



State of Washington
PUBLIC DISCLOSURE COMMISSION

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August 11, 2009

Stephen Pidgeon
Attorney at Law
3002 Colby Avenue Suite 306
Everett, WA 98201

SENT VIA EMAIL, FAX and U.S. MAIL

Re: Email Received August 7, 2009 – Modification Request – Contributors to Protect Marriage Washington and the Referendum 71 Campaign ---
Notice of Hearing Scheduled for August 27, 2009

Dear Mr. Pidgeon:

This letter confirms receipt on Friday, August 7, 2009 of your emailed letter request dated August 6, 2009, seeking a modification of the reporting requirements under RCW 42.17 for the contributors to Protect Marriage Washington. You cite to RCW 42.17.370. You describe you are the attorney acting on behalf of Protect Marriage Washington. Presumably, you are referring to the political committee Protect Marriage Washington, which filed its political committee registration (C1pc) with the Public Disclosure Commission as a ballot committee on May 13, 2009, describing it was against Referendum 71, and which has filed C3 (cash receipts and monetary contributions) and C4 (summary reports) reports with schedules beginning June 8, 2009.

To summarize, in your emailed letter, (1) you request "written confirmation" that "any names and addresses required to be disclosed on forms B (presumably you mean Schedule B, which is a schedule to the C4 and discloses in-kind contributions, pledges, orders, debts and obligations), C3 and C4 will be sealed from public disclosure until such time as the Commission can hear this request" (and contributor occupation information is also referenced in your letter); (2) you seek an "emergency hearing" before the Commission; (3) you request that hearing-related information be placed "under seal" or "sealed"; and, (4) you seek a modification of the reporting requirements.

(1) "Written Confirmation" Request

First I will address your for "written confirmation" that information in contribution forms filed to date will be placed under "seal" pending the hearing. The information you ask the Commission to not disclose

and which describes campaign contributors to Protect Marriage Washington in reports filed with the Commission to date, and particularly names and addresses of contributors provided by Protect Marriage Washington to date on electronically filed C3 forms, has already been made available to the public beginning in June pursuant to law. The information is also available on the Internet via the Commission's website at www.pdc.wa.gov pursuant to law.

These reports and this disclosure to the public are required by statute. Reports filed with the Commission are public records and are required to be posted on the Commission's website. See generally RCW 42.17, included but not limited to:

- RCW 42.17.080 and .090 (C3 and C4 reports required to be filed with the Commission);
- RCW 42.17.080(5) and (8) (copies of account books and filed reports are also be available for public inspection at the committee's headquarters or address of the treasurer);
- RCW 42.17.440 ("All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours ...");
- RCW 42.17.020(42) (definition of public record, which includes any writing relating to the conduct of government or retained by any public agency);
- RCW 42.17.460 ("It is the intent of the legislature to ensure that the commission provide the general public timely access to all contribution and expenditure reports submitted by candidates, continuing political committees, bona fide political parties, lobbyists, and lobbyists' employers.");
- RCW 42.17.367 (the Commission is required to operate a website that allows access to reports, copies of reports, or copies of data and information in reports, filed with the Commission); and,
- RCW 42.17.461(3) (reports filed with the Commission are required to be made available on the agency's website within 2-4 business days, depending upon the type of report and method of filing).

Also see WAC 390-14-020 (public records of the Commission are available for public inspection and copying during designated hours). Therefore, these provisions restrict our ability to grant your request absent a modification order following a hearing under RCW 42.17.370(10) and the required findings by the Commission. In addition, WAC 390-28-040(1) provides that the "filing of a request for modification shall not suspend the reporting requirements of any portion of chapter 42.17 RCW."

(2) Hearing Request - Schedule

With regard to your requested emergency hearing, the Commission is next scheduled to meet and to hear modification applications very soon, on **August 27, 2009**. We will add your request to that agenda. The specific time for your request is not known at this time; we will let you know once that time is set and I estimate that it most likely will be in the afternoon.

