

SMITH & LOWNEY, P.L.L.C.
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May 23rd, 2016

Robert Ferguson
Washington State Attorney General
1125 Washington St SE PO Box 40100
Olympia, WA 98504-0100

Daniel Satterberg
King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Re: 1st Notice of Intent to Sue for Violations of RCW 42.17A

Dear Attorney General Ferguson and Prosecuting Attorney Satterberg:

We represent Washingtonians for Ethical Government (“Washingtonians”) in submitting this statutory notice of intent to sue.

Washingtonians have reason to believe that Tim Eyman, Jack Fagan, Mike Fagan, Barbara Smith, and Bring Back Our \$30 Car Tabs – VMWC – 2016 (collectively “Eyman”) have violated RCW Chapter 42.17A.

Washingtonians intend to bring a citizens’ action against Eyman under RCW 42.17A.765(4) if you do not commence an action against Eyman within the following notice periods specified by statute. At the expiration of 45 days from the date of this letter, a second notice of intent to sue will be sent to you if you have not yet filed suit against Eyman. If, after 10 days following receipt of the second notice you still have not filed suit against Eyman, Washingtonians will bring an action in Superior Court.

I. Violations of RCW 42.17A.

The basis for Washingtonians’ belief that Eyman violated certain sections of RCW Chapter 42.17A is described in the attached complaint and incorporated herein by reference. Indisputable evidence shows Eyman intentionally violated our public disclosure laws.

II. Tim Eyman is a Serial Violator of RCW 42.17A.

Eyman’s latest violations are part of a long history of Tim Eyman’s disregard for our state’s public disclosure laws. Eyman already has three strikes against him, and the current violations are the fourth. He should not be given another pass.

Strike One: In 2002, Eyman was required to pay \$50,000 in penalties and was barred from serving as a treasurer or having control over a political committee’s financial accounts, based upon evidence tending to show that Eyman deceived contributors, embezzled funds from his campaign organization, and failed to properly report the committee’s expenditures. For specific evidence and details, see PDC Case No. 02-281.

Strike Two: In 2005, following the completion of an investigation begun in 2004, fines were assessed against three of Tim Eyman’s political committees in a brief enforcement hearing. See PDC Cases No. 05-066 and 05-068.

Strike Three: Most recently, the PDC again concluded that Eyman pocketed campaign funds for personal use and illegally used funds raised for one initiative to support a different initiative. The PDC found evidence of illegal concealment because the “expenditures were described in the committee’s report as paying for I-1185 signatures, but were intended in part to result in compensation for Mr. Eyman.” The PDC found multiple violations of the law and the matter is currently being prosecuted by the Attorney General, as described in the meeting minutes attached hereto.

Tim Eyman has repeatedly shown a complete and utter disregard for our public disclosure laws, and must be prosecuted to the full extent of the law.

All of the persons and entities described in this letter should pay a penalty for their part in this concealment.

Washingtonians intend to sue for all violations, including those yet to be uncovered and those committed subsequent to the date of this notice of intent to sue. Washingtonians believe that this Notice sufficiently states grounds for filing suit. We intend, at the close of the notice periods, or shortly thereafter, to file a citizen's action against the above-named persons and entities under RCW 42.17A.765(4) for violations of the Fair Campaign Practices Act, RCW Chapter 42.17A. If you have any questions or concerns regarding this Notice, please contact the undersigned attorney.

Very Truly Yours,

SMITH & LOWNEY, PLLC

By:  _____

Knoll Lowney

2317 E. John, Seattle, WA 98112

Attorneys for Washingtonians for Ethical Government

Complaint Against Tim Eyman and “Bring Back Our \$30 Car Tabs – VMWC – 2016” for Violations of RCW 42.17A

I. Respondents

Bring Back Our \$30 Car Tabs – VMWC – 2016
PO Box 18250, Spokane, WA 99228
Phone: 509-991-5295

Tim Eyman, Officer/Media Contact
11913 59th Ave W, Mukilteo, WA 98275
Phone: 425-493-9127; email: tim_eyman@comcast.net

Jack Fagan, Officer/Manager
7020 N Wall Street, Spokane, WA 99208
Phone: 509-991-4762; email: jakatak@comcast.net

Mike Fagan, Officer
1523 E Dalton Street, Spokane, WA 99207

Barbara Smith, Treasurer
PO Box 1093, Mead, WA 99021
Phone: 509-435-2160

II. Alleged Violations

On April 12th, 2016, Tim Eyman, who serves as the designated media contact for “Bring Back Our \$30 Car Tabs – VMWC – 2016” (ostensibly a ballot measure committee formed to promote I-1421, a 2016 initiative to the people) announced the launch of an online ad campaign targeted at fifty-four incumbent Democratic state legislators from twenty-one different legislative districts.

