of broadcast, written, graphic,

1 or other form of political advertising or electioneering communication
2 prepared by a candidate, a political committee, or its authorized
3 agent;

4 (iv) Sums paid for tickets to fund-raising events such as dinners
5 and parties, except for the actual cost of the consumables furnished at
6 the event.

7 (b) "Contribution" does not include:

8 (i) Standard interest on money deposited in a political committee's
9 account;

10 (ii) Ordinary home hospitality;

11 (iii) A contribution received by a candidate or political committee
12 that is returned to the contributor within five business days of the
13 date on which it is received by the candidate or political committee;

14 (iv) A news item, feature, commentary, or editorial in a regularly
15 scheduled news medium that is of primary interest to the general
16 public, that is in a news medium controlled by a person whose business
17 is that news medium, and that is not controlled by a candidate or a
18 political committee;

19 (v) An internal political communication primarily limited to the
20 members of or contributors to a political party organization or
21 political committee, or to the officers, management staff, or
22 stockholders of a corporation or similar enterprise, or to the members
23 of a labor organization or other membership organization;

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

30 (vii) Messages in the form of reader boards, banners, or yard or
31 window signs displayed on a person's own property or property occupied
32 by a person. However, a facility used for such political advertising
33 for which a rental charge is normally made must be reported as an in-
34 kind contribution and counts towards any applicable contribution limit
35 of the person providing the facility;

36 (viii) Legal or accounting services rendered to or on behalf of:

37 (A) A political party or caucus political committee if the person

1 paying for the services is the regular employer of the person rendering
2 such services; or

3 (B) A candidate or an authorized committee if the person paying for
4 the services is the regular employer of the individual rendering the
5 services and if the services are solely for the purpose of ensuring
6 compliance with state election or public disclosure laws.

7 (c) Contributions other than money or its equivalent are deemed to
8 have a monetary value equivalent to the fair market value of the
9 contribution. Services or property or rights furnished at less than
10 their fair market value for the purpose of assisting any candidate or
11 political committee are deemed a contribution. Such a contribution
12 must be reported as an in-kind contribution at its fair market value
13 and counts towards any applicable contribution limit of the provider.

14 ~~((+15+))~~ (16) "Elected official" means any person elected at a
15 general or special election to any public office, and any person
16 appointed to fill a vacancy in any such office.

17 ~~((+16+))~~ (17) "Election" includes any primary, general, or special
18 election for public office and any election in which a ballot
19 proposition is submitted to the voters: PROVIDED, That an election in
20 which the qualifications for voting include other than those
21 requirements set forth in Article VI, section 1 (Amendment 63) of the
22 Constitution of the state of Washington shall not be considered an
23 election for purposes of this chapter.

24 ~~((+17+))~~ (18) "Election campaign" means any campaign in support of
25 or in opposition to a candidate for election to public office and any
26 campaign in support of, or in opposition to, a ballot proposition.

27 ~~((+18+))~~ (19) "Election cycle" means the period beginning on the
28 first day of December after the date of the last previous general
29 election for the office that the candidate seeks and ending on November
30 30th after the next election for the office. In the case of a special
31 election to fill a vacancy in an office, "election cycle" means the
32 period beginning on the day the vacancy occurs and ending on November
33 30th after the special election.

34 ~~((+19+))~~ (20) "Electioneering communication" means any broadcast,
35 cable, or satellite television or radio transmission, United States
36 postal service mailing, billboard, newspaper, or periodical that:

37 (a) Clearly identifies a candidate for a state, local, or judicial

1 office either by specifically naming the candidate, or identifying the
2 candidate without using the candidate's name;

3 (b) Is broadcast, transmitted, mailed, erected, distributed, or
4 otherwise published within sixty days before any election for that
5 office in the jurisdiction in which the candidate is seeking election;
6 and

7 (c) Either alone, or in combination with one or more communications
8 identifying the candidate by the same sponsor during the sixty days
9 before an election, has a fair market value of five thousand dollars or
10 more.