While you have requested an "emergency" hearing, we are able to quickly schedule your request as a full hearing as is typically conducted for modification requests, given the fact that:

- (a) The Commission is already scheduled to meet in the very near future at a regular meeting to consider modification requests and conduct those hearings on August 27;
- (b) Your request for a hearing can be accommodated on the August 27 agenda and conducted as a full hearing (adjudicative proceeding) instead of an abbreviated emergency hearing, which will also allow for a more developed record, particularly for a new modification request such as yours that seeks nondisclosure of information potentially affecting an entire campaign or political committee; and,
- (c) Historically, members of the public are provided advance notice of new modification requests in order to enable them to see what information is sought to be kept from the public and from voters, and to enable them to challenge a modification order pursuant to RCW 42.17.370(10)(last line). As a result, where a new modification request is submitted and a hearing is scheduled, the request is published on the agenda with the materials filed seeking the modification and posted on our website, and the agenda is otherwise made the available to the public. This typically occurs approximately one week prior to the scheduled meeting and hearing. Given the nature of your request, the strong public interest in reports filed with the Commission, as well as the public interest in Referendum 71, we would not want to depart from procedures that allow for sufficient notice to the public and to the voters.

(3) Hearing Records

To date, you have submitted letter dated August 6 with attached blog posting(s) dated May 6, 2009 (Exhibit 2) and August 3, 2009 (Exhibit 1). Please note that RCW 42.17.370(10) provides in part that the Commission is empowered to:

After hearing, by order approved and ratified by a majority of the membership of the commission, suspend or modify any of the reporting requirements of this chapter in a particular case **if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that the suspension or modification will not frustrate the purposes of the chapter.** ... ¹ Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. **The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required under this section.**

If you would like to submit any supplemental written materials in addition to what you have provided, you will need to have them at our office (via email, fax or other delivery) no later than **noon, Friday, August 14**. Send them to my attention. My email address is dellis@pdc.wa.gov. Please let us know if you or any other person will be participating in the hearing. If the participation will be by

¹ While you described the "competitive position" phrase in RCW 42.17.370(10) with respect to the cross-reference to RCW 42.17.241 (it appears that is the cite you intended, since there is no RCW 42.17.341), please note that reference to RCW 42.17.241 and competitive position concerns the statement of financial affairs filed by elected and appointed officials under RCW 42.17.240 and .241, not campaign finance reports.

telephone, you will need to provide us a number where you or that person can be reached at the scheduled time on August 27. You can provide that information to me at (360) 664-2735.

With regard to your request for information "made prior to any hearings be made under seal" it appears you may also be describing hearing-related submissions and filings submitted prior to a hearing for consideration in the hearing. Written applications for hearings and other submissions concerning requested modifications and the scheduled hearings, and evidence presented in the hearings, are public records. For example, see RCW 34.05.449(5); RCW 42.17.020(42); WAC 390-14-020 (public records inspection for Commission records); WAC 390-28-080 (1) ("All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17.370(10) shall be considered to be a public record. There is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied.") In order to close all or part of such a hearing record, the Commission must conclude that all the criteria in WAC 390-28-080 are satisfied. A copy of the rule is enclosed.

If you wish to request that the Commission close the hearing record or a portion of the record and that request be considered as a preliminary matter at the hearing on August 27, please advise because that may affect the time set aside for this hearing. Meanwhile, records otherwise provided to the agency in advance of the hearing will be available to the public per our standard procedures.

Please note that we have received at least one public records request for a copy of your modification request and will be providing copies when requested as in our normal course. We also note that on August 10, 2009 a press release was posted on the protectmarriagewa.com website, and the release is titled "R-71 Campaign Requests Emergency Hearing to Seal Names of Donors." A copy of your August 6, 2009 modification request letter is included in the press release and you are listed as a contact. Therefore, your modification request letter has already been made public by your client.

(4) Modification Request

A copy of your request, along with any supplemental materials you provide, and any staff response, will be provided to the Commission when the agenda is finalized. You will also be provided a copy of any staff response. As noted, your request will be heard under RCW 42.17.370(10) on August 27, 2009.

Sincerely,



DOUG ELLIS
Assistant Director

Enclosure

WAC 390-28-080

Hearing to modify reporting — Evidence, record, adverse decisions.

(1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17.370(10) shall be considered to be a public record. There is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17.370(10), the commission may close the hearing or a portion of the hearing or hearing record. The commission may close a hearing or portion of a hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17.370(10); or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(2)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (1)(a) or (b) of this section;

(ii) An open hearing or record to report the information would work a manifestly unreasonable hardship on the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17 RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules shall be considered confidential by the commission pursuant to a protective order which shall be entered by the commission unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge determines that testimony in private may be necessary, the judge shall immediately adjourn the hearing and refer the matter to the commission.

(3) Any decision or order adverse to an applicant rendered by the commission or the administrative law judge shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.