The campaign consists principally of a series of video advertisements which identify lawmakers from a given district by name and photograph, and subsequently urge viewers to “Vote Them Out”, after having assailed them for refusing to implement Respondents’ previous initiative from 2015 (Initiative 1366, [struck down in January 2016 as unconstitutional in King County Superior Court](#)). The entire collection of ads was published to a website created for and dedicated to the ad campaign by a vendor, Campaign Grid.

The apparent costs of this ad campaign were disclosed in a C4 filing on April 11th, 2016 by “Bring Back Our \$30 Car Tabs – VMWC – 2016”, which states that Campaign Grid of Fort Washington, Pennsylvania, was paid \$42,000 on March 28th, 2016, for “Advertising Promotion for Initiative 1366”. On the same day, Anne Norwood of Gresham, Oregon was paid \$780.00 for “banner advertising”, while Mark Dodd of Vancouver, Washington was paid \$2,438 for “campaign computer advertising”.

RCW 42.17A.255 stipulates that a person or entity that makes an independent expenditure of more than one hundred dollars has five days to file an initial report with the Public Disclosure Commission documenting “all independent expenditures made during the campaign prior to and including such date”.

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An independent expenditure is defined as “any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW [42.17A.220](#), [42.17A.235](#), and [42.17A.240](#).” [Guidelines published by the Public Disclosure Commission](#) define an independent expenditure as having five elements:

1. the ad supports or opposes a candidate for state, local, or judicial office;
2. the ad is paid for by someone other than a candidate, a candidate's committee or agent;
3. the sponsor does the advertising completely independently of any candidate support in the ad (or the opponent of the candidate opposed), or a candidate's committee or agent;
4. the sponsor did not received the candidate's encouragement or approval to produce the ad; and
5. the ad costs at least \$1,000, or the cost of the latest ad when combined with the cost of earlier ads supporting or opposing the candidate, totals \$1,000 or more.

The ads created by Campaign Grid for “Bring Back Our \$30 Car Tabs – VMWC – 2016” meet the definition of an independent expenditure. The ads oppose candidates for state House and Senate, were financed by a committee unaffiliated with a candidate, were produced without the approval or encouragement of a candidate, and collectively cost more than forty times more than the threshold of \$1,000.

Because the ads meet the definition of independent expenditures, they should contain the required statement “No candidate authorized this ad. It is paid for by (name, address, city, state)”. The PDC's guidelines unequivocally state that this statement “must be part of the ad”. For broadcast ads, the PDC's guidance states that the required disclosures “must be clearly spoken”. However, the ads in question do not contain this statement as the law requires. Nor were the ads properly reported as an independent expenditure as required by law. The PDC instructs makers of independent expenditures to “electronically file or otherwise deliver C-6 to the PDC within 5 days of spending \$100 or more”, unless they are political committees, in which case they are instructed to report their independent expenditures “only on the C-4 report”.

The instructions provided by the PDC that accompany the C-4 form state: “The question posted near the top of the first page of this form regarding independent expenditures applies to ALL POLITICAL COMMITTEES required to file C-4 reports, except ballot issue committees that neither contribute to candidates nor make independent expenditures regarding them and candidate committees (because they are prohibited from making expenditures that are not directly related to their own campaigns).”

“Bring Back Our \$30 Car Tabs – VMWC – 2016” is registered as a ballot issue committee, but its treasurer should nevertheless have answered “Yes” to the question “During this report period, did the committee make an independent expenditure (i.e., an expense not considered a contribution) supporting or opposing a state or local candidate?” because it **did** make independent expenditures opposing numerous candidates seeking reelection to the Washington State Legislature. The committee's treasurer then should have documented the independent expenditures as required using Schedule A or Part 3 of Schedule B to show:

- the date of the expense;
- the name and address of the vendor or recipient of the funds;
- if using Schedule A, an “I” in the Code column;
- the name and office sought of the candidate supported or opposed;
- an indication of support or opposition; and
- a brief description of the expense (e.g brochure mailed to absentee voters).