11 (21) "Electioneering communication" does not include:

12 (a) Usual and customary advertising of a business owned by a
13 candidate, even if the candidate is mentioned in the advertising when
14 the candidate has been regularly mentioned in that advertising
15 appearing at least twelve months preceding his or her becoming a
16 candidate;

17 (b) Advertising for candidate debates or forums when the
18 advertising is paid for by or on behalf of the debate or forum sponsor,
19 so long as two or more candidates for the same position have been
20 invited to participate in the debate or forum;

21 (c) A news item, feature, commentary, or editorial in a regularly
22 scheduled news medium that is:

23 (i) Of primary interest to the general public;

24 (ii) In a news medium controlled by a person whose business is that
25 news medium; and

26 (iii) Not a medium controlled by a candidate or a political
27 committee;

28 (d) Slate cards and sample ballots;

29 (e) Advertising for books, films, dissertations, or similar works
30 (i) written by a candidate when the candidate entered into a contract
31 for such publications or media at least twelve months before becoming
32 a candidate, or (ii) written about a candidate;

33 (f) Public service announcements;

34 (g) A mailed internal political communication primarily limited to
35 the members of or contributors to a political party organization or
36 political committee, or to the officers, management staff, or
37 stockholders of a corporation or similar enterprise, or to the members
38 of a labor organization or other membership organization;

1 (h) An expenditure by or contribution to the authorized committee
2 of a candidate for state, local, or judicial office; or

3 (i) Any other communication exempted by the commission through rule
4 consistent with the intent of this chapter.

5 (22) "Expenditure" includes a payment, contribution, subscription,
6 distribution, loan, advance, deposit, or gift of money or anything of
7 value, and includes a contract, promise, or agreement, whether or not
8 legally enforceable, to make an expenditure. The term "expenditure"
9 also includes a promise to pay, a payment, or a transfer of anything of
10 value in exchange for goods, services, property, facilities, or
11 anything of value for the purpose of assisting, benefiting, or honoring
12 any public official or candidate, or assisting in furthering or
13 opposing any election campaign. For the purposes of this chapter,
14 agreements to make expenditures, contracts, and promises to pay may be
15 reported as estimated obligations until actual payment is made. The
16 term "expenditure" shall not include the partial or complete repayment
17 by a candidate or political committee of the principal of a loan, the
18 receipt of which loan has been properly reported.

19 ~~((+20+))~~ (23) "Final report" means the report described as a final
20 report in RCW 42.17.080(2).

21 ~~((+21+))~~ (24) "General election" for the purposes of RCW 42.17.640
22 means the election that results in the election of a person to a state
23 office. It does not include a primary.

24 ~~((+22+))~~ (25) "Gift," is as defined in RCW 42.52.010.

25 ~~((+23+))~~ (26) "Immediate family" includes the spouse, dependent
26 children, and other dependent relatives, if living in the household.
27 For the purposes of RCW 42.17.640 through 42.17.790, "immediate family"
28 means an individual's spouse, and child, stepchild, grandchild, parent,
29 stepparent, grandparent, brother, half brother, sister, or half sister
30 of the individual and the spouse of any such person and a child,
31 stepchild, grandchild, parent, stepparent, grandparent, brother, half
32 brother, sister, or half sister of the individual's spouse and the
33 spouse of any such person.

34 ~~((+24+))~~ (27) "Incumbent" means a person who is in present
35 possession of an elected office.

36 (28) "Independent expenditure" means an expenditure that has each
37 of the following elements:

1 (a) It is made in support of or in opposition to a candidate for
2 office by a person who is not (i) a candidate for that office, (ii) an
3 authorized committee of that candidate for that office, (iii) a person
4 who has received the candidate's encouragement or approval to make the
5 expenditure, if the expenditure pays in whole or in part for political
6 advertising supporting that candidate or promoting the defeat of any
7 other candidate or candidates for that office, or (iv) a person with
8 whom the candidate has collaborated for the purpose of making the
9 expenditure, if the expenditure pays in whole or in part for political
10 advertising supporting that candidate or promoting the defeat of any
11 other candidate or candidates for that office;

12 (b) The expenditure pays in whole or in part for political
13 advertising that either specifically names the candidate supported or
14 opposed, or clearly and beyond any doubt identifies the candidate
15 without using the candidate's name; and

16 (c) The expenditure, alone or in conjunction with another
17 expenditure or other expenditures of the same person in support of or
18 opposition to that candidate, has a value of five hundred dollars or
19 more. A series of expenditures, each of which is under five hundred
20 dollars, constitutes one independent expenditure if their cumulative
21 value is five hundred dollars or more.

