



STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE	)	PDC CASE NO: 5729
WITH RCW 42.17A	)	
	)	
Tim Eyman, Jack Fagan, Mike Fagan,	)	
Barbara Smith, and <i>Bring Back Our</i>	)	
<i>\$30 Car Tabs – VWMC – 2016</i>	)	
	)	
	)	REPORT OF INVESTIGATION
Respondents.	)	
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I. BACKGROUND

- 1.1 *Bring Back Our \$30 Car Tabs – VWMC – 2016* is a political committee formed to promote Initiative 1421 in the 2016 general election. I-1421, which concerned motor vehicle taxes and fees, was filed with the Washington Secretary of State on January 8, 2016.
- 1.2 *Bring Back Our \$30 Car Tabs – VWMC – 2016* registered with the Public Disclosure Commission by filing a C-1pc Political Committee Registration on February 10, 2016. **(Exhibit 1.)** The registration listed Jack Fagan as the committee’s campaign manager, Tim Eyman as its “media contact” and as a general officer, Barbara Smith as the committee’s treasurer, and Mike Fagan as an additional officer.
- 1.3 News reports in early June 2016 indicated that Tim Eyman, the sponsor of I-1421, had abandoned efforts to qualify the initiative for the 2016 ballot. As the Everett *Herald* reported:

*“That one never took off,” [Mr. Eyman] said. He raised nearly \$200,000 for that campaign and has about two-thirds left unspent, according to online records of the state Public Disclosure Commission. Eyman said he will use those leftover dollars on this new initiative. [I-869, an initiative to the 2017 Washington Legislature that concerns motor vehicle taxes, fees, tolls, charges, and registration.]*

**(Exhibit 2.)**

1.4 On May 25, 2016, the Washington State Attorney General received a Citizen Action Notice from Washingtonians for Ethical Government through their attorney Knoll Lowney, alleging that Tim Eyman, Jack Fagan, Mike Fagan, Barbara Smith, and the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee had violated RCW 42.17A. On June 7, 2016, the Washington State Attorney General's office forwarded the complaint to the Public Disclosure Commission to review and investigate. **(Exhibit 3.)**

## II. ALLEGATIONS IN COMPLAINT

2.1 The Citizen Action Notice alleged that Tim Eyman, Jack Fagan, Mike Fagan, Barbara Smith, and *Bring Back Our \$30 Car Tabs – VMWC – 2016* failed to properly disclose expenses incurred to sponsor 21 Independent Expenditure Web videos opposing 54 candidates for legislative office, alleged violations of RCW 42.17A.235 and .240. The notice further alleged that the communications at issue failed to comply with the sponsor identification requirement for Independent Expenditure political advertising under RCW 42.17A.320. Finally, the notice alluded to the C-6 independent expenditure disclosure requirement of RCW 42.17A.255, but did not contain a clear allegation regarding C-6 filing.

## III. FINDINGS

3.1 **Content of Video Advertisements:** As discussed above, the Citizen Action Notice concerned 21 Web-only videos sponsored by *Bring Back Our \$30 Car Tabs – VMWC – 2016*. The notice described the videos as opposing 54 candidates for office. However, the notice only identified 52 candidates as the subject of those videos.

3.2 The *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee disclosed sponsorship of these 21 videos and the majority of related distribution expenses on a C-4 Summary, Full Report of Receipts and Expenditures filed with the PDC on April 11, 2016. The report listed the expenses as paid on March 28, 2016. **(Exhibit 4, p 3.)** In this initial C-4 report, the committee described the purpose of the March 2016 expenditures as “Banner Advertising,” “Campaign Computer Advertising,” and “Advertising Promotion for Initiative 1366.” (Initiative 1366 was a 2015 statewide initiative that provided for a 2/3 majority requirement for legislative tax increases. It was approved by Washington voters in the November 3, 2015 general election, and subsequently ruled unconstitutional.) The report did not answer “yes” to the question on the C-4 cover sheet, “*During the report period, did the committee make an independent expenditure (i.e., an expenses not considered a contribution) supporting or opposing a state or local candidate?”*