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Election Totals ▼ **Candidates ▼** Committees ▼ Independent Expenditures ▼ Lobbying ▼ Advanced ▼ PDC Home

Statewide | **Legislative** | Judicial | Local | Surplus |

- Cash Contributions
- In-kind Contributions
- Expenditures
- Independent Expenditures

Independent Expenditures for/against: ORTIZ-SELF LILLIAN

Total Raised: \$15,305.00 Total Spent: \$11,102.26
Total IE Supporting: \$0.00 Total IE Opposing: \$0.00

Select an opponent ▼

NOTE: Click on a column header to sort by that column, or click on the icon to filter your results

Drag a column header and drop it here to group by that column

REPORT	SPONSOR	DATE	AMOUNT	S/O	CITY	STATE	ZIP
No records to display.							

Displaying items 0 - 0 of 0

Figure 1: The Public Disclosure Commission website as seen on May 20th, 2016. No independent expenditures are listed for or against Lillian Ortiz-Self, one of the targets of the ads.

None of this information was provided as part of the C4 filed on April 11th, 2016, nor has it been provided since. The committee's failure to report this independent expenditure is an act of concealment. It constitutes an egregious violation of Washington's public disclosure law. Journalists, voters, candidates and observers rely on the Public Disclosure Commission's website to track independent expenditures, but because these ads have not been reported as required, only those who actually see the website, videos, or emails generated by respondents will be aware of their existence.

III. Evidence

Website

Each one of the ads created as part of the campaign may be viewed at this NationBuilder website set up by the vendor (URL: <http://www.two-thirds-to-raise-taxes.info>).

Let The People Vote...
Two Thirds To Raise Taxes
Constitutional Amendment

HOME ABOUT GET CONNECTED ▼ CHOOSE A LEGISLATIVE DISTRICT ▼

Choose a targeted Legislative District below:

LD 01	LD 03	LD 05	LD 19	LD 21	LD 23	LD 24	LD 27	LD 28	LD 29
LD 31	LD 32	LD 33	LD 38	LD 40	LD 41	LD 44	LD 45	LD 47	LD 48
LD 49									

Or Click Here to Lookup Your District Number

Do you like this page?

Paid for by Voters Want More Choices
PO BOX 18250, SPOKANE, WA 99228
Top 5 contributors: Kenneth Fisher, Clyde Holland,
Tim Eymann, Mark Needham, Suzanne Burke

Sign in with Facebook, Twitter or email. Created with NationBuilder

Figure 2: The front page of the NationBuilder website.

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Figure 3: The legislative district selector on the NationBuilder website.

Video Advertisements

Alternatively, the videos can be viewed on Vimeo, the platform on which they were originally published. The specific web address for each video is listed below:

1. LD-01: Ad targeting Rosemary McAulifee, Derek Stanford, Luis Moscoso: <https://vimeo.com/160574845>
2. LD-03: Ad targeting Andy Billig, Timm Ormsby, Marcus Riccelli: <https://vimeo.com/160574846>
3. LD-05: Ad targeting Mark Mullet: <https://vimeo.com/161429482>
4. LD-19: Ad targeting Dean Takko, Brian Blake, and JD Rossetti: <https://vimeo.com/160574851>
5. LD-21: Ad targeting Marko Liias, Strom Peterson, Lillian Ortiz-Self: <https://vimeo.com/160574847>
6. LD-23: Ad targeting Christine Rolfes, Sherry Appleton, Drew Hansen: <https://vimeo.com/160574850>
7. LD-24: Ad targeting Jim Hargrove, Kevin Van De Wege, Steve Tharinger: <https://vimeo.com/160574849>
8. LD-27: Ad targeting Jeannie Darneille, Laurie Jenkins, and Jake Fey: <https://vimeo.com/160574853>
9. LD-28: Ad targeting Christine Kilduff: <https://vimeo.com/160574848>
10. LD-29: Ad targeting Steve Conway, David Sawyer, Steve Kirby: <https://vimeo.com/160574859>
11. LD-31: Ad targeting Christopher Hurst: <https://vimeo.com/160574860>
12. LD-32: Ad targeting Maralyn Chase, Cindy Ryu, and Ruth Kagi: <https://vimeo.com/160574862>
13. LD-33: Ad targeting Karen Keiser, Tina Orwall, and Mia Gregersen: <https://vimeo.com/160574863>
14. LD-38: Ad targeting John McCoy, June Robinson, Mike Sells: <https://vimeo.com/160574872>
15. LD-40: Ad targeting Kevin Ranker, Kristine Lytton, Jeff Morris: <https://vimeo.com/160574866>
16. LD-41: Ad targeting Judy Clibborn, Tana Senn: <https://vimeo.com/160574864>
17. LD-44: Ad targeting Steve Hobbs, Hans Dunshee: <https://vimeo.com/160574871>
18. LD-45: Ad targeting Larry Springer, Roger Goodman: <https://vimeo.com/160574867>
19. LD-47: Ad targeting Pat Sullivan: <https://vimeo.com/161429483>
20. LD-48: Ad targeting Cyrus Habib, Joan McBride, Patty Kuderer: <https://vimeo.com/160574869>
21. LD-49: Ad targeting Annette Cleveland, Jim Moeller, Sharon Wylie: <https://vimeo.com/160574868>