22 ~~((+25+))~~ (29)(a) "Intermediary" means an individual who transmits
23 a contribution to a candidate or committee from another person unless
24 the contribution is from the individual's employer, immediate family as
25 defined for purposes of RCW 42.17.640 through 42.17.790, or an
26 association to which the individual belongs.

27 (b) A treasurer or a candidate is not an intermediary for purposes
28 of the committee that the treasurer or candidate serves.

29 (c) A professional fund-raiser is not an intermediary if the fund-
30 raiser is compensated for fund-raising services at the usual and
31 customary rate.

32 (d) A volunteer hosting a fund-raising event at the individual's
33 home is not an intermediary for purposes of that event.

34 ~~((+26+))~~ (30) "Legislation" means bills, resolutions, motions,
35 amendments, nominations, and other matters pending or proposed in
36 either house of the state legislature, and includes any other matter
37 that may be the subject of action by either house or any committee of

1 the legislature and all bills and resolutions that, having passed both
2 houses, are pending approval by the governor.

3 ~~((+27))~~ (31) "Lobby" and "lobbying" each mean attempting to
4 influence the passage or defeat of any legislation by the legislature
5 of the state of Washington, or the adoption or rejection of any rule,
6 standard, rate, or other legislative enactment of any state agency
7 under the state Administrative Procedure Act, chapter 34.05 RCW.
8 Neither "lobby" nor "lobbying" includes an association's or other
9 organization's act of communicating with the members of that
10 association or organization.

11 ~~((+28))~~ (32) "Lobbyist" includes any person who lobbies either in
12 his or her own or another's behalf.

13 ~~((+29))~~ (33) "Lobbyist's employer" means the person or persons by
14 whom a lobbyist is employed and all persons by whom he or she is
15 compensated for acting as a lobbyist.

16 ~~((+30))~~ (34) "Participate" means that, with respect to a
17 particular election, an entity:

18 (a) Makes either a monetary or in-kind contribution to a candidate;

19 (b) Makes an independent expenditure or electioneering
20 communication in support of or opposition to a candidate;

21 (c) Endorses a candidate prior to contributions being made by a
22 subsidiary corporation or local unit with respect to that candidate or
23 that candidate's opponent;

24 (d) Makes a recommendation regarding whether a candidate should be
25 supported or opposed prior to a contribution being made by a subsidiary
26 corporation or local unit with respect to that candidate or that
27 candidate's opponent; or

28 (e) Directly or indirectly collaborates or consults with a
29 subsidiary corporation or local unit on matters relating to the support
30 of or opposition to a candidate, including, but not limited to, the
31 amount of a contribution, when a contribution should be given, and what
32 assistance, services or independent expenditures, or electioneering
33 communications, if any, will be made or should be made in support of or
34 opposition to a candidate.

35 (35) "Person" includes an individual, partnership, joint venture,
36 public or private corporation, association, federal, state, or local
37 governmental entity or agency however constituted, candidate,

1 committee, political committee, political party, executive committee
2 thereof, or any other organization or group of persons, however
3 organized.

4 ~~((31))~~ (36) "Person in interest" means the person who is the
5 subject of a record or any representative designated by that person,
6 except that if that person is under a legal disability, the term
7 "person in interest" means and includes the parent or duly appointed
8 legal representative.

9 ~~((32))~~ (37) "Political advertising" includes any advertising
10 displays, newspaper ads, billboards, signs, brochures, articles,
11 tabloids, flyers, letters, radio or television presentations, or other
12 means of mass communication, used for the purpose of appealing,
13 directly or indirectly, for votes or for financial or other support or
14 opposition in any election campaign.

15 ~~((33))~~ (38) "Political committee" means any person (except a
16 candidate or an individual dealing with his or her own funds or
17 property) having the expectation of receiving contributions or making
18 expenditures in support of, or opposition to, any candidate or any
19 ballot proposition.