- 3.3 On an amended C-4 filed on May 25, 2016, *Bring Back Our \$30 Car Tabs – VMWC – 2016* disclosed that the video ads opposed 52 candidates, and listed those candidates. **(Exhibit 5, pp 3 - 4.)** As with the original C-4 report, the amended report listed the relevant expenditures as paid on March 28, 2016. Also like the original C-4, the amended report did not answer “yes” to the question on the C-4 cover sheet concerning independent expenditures (though the detailed expenditure listing did classify the expenses as independent expenditures).<sup>1</sup>
- 3.4 As of June 7, 2016, the date that PDC staff received the Citizen Action Notice from the Washington Attorney General, the videos at issue were no longer available for viewing online. PDC staff requested and received copies of the videos from *Bring Back Our \$30 Car Tabs – VMWC – 2016*. **(Exhibit 6.)** Staff also received a selection of the videos from Andrew Villeneuve of the Northwest Progressive Institute. **(Exhibit 7.)** Staff reviewed the videos received from the two sources and found them to be the same.
- 3.5 Staff’s review indicated that of the 52 individual officials identified in the 21 videos, only 49 were candidates for any office as of March 28, 2016, the date of the relevant expenditures by *Bring Back Our \$30 Car Tabs – VMWC – 2016*. State Senator Marko Liias, now a candidate for State Treasurer, had not announced or registered his campaign as of March 28, 2016. State Senator Jim Hargrove was previously a registered candidate for re-election, but announced withdrawal from his race on March 10, 2016, before the Web videos were sponsored. State Senator John McCoy was not yet a candidate for re-election as of March 28, 2016.
- 3.6 The Web videos criticized the identified legislators and candidates for failing to support a 2/3 majority requirement for tax increases. The videos displayed the printed statement, “Vote Them Out!” and ended with the printed statement, “Paid for by Voters Want More Choices... Top 5 Contributors: Kenneth Fisher, Clyde Holland, Tim Eyman, Mark Needham, and Suzanne Burke.” **(Exhibit 3, pp 7 – 8.)**
- 3.7 **C-4 Disclosure (Purpose of Video Advertisements):** As discussed above, the initial C-4 that *Bring Back Our \$30 Car Tabs – VMWC – 2016* filed on April 11, 2016 to report expenditures connected with its Web videos did not disclose that the purpose of the expenditures was to oppose any candidate

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<sup>1</sup> PDC Filer Assistance staff report that classifying an individual expense as an independent expenditure in the PDC’s ORCA electronic filing software automatically populates the question concerning independent expenditures on the C-4 cover sheet with a “yes” answer. However, due to the workings of the software, staff believe that failing to properly classify expenses in this manner on an original C-4 report may foreclose the opportunity for the filer to affirmatively answer the cover sheet question in an amended report, even when the amendment properly classifies the expenses as independent expenditures.

for office. **(Exhibit 4, p 3.)** That purpose was first disclosed 44 days late, on the amended C-4 report filed on May 25, 2016. **(Exhibit 5, pp 3 – 4.)**

- 3.8 **Sponsor Identification and Disclaimer:** PDC filings and invoices provided by the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee, as well as information provided by the committee’s counsel, Mark Lamb, indicate that the total value of the videos was as follows:

Video production: \$2,438  
Online advertising copy: \$780  
Targeting and online distribution: \$42,000  
Web site: \$100  
Emails: \$0 (no cost)  
**TOTAL: \$45,318**

**(Exhibit 8, pp 3 – 6, Exhibit 9, p 2.)** The above expenditures paid for 21 videos and related online advertising to promote or distribute the videos. The value of each video communication was thus \$2,158.

- 3.9 In 11 cases the video advertisement opposed three candidates, a pro-rata share of \$719.33 per candidate. Because the value of these advertisements was less than \$1,000 per candidate, under WAC 390-16-063(1) it appears these 11 videos did not meet the definition of “independent expenditure” for the purposes of the sponsor identification requirement of RCW 42.17A.320(4).
- 3.10 The remaining ten videos opposed either one or two candidates. Because these videos were valued at \$1,079 - \$2,158 per candidate, it appears they met the definition of “independent expenditure” and were required to comply with the sponsor identification requirement of RCW 42.17A.320(4), including the “*No candidate authorized this ad*” disclaimer, and accurate “Top 5 contributors” information. As discussed above, the sponsor ID statement in the videos contained an abbreviated version of the sponsor’s name (“Voters Want More Choices”) but did not contain the committee’s city or state. The videos also did not include the statement “*No candidate authorized this ad.*” **(Exhibit 3, p 8.)**
- 3.11 In addition, while Kenneth Fisher, Clyde Holland, and Suzanne Burke were among the top contributors to the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee, as of the date of its March 28, 2016 expenditures, that committee had disclosed no contributions from Mark Needham or from Tim Eyman. **(Exhibit 10.)** In light of this, the “Top 5 Contributors” information in the Web videos appears to be inaccurate.
- 3.12 In response to PDC staff’s request for an explanation of the committee’s choice of contributors to identify in its advertising, Mark Lamb stated that the