As of May 20th, 2016, most of the individuals named above filed to run for reelection with the Secretary of State and have active campaigns, according to reports filed with the Public Disclosure Commission.

Stills from the videos

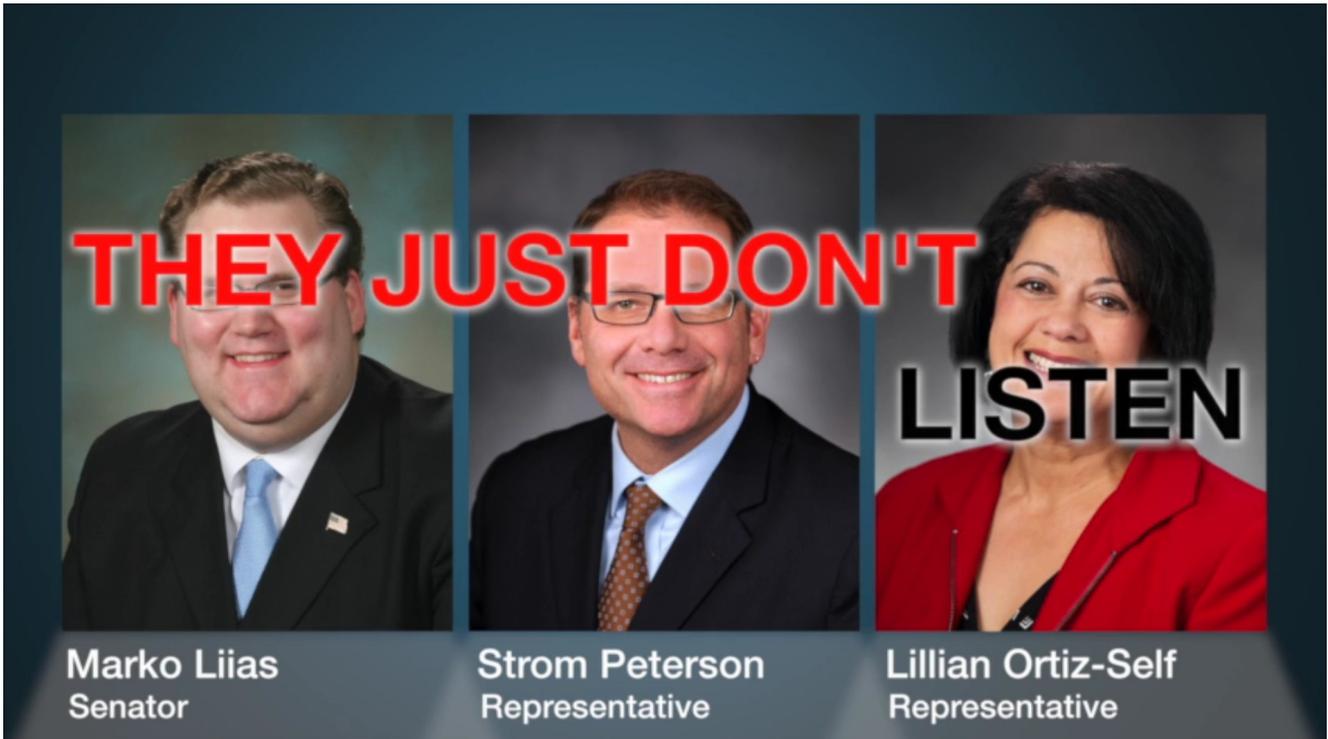


Figure 4: The still above is a scene from one of the ads (the 21st Legislative District version) identifying candidates by name and photograph.