20 ~~((34))~~ (39) "Primary" for the purposes of RCW 42.17.640 means the
21 procedure for nominating a candidate to state office under chapter
22 ~~((29.18 or 29.21))~~ 29A.52 RCW or any other primary for an election that
23 uses, in large measure, the procedures established in chapter ~~((29.18~~
24 ~~or 29.21))~~ 29A.52 RCW.

25 ~~((35))~~ (40) "Public office" means any federal, state, judicial,
26 county, city, town, school district, port district, special district,
27 or other state political subdivision elective office.

28 ~~((36))~~ (41) "Public record" includes any writing containing
29 information relating to the conduct of government or the performance of
30 any governmental or proprietary function prepared, owned, used, or
31 retained by any state or local agency regardless of physical form or
32 characteristics. For the office of the secretary of the senate and the
33 office of the chief clerk of the house of representatives, public
34 records means legislative records as defined in RCW 40.14.100 and also
35 means the following: All budget and financial records; personnel
36 leave, travel, and payroll records; records of legislative sessions;
37 reports submitted to the legislature; and any other record designated

1 a public record by any official action of the senate or the house of
2 representatives.

3 ~~((37))~~ (42) "Recall campaign" means the period of time beginning
4 on the date of the filing of recall charges under RCW ~~((29.82.015))~~
5 29A.56.120 and ending thirty days after the recall election.

6 ~~((38))~~ (43) "Sponsor of an electioneering communications,
7 independent expenditures, or political advertising" means the person
8 paying for the electioneering communication, independent expenditure,
9 or political advertising. If a person acts as an agent for another or
10 is reimbursed by another for the payment, the original source of the
11 payment is the sponsor.

12 (44) "State legislative office" means the office of a member of the
13 state house of representatives or the office of a member of the state
14 senate.

15 ~~((39))~~ (45) "State office" means state legislative office or the
16 office of governor, lieutenant governor, secretary of state, attorney
17 general, commissioner of public lands, insurance commissioner,
18 superintendent of public instruction, state auditor, or state
19 treasurer.

20 ~~((40))~~ (46) "State official" means a person who holds a state
21 office.

22 ~~((41))~~ (47) "Surplus funds" mean, in the case of a political
23 committee or candidate, the balance of contributions that remain in the
24 possession or control of that committee or candidate subsequent to the
25 election for which the contributions were received, and that are in
26 excess of the amount necessary to pay remaining debts incurred by the
27 committee or candidate prior to that election. In the case of a
28 continuing political committee, "surplus funds" mean those
29 contributions remaining in the possession or control of the committee
30 that are in excess of the amount necessary to pay all remaining debts
31 when it makes its final report under RCW 42.17.065.

32 ~~((42))~~ (48) "Writing" means handwriting, typewriting, printing,
33 photostating, photographing, and every other means of recording any
34 form of communication or representation, including, but not limited to,
35 letters, words, pictures, sounds, or symbols, or combination thereof,
36 and all papers, maps, magnetic or paper tapes, photographic films and
37 prints, motion picture, film and video recordings, magnetic or punched

1 cards, discs, drums, diskettes, sound recordings, and other documents
2 including existing data compilations from which information may be
3 obtained or translated.

4 As used in this chapter, the singular shall take the plural and any
5 gender, the other, as the context requires.

6 **Sec. 7.** RCW 42.17.103 and 2001 c 54 s 1 are each amended to read
7 as follows:

8 (1) The sponsor of political advertising who, within twenty-one
9 days of an election, publishes, mails, or otherwise presents to the
10 public political advertising supporting or opposing a candidate or
11 ballot proposition that qualifies as an independent expenditure with a
12 fair market value of one thousand dollars or more shall deliver, either
13 electronically or in written form, a special report to the commission
14 within twenty-four hours of, or on the first working day after, the
15 date the political advertising is first published, mailed, or otherwise
16 presented to the public.

17 (2) If a sponsor is required to file a special report under this
18 section, the sponsor shall also deliver to the commission within the
19 delivery period established in subsection (1) of this section a special
20 report for each subsequent independent expenditure of any size
21 supporting or opposing the same candidate who was the subject of the
22 previous independent expenditure, supporting or opposing that
23 candidate's opponent, or supporting or opposing the same ballot
24 proposition that was the subject of the previous independent
25 expenditure.

