

## WASHINGTON STATE PUBLIC DISCLOSURE LAWS AT RISK

*In the Citizens United decision, the Supreme Court of the United States indicated that it would uphold the Federal Election Commission (FEC) disclosure laws; but since then, Congress has not acted on any new disclosure bills nor has the FEC fully enforced the existing laws. This article discusses a challenge against Washington State Public Disclosure Laws in the aftermath of the Initiative 522 campaign, based on the Citizens United ruling, which could lead to the dismantling of the Washington State public disclosure laws.*

Washington State has several sections of statutes that together comprise what the public generally considers to be “public disclosure laws”. The State of Washington Attorney General says, “Strong ‘sunshine laws’ are crucial to assuring government accountability and transparency.”<sup>1</sup> Washington’s “sunshine laws” are the open public meetings laws adopted by the Legislature in 1971, contained in RCW 42.30; and the open public records laws in RCW 42.56. Washington State also has a Campaign Disclosure and Contribution statute, RCW 42.17A, established originally by Initiative 276 in November, 1972. In combination, these public disclosure laws are subject to challenge.

### **No-on-Initiative 522 Campaign v. Washington State (WA) Public Disclosure Law, 2013**

The 2010 *Citizens United* ruling unleashed a flood of money into political campaigns (see Figure A in Appendix). The campaign spending in Washington State Initiative 522, “labeling foods containing genetically engineered organisms” in 2013 was the most expensive campaign in Washington history (See Figure D in Appendix) and is an example of that flood of money. A record amount was spent by the YES and NO campaigns for I-522 (See Figures B, C and D in Appendix). The I-522 campaigns are also noteworthy in that the contributors to the campaigns were scrutinized by the state because of the State Campaign Disclosure and Contribution law. The statute states:

*"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."<sup>2</sup>*

The Washington State Public Disclosure Commission states,

*"The Public Disclosure Law relies on the antiseptic qualities of "sunshine" and several prohibitions to assure citizens of Washington that governmental systems and individuals who operate within it are open and honest. Before deciding which candidate, ballot proposal or pending legislation deserve support, the law provides citizens with an in-depth look at who is financing a campaign or has hired legislative lobbyists. In addition, monitoring efforts of concerned citizens, special interest groups, media and the Public Disclosure Commission assures compliance with the law. Although the Act does not apply to candidates running for federal office, a Federal Election Law governs these individuals. Furthermore, at the state level disclosure laws cover all candidates, elected officials, lobbyists and lobbyist employers. Persons*

<sup>1</sup> “Open Government”, Washington State Attorney General Web Site, <http://www.atg.wa.gov/open-government>, viewed 02/10/16.

<sup>2</sup> RCW 42.17A.001(10), <http://apps.leg.wa.gov/rcw/default.aspx?cite=42.17A.001>, viewed 04/18/16

*holding or seeking local office are subject to only portions of the law. The statute contains five main elements. Together they constitute one of the most exhaustive disclosure laws in the country and serve to build public confidence in the political process and government.”<sup>3</sup>*

## **Background on litigation for violation of Washington State Public Disclosure Law (PDL)**

### Hidden donors’ identities

An article in the Seattle Post-Intelligencer (PI) on October 4, 2013, described how Washington’s Initiative 522 campaigns outspent the campaigns for California’s Proposition 37 regarding labeling GEO. The articles stated that,

*“The campaign against Prop. 37 in California saw big donations from such food industry giants as Pepsico (\$2.14 million), Coca-Cola (\$1.45 million), Kraft Foods (\$1.64 million), Nestle (\$1.31 million) and soup giants Heinz and Kraft (\$500,000 apiece). Agribusiness is big in the No-on-522 effort — Monsanto has given \$4 million — but the food companies’ names have vanished from this year’s campaign. The Grocery Manufacturers Association (GMA) has, however, made donations of \$472,000, \$1.75 million, and this week — \$5 million to the No-on-522 campaign. The GMA is the chief lobby group for major food producers.....”<sup>4</sup>*

When the food companies’ names were publicized during the California Proposition 37 campaign, there was consumer backlash against the companies<sup>5</sup>. While the Grocery Manufacturers Association (GMA) was giving millions of dollars to the Washington No-on-522 campaign, a new I-522 support organization, Moms-for-Labeling, sued the GMA for violating the Washington State PDL by not disclosing the donors<sup>6</sup>, but their suit was unsuccessful. After the Moms-for-Labeling litigation, Washington State Attorney General Ferguson brought suit against the GMA for violating the WA PDL (RCW 42.17A) on October 16, 2013, stating that the GMA was funding the political campaign in WA without registering as a political committee.