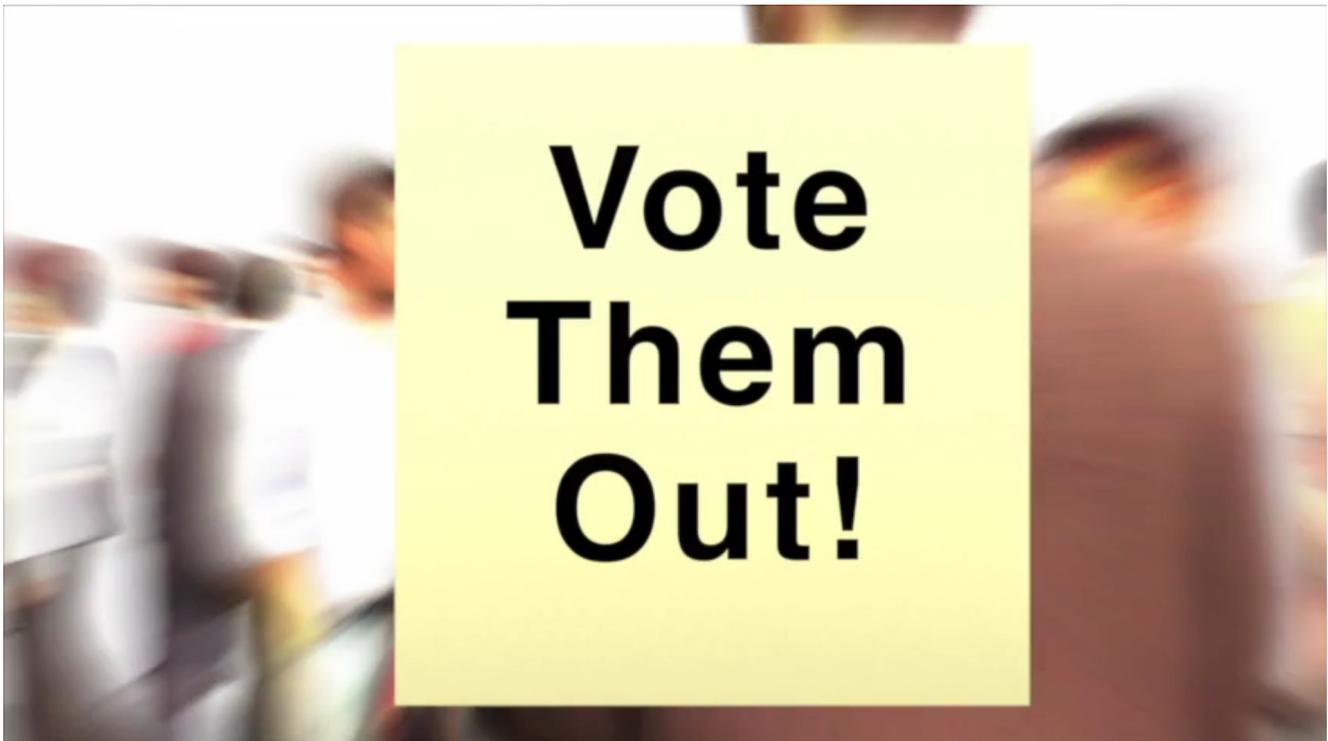


Figure 5: This still depicts the scene from the ads where viewers are urged to “Vote Them Out!” This scene is the same in every one of the twenty-one ads. As the words above appear on screen, the ad’s voiceover intones: “Tell them you’re going to hold them accountable at the next election.”