- 26 (3) The special report must include at least:
- 27 (a) The name and address of the person making the expenditure;
 - 28 (b) The name and address of the person to whom the expenditure was
29 made;
 - 30 (c) A detailed description of the expenditure;
 - 31 (d) The date the expenditure was made and the date the political
32 advertising was first published or otherwise presented to the public;
 - 33 (e) The amount of the expenditure;
 - 34 (f) The name of the candidate supported or opposed by the
35 expenditure, the office being sought by the candidate, and whether the
36 expenditure supports or opposes the candidate; or the name of the

1 ballot proposition supported or opposed by the expenditure and whether
2 the expenditure supports or opposes the ballot proposition; and

3 (g) Any other information the commission may require by rule.

4 (4) All persons required to report under RCW 42.17.065, 42.17.080,
5 42.17.090, (~~and~~) 42.17.100, and section 3 of this act are subject to
6 the requirements of this section. The commission may determine that
7 reports filed pursuant to this section also satisfy the requirements of
8 RCW 42.17.100.

9 (5) The sponsor of independent expenditures supporting a candidate
10 or opposing that candidate's opponent required to report under this
11 section shall file with each required report an affidavit or
12 declaration of the person responsible for making the independent
13 expenditure that the expenditure was not made in cooperation,
14 consultation, or concert with, or at the request or suggestion of, the
15 candidate, the candidate's authorized committee, or the candidate's
16 agent, or with the encouragement or approval of the candidate, the
17 candidate's authorized committee, or the candidate's agent.

18 **Sec. 8.** RCW 42.17.110 and 1975-'76 2nd ex.s. c 112 s 5 are each
19 amended to read as follows:

20 (1) Each commercial advertiser who has accepted or provided
21 political advertising or electioneering communications during the
22 election campaign shall maintain open for public inspection during the
23 campaign and for a period of no less than three years after the date of
24 the applicable election, during normal business hours, documents and
25 books of account which shall specify:

26 (a) The names and addresses of persons from whom it accepted
27 political advertising or electioneering communications;

28 (b) The exact nature and extent of the (~~advertising~~) services
29 rendered; and

30 (c) The consideration and the manner of paying that consideration
31 for such services.

32 (2) Each commercial advertiser which must comply with subsection
33 (1) of this section shall deliver to the commission, upon its request,
34 copies of such information as must be maintained open for public
35 inspection pursuant to subsection (1) of this section.

1 **Sec. 9.** RCW 42.17.510 and 1995 c 397 s 19 are each amended to read
2 as follows:

3 (1) All written political advertising, whether relating to
4 candidates or ballot propositions, shall include the sponsor's name and
5 address. All radio and television political advertising, whether
6 relating to candidates or ballot propositions, shall include the
7 sponsor's name. The use of an assumed name for the sponsor of
8 electioneering communications, independent expenditures, or political
9 advertising shall be unlawful. ((The party with which a candidate
10 files)) For partisan office, if a candidate has expressed a party or
11 independent preference on the declaration of candidacy, that party or
12 independent designation shall be clearly identified in electioneering
13 communications, independent expenditures, or political advertising
14 ((for partisan office)).

15 (2) In addition to the materials required by subsection (1) of this
16 section, except as specifically addressed in subsections (4) and (5) of
17 this section, all political advertising undertaken as an independent
18 expenditure by a person or entity other than a party organization, and
19 all electioneering communications, must include the following statement
20 ((~~on~~)) as part of the communication "NOTICE TO VOTERS (Required by
21 law): This advertisement is not authorized or approved by any
22 candidate. It is paid for by (name, address, city, state)." If the
23 advertisement undertaken as an independent expenditure or
24 electioneering communication is undertaken by a nonindividual other
25 than a party organization, then the following notation must also be
26 included: "Top Five Contributors," followed by a listing of the names
27 of the five persons or entities making the largest contributions in
28 excess of seven hundred dollars reportable under this chapter during
29 the twelve-month period before the date of the advertisement or
30 communication.