The GMA allegedly created a separate fund to collect money from their members for the No-on-522 campaign. Under WAPDL, this solicitation activity for the political campaign defined the GMA as a political committee yet they had not registered as such until the State Attorney General brought a suit against them. On October 18, the GMA registered with the WA Public Disclosure Commission as a political committee. GMA also failed to report all contributors to its campaign fund to the WA Public Disclosure Commission (PDC) [RCW 42.17A.235 (3)]. The WAPDL also requires that “a political committee may make a contribution to another political committee only when the contributing political

<sup>3</sup> PDC, Regulating Candidates, Campaigns and Lobbyists, <https://www.pdc.wa.gov/>, viewed 02/10/16

<sup>4</sup> Connelly, Joel, "Corporate Laundering Suit over Food-labeling Initiative Dismissed -- for Now", *Strange Bedfellows - Politics News*. *Seattle PI*, October 4, 2013, <http://blog.seattlepi.com/seattlepolitics/2013/10/04/corporate-laundering-suit-dismissed-for-now/>. Viewed 02/10/16

<sup>5</sup> Sciammacco, Sara. "Investors Call For Food Companies to Stay out of Washington State GMO Battle." *Environmental Working Group*, October 9, 2013, <http://www.ewg.org/release/investors-call-food-companies-stay-out-washington-state-gmo-battle>. Viewed 02/10/16

<sup>6</sup> "Moms for Labeling Fined \$10,000 Washington's GMO Showdown." *ENewsParkForest*. October 14, 2013, <http://www.occupy.com/article/moms-labeling-fined-10000-washingtons-gmo-showdown>. Viewed 02/10/16

committee has received contributions of ten dollars or more each from at least ten persons registered to vote in Washington state”.

42.17A.442(1)]. The GMA had less than ten Washingtonian contributors to their campaign fund<sup>7</sup> yet transferred its campaign fund to the No-on-522 campaign committee<sup>8</sup>.

### Legal Actions

The State of Washington amended its lawsuit against GMA for violating the WA Public Disclosure Law in January 2014. Soon after, the GMA filed their counter suit against the State of Washington, claiming that their constitutional rights were violated by WA enforcing its PDL. The WA State court filing indicated the following illegal actions by the GMA.<sup>9, 10, 11</sup>

The GMA set up a separate fund to solicit contributions from its members for the campaign against mandatory GEO labeling (Initiative 522) in Washington. Its solicitation activity had started as early as February 2013, but it failed to register with the PDC as a political committee within two weeks of the date it first had the expectation of receiving contributions or making expenditures in the political campaign

- i. The GMA, which did not report political contributions, expenditures and their donors to the Public Disclosure Commission (PDC), is in violation of RCW 42.17A.435: acting to conceal the true sources of funding for its campaign activities
- ii. The GMA didn't have ten Washingtonian contributors in the campaign fund when it transferred the fund to the No-on-522 campaign committee. This is violation of RCW 42.17A.442.

### GMA claims in their court filing

- i. For its members, paying into the GMA's separate "ACCOUNT" is not different from making general dues payments. This does not amount to political contributions and therefore the GMA is not defined as a political committee. *"Because no governmental interest outweighs the burdens on the GMA and its members, designating the GMA as a political committee*

---

<sup>7</sup> See Figure C in Appendix.