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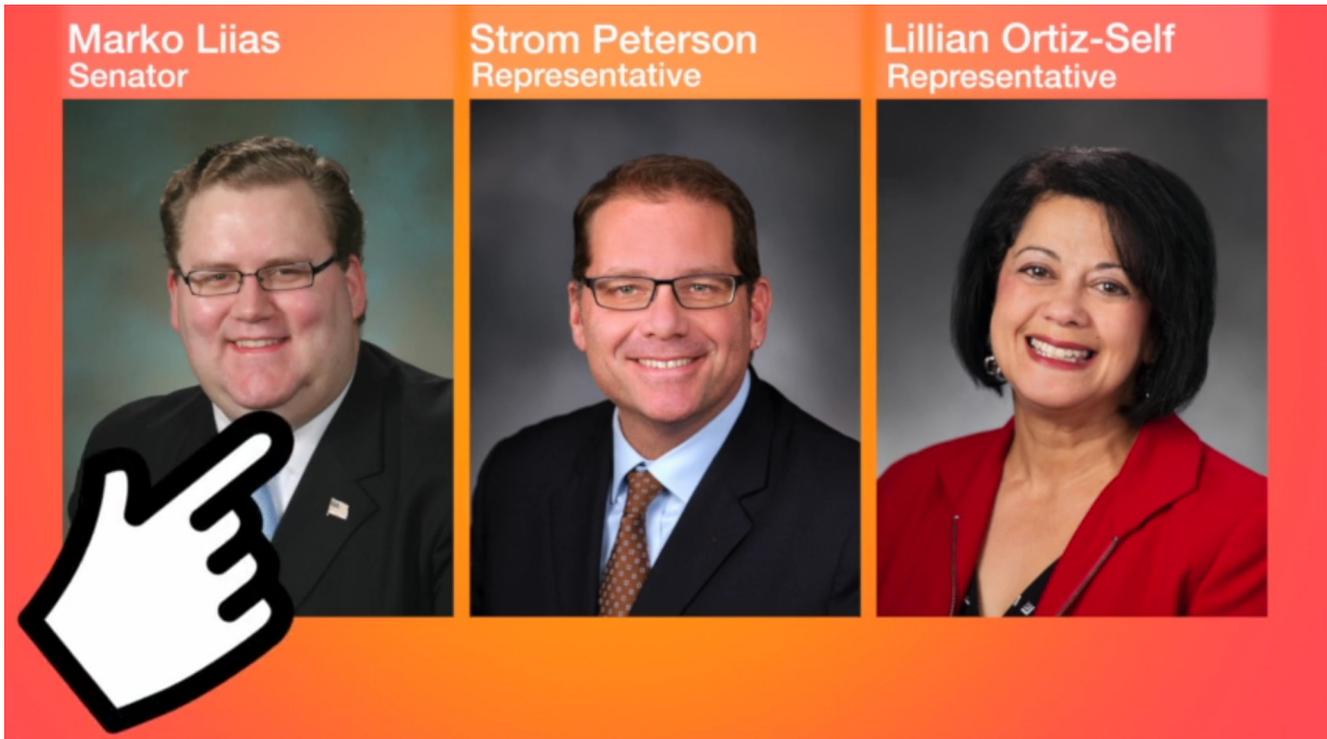


Figure 6: Immediately following the “Vote Them Out” scene, the names and faces of the ad’s targets are shown a second and final time, prior to the final scene in the ad. The above is an example – again from the 21st District ad.