31 (3) The statements and listings of contributors required by
32 subsections (1) and (2) of this section shall:

33 (a) Appear on the first page or fold of the written advertisement
34 or communication in at least ten-point type, or in type at least ten
35 percent of the largest size type used in a written advertisement or
36 communication directed at more than one voter, such as a billboard or
37 poster, whichever is larger;

38 (b) Not be subject to the half-tone or screening process; and

1 (c) Be set apart from any other printed matter(~~(i) and~~
2 ~~(d) Be clearly spoken on any broadcast advertisement~~)).

3 (4) In an independent expenditure or electioneering communication
4 transmitted via television or other medium that includes a visual
5 image, the following statement must either be clearly spoken, or appear
6 in print and be visible for at least four seconds, appear in letters
7 greater than four percent of the visual screen height, and have a
8 reasonable color contrast with the background: "No candidate
9 authorized this ad. Paid for by (name, city, state)." If the
10 advertisement or communication is undertaken by a nonindividual other
11 than a party organization, then the following notation must also be
12 included: "Top Five Contributors" followed by a listing of the names
13 of the five persons or entities making the largest contributions in
14 excess of seven hundred dollars reportable under this chapter during
15 the twelve-month period before the date of the advertisement.
16 Abbreviations may be used to describe contributing entities if the full
17 name of the entity has been clearly spoken previously during the
18 broadcast advertisement.

19 (5) The following statement shall be clearly spoken in an
20 independent expenditure or electioneering communication transmitted by
21 a method that does not include a visual image: "No candidate
22 authorized this ad. Paid for by (name, city, state)." If the
23 independent expenditure or electioneering communication is undertaken
24 by a nonindividual other than a party organization, then the following
25 statement must also be included: "Top Five Contributors" followed by
26 a listing of the names of the five persons or entities making the
27 largest contributions in excess of seven hundred dollars reportable
28 under this chapter during the twelve-month period before the date of
29 the advertisement. Abbreviations may be used to describe contributing
30 entities if the full name of the entity has been clearly spoken
31 previously during the broadcast advertisement.

32 (6) Political yard signs are exempt from the requirement of
33 subsections (1) and (2) of this section that the name and address of
34 the sponsor of political advertising be listed on the advertising. In
35 addition, the public disclosure commission shall, by rule, exempt from
36 the identification requirements of subsections (1) and (2) of this
37 section forms of political advertising such as campaign buttons,

1 balloons, pens, pencils, sky-writing, inscriptions, and other forms of
2 advertising where identification is impractical.

3 ~~((+5+))~~ (7) For the purposes of this section, "yard sign" means any
4 outdoor sign with dimensions no greater than eight feet by four feet.

5 **Sec. 10.** RCW 42.17.530 and 1999 c 304 s 2 are each amended to read
6 as follows:

7 (1) It is a violation of this chapter for a person to sponsor with
8 actual malice:

9 (a) Political advertising or an electioneering communication that
10 contains a false statement of material fact about a candidate for
11 public office. However, this subsection (1)(a) does not apply to
12 statements made by a candidate or the candidate's agent about the
13 candidate himself or herself;

14 (b) Political advertising or an electioneering communication that
15 falsely represents that a candidate is the incumbent for the office
16 sought when in fact the candidate is not the incumbent;

17 (c) Political advertising or an electioneering communication that
18 makes either directly or indirectly, a false claim stating or implying
19 the support or endorsement of any person or organization when in fact
20 the candidate does not have such support or endorsement.

21 (2) Any violation of this section shall be proven by clear and
22 convincing evidence.

23 **Sec. 11.** RCW 42.17.640 and 2001 c 208 s 1 are each reenacted and
24 amended to read as follows:

25 (1) No person, other than a bona fide political party or a caucus
26 political committee, may make contributions to a candidate for a state
27 legislative office that in the aggregate exceed ~~((five))~~ seven hundred
28 dollars or to a candidate for a state office other than a state
29 legislative office that in the aggregate exceed one thousand four
30 hundred dollars for each election in which the candidate is on the
31 ballot or appears as a write-in candidate. Contributions made with
32 respect to a primary may not be made after the date of the primary.
33 However, contributions to a candidate or a candidate's authorized
34 committee may be made with respect to a primary until thirty days after
35 the primary, subject to the following limitations: (a) The candidate
36 lost the primary; (b) the candidate's authorized committee has

1 insufficient funds to pay debts outstanding as of the date of the
2 primary; and (c) the contributions may only be raised and spent to
3 satisfy the outstanding debt. Contributions made with respect to a
4 general election may not be made after the final day of the applicable
5 election cycle.