<sup>8</sup> "Initiative Committees" , *Public Disclosure Commission. Washington State, n.d.*, [http://web.pdc.wa.gov/MvcQuerySystem/Committee/initiative\\_committees?year=2013](http://web.pdc.wa.gov/MvcQuerySystem/Committee/initiative_committees?year=2013)

<sup>9</sup> "No. 13-2-02156-8, First Amended Complaint for Civil Penalties and for Injunctive Relief for Violations Of RCW 42.17a, Plaintiff; The State of Washington, Defendant; Grocery Manufacturers Association", November 20, 2013, [http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press\\_Releases/NoteMotionLiftPO-01222016035253.pdf](http://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/NoteMotionLiftPO-01222016035253.pdf) , viewed 02/10/16

<sup>10</sup> "Executive Summary and Staff Analysis – Grocery Manufacturers Association PDC Case No. 14-002", Washington Public Disclosure Commission, <https://www.pdc.wa.gov/sites/default/files/meeting-resources/GMAExeSummary.10.23.2014.pdf>, viewed 02/10/16

<sup>11</sup> See figure E in Appendix

*violates the Washington Constitution and the First and Fourteenth Amendments to the US Constitution”.*<sup>12</sup>

- ii. *“No governmental interest justifies requiring the GMA’s members to file reports in Washington simply because they paid into the GMA’s separate ACCOUNT as a condition of membership”*<sup>13</sup>
- iii. Washington’s “Ten Contributor” law states that a political committee may make a contribution to another committee when the contributing political committee has received contribution of ten dollars or more each from at least ten persons registered to vote in Washington State. This requirement to transfer money between committees is unconstitutional because *“no governmental interest justifies this burden on expressive and associational rights – particularly since the law facially discriminates against out-of-state citizens, Washington residents who have not registered to vote and associational entities of every kind”*<sup>14</sup>

### **How does *the Citizens United* ruling affect the Washington State public disclosure laws?**

Although the 2010 Supreme Court ruling in *Citizens United v. Federal Election Commission (FEC)* allowed unlimited amounts of campaign financing, the Supreme Court nonetheless upheld the FEC’s disclosure laws. In 2012 Calif. Prop 37, the corporations directly funded the campaign against the proposition. In 2013 Washington initiative 522, the Grocery Manufacturers Association (GMA) was used as a front organization to shield the corporate donors from funding the No-on-522 campaign.<sup>15, 16, 17</sup>

In the *Citizens United* decision, the Supreme Court indicated that it would uphold the Federal Election Commission (FEC) disclosure laws but since then Congress has not acted on any new disclosure bills nor has FEC fully enforced the existing laws. At the federal level, the IRS tax filing rule defines what category a not-for-profit organization fits into and the limits on political activity in order to maintain this status. However, the IRS does not go beyond that in requiring disclosure of contributors to organizations.

What is a political committee, where does it get its money, how is it spent, and what needs to be disclosed? These are questions that are well addressed in the WA Public Disclosure Law. Disclosure of donors in election campaigns informs voters who are supporters for an initiative, legislation or a candidate. The WA Public Disclosure Commission states “Before deciding which candidate, ballot

---

<sup>12</sup> "Civil Right Complaint for Declaratory and Injunctive Relief, Plaintiff; Grocery Manufacturers Association, Defendant; Robert W. Ferguson, Attorney General of the State of Washington." (n.d.):Takepart.com. 2014. <http://www.takepart.com/sites/default/files/Complaint%20and%20Summons.pdf>, viewed 02/10/16

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Connelly, Joel. "Corporate Laundering Suit over Food-labeling Initiative Dismissed -- for Now." *Strange Bedfellows - Politics News*. Seattle PI, 04 Oct. 2013. Web., <http://blog.seattlepi.com/seattlepolitics/2013/10/04/corporate-laundering-suit-dismissed-for-now/>, viewed 04/16/16

<sup>16</sup> "Initiative Committees" *Public Disclosure Commission. Washington State*, n.d., [http://web.pdc.wa.gov/MvcQuerySystem/Committee/initiative\\_committees?year=2013](http://web.pdc.wa.gov/MvcQuerySystem/Committee/initiative_committees?year=2013)

<sup>17</sup> "No. 13-2-02156-8, First Amended Complaint for Civil Penalties and for Injunctive Relief for Violations Of RCW 42.17a, [http://www.lwwwacustudy.org/WA\\_AG\\_sue\\_GMA\\_Nov20\\_2013.pdf](http://www.lwwwacustudy.org/WA_AG_sue_GMA_Nov20_2013.pdf), viewed 04/16/16

proposal or pending legislation deserve support, the law provides citizens with an in-depth look at who is financing a campaign....”<sup>18</sup>