committee identified the largest contributors to committees with the “VWMC” moniker during 2016, i.e., *Bring Back Our \$30 Car Tabs – VMWC – 2016* and *Tougher to Raise Taxes VWMC*. **(Exhibit 11.)**

- 3.13 **C-1pc Registration / Purpose of Committee:** As noted above, C-1pc Political Committee Registrations currently on file for *Bring Back Our \$30 Car Tabs – VMWC – 2016* indicate the committee’s sole purpose is to support Initiative 1421 in the 2016 general election. I-1421 concerns motor vehicle taxes and fees. The committee’s C-1pc registrations do not identify any candidate that the committee will support or oppose.
- 3.14 On June 28, 2016 and June 29, 2016, Mark Lamb provided copies of draft C-1pc amendments meant to indicate candidates or ballot propositions the committee has supported or opposed. **(Exhibit 9, pp 5 – 7, Exhibit 11, pp 7 - 8.)** On June 30, 2016, Jack Fagan transmitted an email to PDC staff, stating that the committee’s final amended C-1pc had been mailed. **(Exhibit 12.)**
- 3.15 Although the issue was not raised in the Citizen Action Notice, within ten days of sponsoring the committee’s March 28, 2016 expenditures to oppose a candidate, or to support a ballot proposition other than I-1421, *Bring Back Our \$30 Car Tabs – VMWC – 2016* was required to file an amended C-1pc indicating the committee’s updated purpose. This amendment, due no later than April 7, 2016, is 89 days late as of the date of this report.
- 3.16 In response to PDC staff’s question about why *Bring Back Our \$30 Car Tabs – VMWC – 2016* sponsored expenditures for a purpose unrelated to supporting I-1421, Mark Lamb stated the following:

*“VWMC did not have the intention of making any expenditures that referenced elected officials when it was formed. After the legislature failed to act on the 2/3 amendment to the Washington Constitution the officers of the committee felt it was important that the voters of the state understand this and be informed about how their elected representatives voted...they did not understand the PDC’s position that the committee would need to amend the C1PC to permit the committee to comment on such issues. The committee generally opposes higher taxes that are not approved by either the voters or a supermajority of their elected representatives. As such, VWMC supports a return to \$30 tabs and a 2/3 majority requirement.”*

**(Exhibit 9, p 2.)**

- 3.17 **Independent Expenditure (C-6) Disclosure:** As noted above, in their Citizen Action Notice, the complainants did not make a specific allegation concerning any alleged failure by *Bring Back Our \$30 Car Tabs – VMWC – 2016* to file C-6 Independent Expenditure reports. Nevertheless, PDC staff

reviewed a possible C-6 filing requirement for the political committee, and found no such requirement under any of the relevant statutory provisions:

- The C-6 filing requirement of **RCW 42.17A.255** for independent expenditures valued at \$100 or more does not apply to expenditures that are required to be disclosed by a political committee under RCW 42.17A.235 and RCW 42.17A.240. *Bring Back Our \$30 Car Tabs – VMWC – 2016* is a political committee reporting under .235 and .240.
- The C-6 filing requirement of **RCW 42.17A.260** applies to independent expenditure political advertising valued at \$1,000 or more and presented to the public within 21 days of an election. The nearest election to the ads at issue in this complaint is the upcoming August 2, 2016 primary election. The Web ads were discontinued more than 21 days before that election.
- The C-6 filing requirement of **RCW 42.17A.305** applies only to electioneering communications as defined by RCW 42.17A.005(19). That definition requires that an electioneering communication be presented in one of several specified media, which exclude online advertising.