6 (2) No person, other than a bona fide political party or a caucus
7 political committee, may make contributions to a state official against
8 whom recall charges have been filed, or to a political committee having
9 the expectation of making expenditures in support of the recall of the
10 state official, during a recall campaign that in the aggregate exceed
11 ((five)) seven hundred dollars if for a state legislative office or one
12 thousand four hundred dollars if for a state office other than a state
13 legislative office.

14 (3)(a) Notwithstanding subsection (1) of this section, no bona fide
15 political party or caucus political committee may make contributions to
16 a candidate during an election cycle that in the aggregate exceed (i)
17 ((fifty)) seventy cents multiplied by the number of eligible registered
18 voters in the jurisdiction from which the candidate is elected if the
19 contributor is a caucus political committee or the governing body of a
20 state organization, or (ii) ((twenty-five)) thirty-five cents
21 multiplied by the number of registered voters in the jurisdiction from
22 which the candidate is elected if the contributor is a county central
23 committee or a legislative district committee.

24 (b) No candidate may accept contributions from a county central
25 committee or a legislative district committee during an election cycle
26 that when combined with contributions from other county central
27 committees or legislative district committees would in the aggregate
28 exceed ((twenty-five)) thirty-five cents times the number of registered
29 voters in the jurisdiction from which the candidate is elected.

30 (4)(a) Notwithstanding subsection (2) of this section, no bona fide
31 political party or caucus political committee may make contributions to
32 a state official against whom recall charges have been filed, or to a
33 political committee having the expectation of making expenditures in
34 support of the state official, during a recall campaign that in the
35 aggregate exceed (i) ((fifty)) seventy cents multiplied by the number
36 of eligible registered voters in the jurisdiction entitled to recall
37 the state official if the contributor is a caucus political committee
38 or the governing body of a state organization, or (ii) ((twenty-five))

1 thirty-five cents multiplied by the number of registered voters in the
2 jurisdiction from which the candidate is elected if the contributor is
3 a county central committee or a legislative district committee.

4 (b) No state official against whom recall charges have been filed,
5 no authorized committee of the official, and no political committee
6 having the expectation of making expenditures in support of the recall
7 of a state official may accept contributions from a county central
8 committee or a legislative district committee during an election cycle
9 that when combined with contributions from other county central
10 committees or legislative district committees would in the aggregate
11 exceed (~~twenty-five~~) thirty-five cents multiplied by the number of
12 registered voters in the jurisdiction from which the candidate is
13 elected.

14 (5) For purposes of determining contribution limits under
15 subsections (3) and (4) of this section, the number of eligible
16 registered voters in a jurisdiction is the number at the time of the
17 most recent general election in the jurisdiction.

18 (6) Notwithstanding subsections (1) through (4) of this section, no
19 person other than an individual, bona fide political party, or caucus
20 political committee may make contributions reportable under this
21 chapter to a caucus political committee that in the aggregate exceed
22 (~~five~~) seven hundred dollars in a calendar year or to a bona fide
23 political party that in the aggregate exceed (~~two~~) three thousand
24 five hundred dollars in a calendar year. This subsection does not
25 apply to loans made in the ordinary course of business.

26 (7) For the purposes of RCW 42.17.640 through 42.17.790, a
27 contribution to the authorized political committee of a candidate, or
28 of a state official against whom recall charges have been filed, is
29 considered to be a contribution to the candidate or state official.

30 (8) A contribution received within the twelve-month period after a
31 recall election concerning a state office is considered to be a
32 contribution during that recall campaign if the contribution is used to
33 pay a debt or obligation incurred to influence the outcome of that
34 recall campaign.

35 (9) The contributions allowed by subsection (2) of this section are
36 in addition to those allowed by subsection (1) of this section, and the
37 contributions allowed by subsection (4) of this section are in addition
38 to those allowed by subsection (3) of this section.