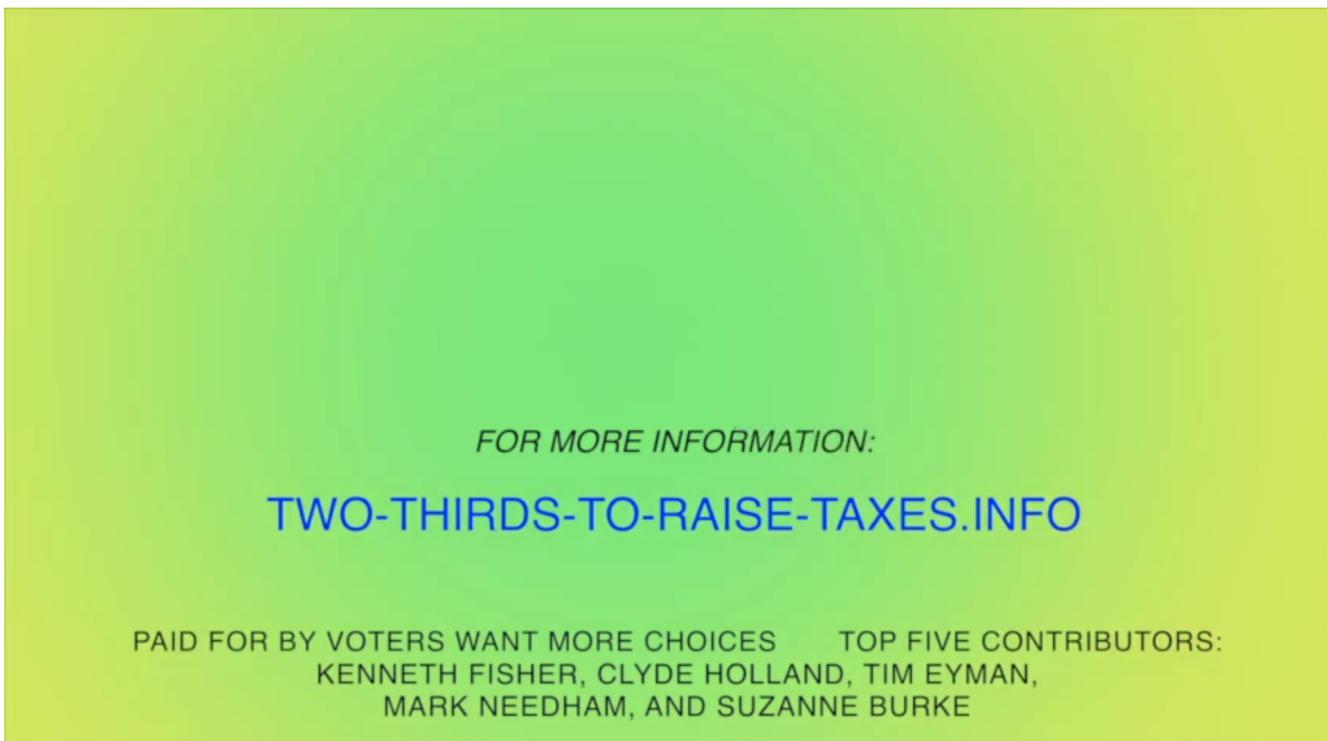


Figure 7: The final scene from the ads states who is responsible for the ad, including the top five contributors, but fails to include the required disclosure “No candidate authorized this ad...”

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Screenshot of one of the web ads created to promote the videos

The screenshot shows the top portion of a web page from The New Yorker. At the top, there is a navigation bar with categories: NEWS, CULTURE, BOOKS, SCIENCE & TECH, BUSINESS, HUMOR, CARTOONS, MAGAZINE, AUDIO, VIDEO, ARCHIVE, and a SUBSCRIBE button. Below the navigation bar, the date "FEBRUARY 25, 2014" is displayed. The main article title is "ARIZONA CONFRONTING AWKWARD REALIZATION THAT GAY PEOPLE HAVE MONEY, BUY STUFF" by "ANDY BOROWITZ". To the right of the article title is a circular profile picture of a man and the text "BOROWITZ REPORT". Below the article title are social media sharing icons for Facebook, Twitter, Google+, Email, and Print. The main content area features a large photograph of a woman with blonde hair and red glasses speaking at a microphone. Overlaid on the right side of this photograph is a video advertisement. The advertisement has a blue background with white and yellow text. It reads: "Politicians in Olympia IGNORED YOU & a Majority of Washington Voters! Push Back NOW! > 2/3's to Raise Taxes!". The word "IGNORED" is in large, bold, white letters. The advertisement is circled in red.

Figure 8: A web ad promoting the video ads documented above, running on the website of The New Yorker

Email Messages

Communications sent by Tim Eyman promoting the videos listed above and urging the defeat of the candidates targeted by the illegal independent expenditure may be viewed here in reverse chronological order:

- 05/02/2016 - [We scored a scalp! For weeks we've been bashing Democrats -- one of them "retired" last week](#)
- 04/26/2016 - [On taxes, all Democrat legislators are Seattle-centric clones](#)
- 04/20/2016 - [It's the House and Senate Democrats fault that I-1366 wasn't implemented](#)
- 04/15/2016 - [Most overwhelming response we've ever had -- our ads against Dems are YUGE!](#)
- 04/12/2016 - [Powerful video and ads calling out undemocratic Democrats who disrespected voters](#)

Reports filed with the Public Disclosure Commission

Enclosed with this complaint is the C1-PC and most recent C4s for "Bring Back Our \$30 Car Tabs – VMWC – 2016", which document that these independent expenditures were made but not correctly reported.

IV. Witnesses

Persons or entities with knowledge of the creation of this independent expenditure include the following:

- Officers of "Bring Back Our \$30 Car Tabs – VMWC – 2016": Tim Eyman, Jack Fagan, Mike Fagan, and Barbara Smith (Treasurer) – addresses listed in Part 1
- Mark Dodd, vendor (PO Box 953, Vancouver, WA 98666)
- Anne Norwood, vendor (1312 SW 15th Court, Gresham, OR 97080)
- Campaign Grid, vendor (414 Commerce Drive Suite 100, Fort Washington, PA 19034)