#### IV. SCOPE

4.1 PDC staff reviewed the following documents:

1. A Citizen Action Notice filed with the Washington Attorney General on May 25, 2016 by Washingtonians for Ethical Government through counsel Knoll Lowney, alleging violations of RCW 42.17A by Tim Eyman, Jack Fagan, Mike Fagan, Barbara Smith, and *Bring Back Our \$30 Car Tabs – VMWC – 2016*;
2. C-1pc Political Committee registrations, C-3 Monetary Contributions reports, and C-4 Summary, Full Reports of Receipts and Expenditures filed by the *Bring Back Our \$30 Car Tabs – VMWC - 2016* committee;
3. Results of queries of the PDC contribution and expenditure database;
4. Copies of political advertisement videos received on June 24, 2016 from the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee;
5. Copies of selected political advertisement videos sponsored by the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee, received on June 24, 2016 from Andrew Villeneuve of the Northwest Progressive Institute;

6. PDC candidate registration filings, Secretary of State candidate registration data, and news reports concerning Washington legislative and executive office campaigns in the 2016 and 2018 elections;
7. News reports concerning the Initiative 1421 and Initiative 869 campaigns;
8. Responses from counsel Mark Lamb on behalf of the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee and its officers, received on June 22, 2016, June 24, 2016, June 28, 2016, and June 29, 2016; and
9. An email received from Jack Fagan on June 30, 2016.

## V. LAW

Under **RCW 42.17A.320(4)**, the sponsor of an independent expenditure political advertisement that contains a visual image is required to include the statement “*No candidate authorized this ad. Paid for by (name, city, state)*” in the advertisement. If the sponsor is a political committee, the sponsor is also required to include the statement “Top Five Contributors,” followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars during the twelve-month period before the date the advertisement was initially presented to the public.

**RCW 42.17A.005(26)** provides the definition of an “independent expenditure” for the purpose of the sponsor identification and disclaimer requirements of RCW 42.17A.320. Under the definition, the value of an independent expenditure must be \$1,000 for at least one candidate supported or opposed, on a pro rata basis. (See **WAC 390-05-400** for changes in dollar amounts for “independent expenditures,” and **WAC 390-16-063** for the prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.)

Under **RCW 42.17A.205(2)**, on the C-1pc Political Committee registration, a political committee is required to disclose:

- ...(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party; [and]
- (g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition[.]

Per **RCW 42.17A.205(4)**, any material change to the information on a previous registration is required to be disclosed on an amended C-1pc registration filed within ten days of the change.

Per **RCW 42.17A.240(6)** and **WAC 390-16-037(1)**, the C-4 Summary, Full Report of Receipts and Expenditures must disclose the purpose of each expenditure being reported, including by identifying the candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure, unless the candidates or ballot propositions have been previously identified in a statement of organization filed under RCW 42.17A.205.

Respectfully submitted this 5<sup>th</sup> day of July, 2016.



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Tony Perkins  
Compliance Officer

### **EXHIBIT LIST**

- Exhibit 1** Original and amended C-1pc Political Committee Registrations filed by the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee on February 10, 2016.
- Exhibit 2** “*Tim Eyman’s New Ballot Measure Targets Tolls and Transit Taxes,*” article published June 7, 2016 in the *Everett Herald*.
- Exhibit 3** Citizen Action Notice filed on May 25, 2016 with Washington State Attorney General by Washingtonians for Ethical Government, alleging violations of RCW 42.17A by Tim Eyman, Jack Fagan, Mike Fagan, Barbara Smith, and the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee.
- Exhibit 4** C-4 Summary, Full Report of Receipts and Expenditures filed by the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee on April 11, 2016.
- Exhibit 5** Amended C-4 Summary, Full Report of Receipts and Expenditures filed by the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee on May 25, 2016.
- Exhibit 6** Copies of 21 Web videos sponsored by *Bring Back Our \$30 Car Tabs – VMWC – 2016*, received from the committee on June 24, 2016.
- Exhibit 7** Copies of selected Web videos sponsored by the *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee, received on June 24, 2016 from Andrew Villeneuve of the Northwest Progressive Institute.
- Exhibit 8** Formal response to the Citizen Action Notice, received on June 24, 2016 from Mark Lamb on behalf of *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee.
- Exhibit 9** Email received June 28, 2016 from Mark Lamb, with attachments.
- Exhibit 10** Result of PDC contribution database query for *Bring Back Our \$30 Car Tabs – VMWC – 2016* committee (top contributors only, \$200 - \$22,500 range).
- Exhibit 11** Email received June 29, 2016 from Mark Lamb, with attachments.
- Exhibit 12** Email received from Jack Fagan on June 30, 2016.