“The Open Government Act constitutes one of the most exhaustive disclosure laws in the country and serves to build public confidence in the political process and government.”<sup>19</sup> A law suit brought by Grocery Manufacturers Association (GMA) in 2014 challenged the constitutionality of WA Public Disclosure Law that was established by people’s initiative in 1972. On Mar. 11, 2016, the decision of the law suit was made public stating that “a Thurston County judge ruled the GMA violated Washington campaign finance disclosure laws by shielding the identities of major corporate donors funding efforts to defeat a food labeling initiative in Washington.”<sup>20</sup>

---

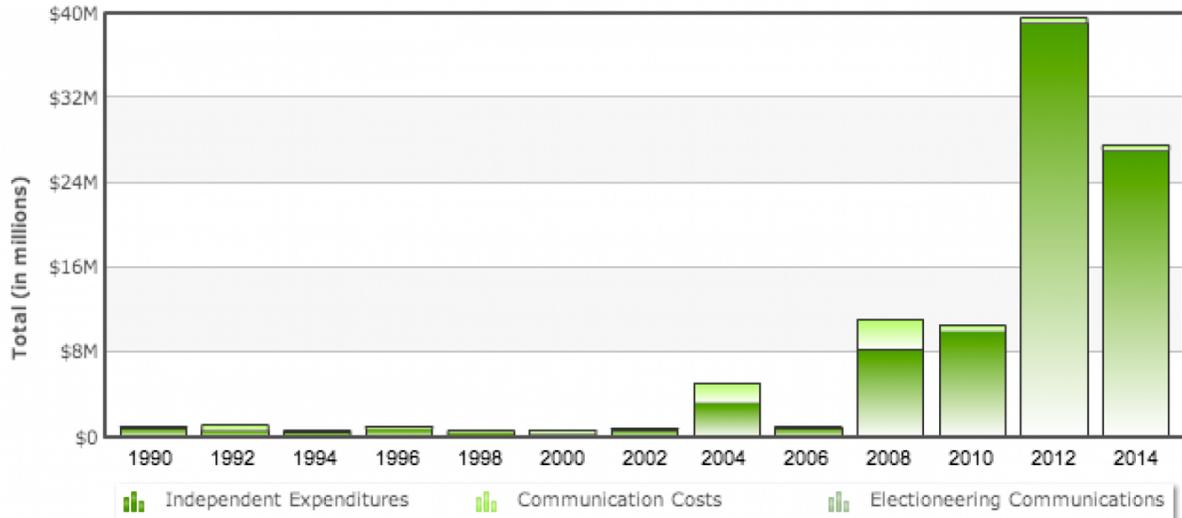
<sup>18</sup> PDC, Regulating Candidates, Campaigns and Lobbyists, <https://www.pdc.wa.gov/>, viewed 05/27/16

<sup>19</sup> Ibid.

<sup>20</sup> “Court: GMA unlawfully hid donors’ identities from public” *Washington State Office of the Attorney General*, <http://www.atg.wa.gov/news/news-releases/court-gma-unlawfully-hid-donors-identities-public#sthash.TjulrkEX.dpuf>, viewed 05/12/16

## APPENDIX

### A. Outside group spending through Jan 21, 2014



The image is a courtesy of OpenSecret.org

[http://www.washingtonpost.com/blogs/the-fix/wp/2014/01/21/how-citizens-united-changed-politics-in-6-charts/?tid=up\\_next](http://www.washingtonpost.com/blogs/the-fix/wp/2014/01/21/how-citizens-united-changed-politics-in-6-charts/?tid=up_next)

### B. Opponents of Initiative 522 set a state record for the most money ever raised in support or opposition of a ballot measure in Washington State

Measure	Position	Amount
Initiative 522 (2013)	Opposition	\$22,009,926
Initiative 1183 (2011)	Support	\$20,115,326
Initiative 1107 (2010)	Support	\$16,042,629
Referendum 74 (2012)	Support	\$14,784,287
Initiative 1183 (2011)	Opposition	\$12,351,656