1 (10) RCW 42.17.640 through 42.17.790 apply to a special election
2 conducted to fill a vacancy in a state office. However, the
3 contributions made to a candidate or received by a candidate for a
4 primary or special election conducted to fill such a vacancy shall not
5 be counted toward any of the limitations that apply to the candidate or
6 to contributions made to the candidate for any other primary or
7 election.

8 (11) Notwithstanding the other subsections of this section, no
9 corporation or business entity not doing business in Washington state,
10 no labor union with fewer than ten members who reside in Washington
11 state, and no political committee that has not received contributions
12 of ten dollars or more from at least ten persons registered to vote in
13 Washington state during the preceding one hundred eighty days may make
14 contributions reportable under this chapter to a candidate, to a state
15 official against whom recall charges have been filed, or to a political
16 committee having the expectation of making expenditures in support of
17 the recall of the official. This subsection does not apply to loans
18 made in the ordinary course of business.

19 (12) Notwithstanding the other subsections of this section, no
20 county central committee or legislative district committee may make
21 contributions reportable under this chapter to a candidate, state
22 official against whom recall charges have been filed, or political
23 committee having the expectation of making expenditures in support of
24 the recall of a state official if the county central committee or
25 legislative district committee is outside of the jurisdiction entitled
26 to elect the candidate or recall the state official.

27 (13) No person may accept contributions that exceed the
28 contribution limitations provided in this section.

29 (14) The following contributions are exempt from the contribution
30 limits of this section:

31 (a) An expenditure or contribution earmarked for voter
32 registration, for absentee ballot information, for precinct caucuses,
33 for get-out-the-vote campaigns, for precinct judges or inspectors, for
34 sample ballots, or for ballot counting, all without promotion of or
35 political advertising for individual candidates; or

36 (b) An expenditure by a political committee for its own internal
37 organization or fund raising without direct association with individual
38 candidates.

1 **Sec. 12.** RCW 42.17.660 and 1993 c 2 s 6 are each amended to read
2 as follows:

3 For purposes of this chapter:

4 (1) A contribution by a political committee with funds that have
5 all been contributed by one person who exercises exclusive control over
6 the distribution of the funds of the political committee is a
7 contribution by the controlling person.

8 (2) Two or more entities are treated as a single entity if one of
9 the two or more entities is a subsidiary, branch, or department of a
10 corporation that is participating in an election campaign or making
11 contributions, or a local unit(~~(7)~~) or branch(~~(7, or affiliate)~~) of a
12 trade association, labor union, or collective bargaining association
13 that is participating in an election campaign or making contributions.

14 All contributions made by a person or political committee whose
15 contribution or expenditure activity is financed, maintained, or
16 controlled by a trade association, labor union, collective bargaining
17 organization, or the local unit of a trade association, labor union, or
18 collective bargaining organization are considered made by the (~~same~~
19 ~~person or entity~~) trade association, labor union, collective
20 bargaining organization, or local unit of a trade association, labor
21 union, or collective bargaining organization.

22 (3) The commission shall adopt rules to carry out this section and
23 is not subject to the time restrictions of RCW 42.17.370(1).

24 **PART IV - TECHNICAL PROVISIONS**

25 NEW SECTION. **Sec. 13.** RCW 42.17.505 (Definitions) and 1988 c 199
26 s 1 are each repealed.

27 NEW SECTION. **Sec. 14.** Part headings used in this act are not any
28 part of the law.

29 NEW SECTION. **Sec. 15.** (1) Sections 1 through 5 of this act are
30 each added to chapter 42.17 RCW to be codified with the subchapter
31 heading of "Reporting of Electioneering Communications."

32 (2) The code reviser must change the subchapter heading "Political
33 Advertising" to "Political Advertising and Electioneering
34 Communications" in chapter 42.17 RCW.

1 NEW SECTION. **Sec. 16.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected.

5 NEW SECTION. **Sec. 17.** Sections 6 and 12 of this act are necessary
6 for the immediate preservation of the public peace, health, or safety,
7 or support of the state government and its existing public
8 institutions, and take effect July 1, 2005. The remainder of this act
9 takes effect January 1, 2006.

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