Washington 2013 ballot measures

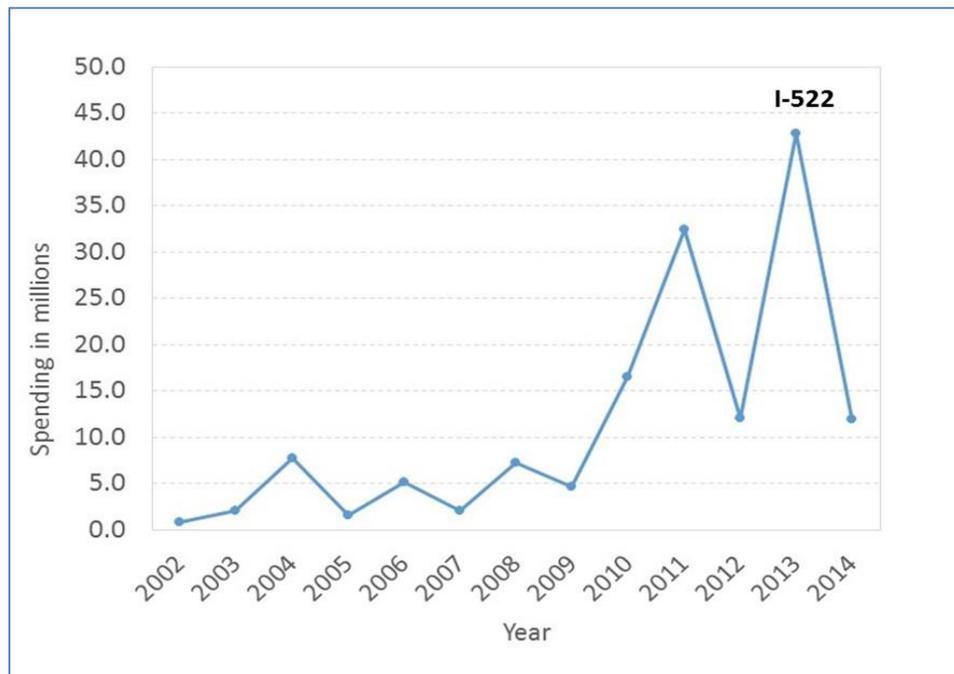
[http://ballotpedia.org/Washington\\_2013\\_ballot\\_measures](http://ballotpedia.org/Washington_2013_ballot_measures)

**C. Competitive initiative\* to the people with highest campaign spending each year since 2002 in Washington.**

Year	Initiative	FOR (\$ million)	AGAINST (\$ million)	Status
2002	776	0.42	0.38	Approved
2003	841	1.5	0.5	Approved
2004	892	1.15	6.6	Rejected
2005	901	1.6	0.03	Approved
2006	933	1.2	3.8	Rejected
2007	960	1.2	0.8	Approved
2008	1000	5.5	1.7	Approved
2009	1033	1	3.5	Rejected
2010	1107	16	0.4	Approved
2011	1183	20.1	12.3	Approved
2012	1240	11.4	0.7	Approved
2013	<b>522</b>	9.9	<b>32.9</b>	Rejected
2014	594	11.4	0.6	Approved

\* Competitive Initiative requires campaigns “FOR” and “AGAINST”. Data from WA Public Disclosure Commission, initiatives 2002 to 2014

**D. Competitive Initiative\* to the people with highest campaign spending from 2002 to 2014 in Washington**



\* Competitive Initiative requires campaigns “FOR” and “AGAINST”

Data obtained from Washington State Public Disclosure Commission, Initiatives 2002 to 2014.

**E. Exact wording of the Washington State Public Disclosure Law that Grocery Manufacturers Associations violated are:**

I. Definition of Political Committee

"Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition [RCW 42.17A.005 (37)].

II. Reporting of contribution and expenditure

- A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign [RCW 42.17A.205 (1)].
- On the day the treasurer is designated, each candidate or political committee must file with the commission a report of all contributions received and expenditures made prior to that date, if any [RCW 42.175.235 (1)]
- The report shall contain the name of each person contributing the funds and the amount contributed by each person. However, persons who contribute no more than twenty-five dollars in the aggregate are not required to be identified in the report [RCW 42.17A.235 (3)].
- The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure [RCW 42.17A.235 (4)].
- No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment [RCW 42.17A.435].

III. Contribution by political committees to political committees

A political committee may make a contribution to another political committee only when the contributing political committee has received contributions of ten dollars or more each from at least ten persons registered to vote in Washington State [RCW 42.17A.442].