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☐ Hearing is set

Date: _____

Time: _____

Judge/Calendar: _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THURSTON COUNTY

MOMS FOR LABELING,

Plaintiff,

vs.

**NO ON 522 and THE GROCERY
MANUFACTURERS' ASSOCIATION**

Defendants.

No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Plaintiff, by and through its attorneys of record, hereby files this Complaint, making the allegations herein upon personal knowledge as to themselves and their own acts, and upon information and belief based on investigation of counsel as to all other matters, as set forth herein.

I. INTRODUCTION

As this case is filed, the No on Initiative 522 campaign is commencing a statewide advertising campaign that illegally conceals the identity of the campaign's donors. Donations to the Initiative 522 Campaign are being laundered through the Grocery Manufacturers'

1 Association ("GMA"), the world's largest association of food, beverage, and consumer
2 product companies.

3 The No on 522 advertisements falsely label the GMA as a top donor. *See, e.g.,*
4 Exhibit A to this Complaint. In fact, the GMA did not make those donations. Rather, the
5 GMA acted as a political committee by soliciting and collecting donations to try to defeat
6 Initiative 522, and falsely claiming to have made the donations. The GMA never registered
7 as a political committee.

8 In addition to being illegal, this scheme severely harms the voters of Washington
9 State, including the members of Moms for Labeling. The scheme conceals the true funders
10 of the No on 522 Campaign. Campaign advertisements provide false information about
11 donors and there is nowhere that voters can go learn of the actual contributors to the
12 campaign.

13 In addition, because the GMA has not filed as a political committee, it has concealed
14 the size of the war chest it has amassed for the No on 522 Campaign.

15 Judicial intervention is necessary to resolve key disputes and to remove the false
16 advertising from the airways until the No on 522 Campaign and the GMA come into
17 compliance with the law.

18 II. PARTIES AND STANDING

19 1. Plaintiff Moms for Labeling is a Washington not-for-profit corporation. Its
20 members are mothers who are harmed by the concealment of the true donors of the No on
21 522 Campaign. Moms for Labeling formed to give mothers the right to know about the
22 ingredients that are in the foods they feed their families.

23 2. Defendant Grocery Manufacturers Association ("GMA") is the world's largest
24 association of food, beverage, and consumer product companies,¹ based in Washington D.C.

25
26 ¹ http://www.gmaonline.org/file-manager/Membership/Benefits_of_Membership_2011.pdf

1 3. The No on 522 Campaign is a Washington state political committee.

2 **III. JURISDICTION AND VENUE**

3 4. This court has jurisdiction by virtue of RCW 2.08.010.

4 5. Venue properly lies in this court by virtue of RCW 4.92.010(1).

5 **IV. STATEMENT OF FACTS**

6 **A. THE GROCERY MANUFACTURERS ASSOCIATION HAS BEEN USED TO**
7 **ILLEGALLY CONCEAL CONTRIBUTIONS TO THE NO ON 522**
8 **CAMPAIGN**

9 6. The Grocery Manufacturers Association ("GMA") has made a special appeal
10 to its members, in the form of a voluntary special assessment, to fund the No on 522
11 Campaign.

12 7. The GMA has received pledges and contributions from certain members to
13 support the No on 522 Campaign.

14 8. The GMA consolidated these contributions and then turned them over to the
15 No on 522 Campaign.

16 **B. THE NO ON 522 CAMPAIGN FALSELY REPORTED THE DONATIONS AS**
17 **IF GMA MADE THEM**

18 9. The No on 522 Campaign has reported these contributions as if they were
19 made by the GMA, when in fact other corporations made these donations and the GMA was
20 merely used as a conduit to conceal the true identity of the donors.

21 **C. THE NO ON 522 CAMPAIGN'S POLITICAL ADVERTISINGS FALSELY**
22 **LIST THE GMA AS THE ORIGINATOR OF THESE CONTRIBUTIONS**

23 10. The No on 522 Campaign has embarked upon a multi-million dollar television
24 advertising campaign that falsely lists the GMA as one of the campaign's top five
25 contributors based upon the concealed contributions, as depicted in Exhibit A to this
26 Complaint.

11. For the past months, the No on 522 Campaign has listed the GMA as its single top contributor based upon these concealed contributions.

D. THE ILLEGAL ADVERTISING AND FALSE REPORTING CONCEALS CRITICAL INFORMATION FROM WASHINGTON VOTERS

12. By listing the GMA as the contributor, the No on 522 Campaign's illegal advertisements and reporting are informing voters that the GMA has made the contributions from its general treasury, which is not true.

13. This illegal advertising and reporting prejudices the voters. Voters are falsely informed that the GMA funded these contributions. Voters are given no reason to believe that the GMA was merely acting as a conduit for other companies' contributions.

14. In addition, because the GMA has not filed as a political committee—despite acting as one—voters have no place to look to find the source of the concealed contributions.

E. BY SOLICITING AND RECEIVING PLEDGES AND CONTRIBUTIONS, THE GMA BECAME A POLITICAL COMMITTEE, BUT HAS FAILED TO COMPLY WITH THE LAW

15. The GMA has not met any of the legal obligations of a political committee. It has not filed as a political committee or filed any of the necessary reporting. As a result, Washington voters have no information about this shadowy organization or the source of the concealed contributions it is handling for the No on 522 Campaign.

**V. FIRST CAUSE OF ACTION:
CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**

16. Plaintiff reincorporates and realleges all previous paragraphs as if fully set forth herein.

17. Plaintiff and its members are fighting to give moms the right to know what is in the foods they eat, and therefore support Initiative 522 to require labeling of foods containing genetically modified organisms ("GMO").

1 18. These moms are fighting for transparency in food and in this campaign. They
2 oppose out of state corporations concealing GMO ingredients in their food and concealing
3 their efforts to buy this election. They have an existing and genuine interest in ensuring that
4 out of state lobbying groups and corporations do not use illegal tactics to oppose I-522 or
5 deceive the voters.

6 19. There is a ripe justiciable controversy over the following issues:

7 a. Whether the No on 522 Campaign's advertisements may list the GMA
8 as a top donor, when in fact the GMA is actually operating as a conduit to conceal
9 contributions from other out-of-state corporations.

10 b. Whether the GMA is acting as an illegal intermediary by making
11 contributions on behalf of others.

12 c. Whether the No on 522 Campaign has illegally concealed its donors
13 from voters through its false reporting to the Public Disclosure Commission.

14 d. Whether the GMA became a political committee by soliciting and
15 receiving pledges and contributions from its members for the No on 522
16 Campaign.

17 e. Whether the GMA has illegally failed to report as a political
18 committee.

19 20. Plaintiff is entitled to declaratory judgment establishing all of these questions
20 in the affirmative.

21 21. The concealment of the No on 522 Campaign and the GMA is contrary to the
22 letter and the spirit of Washington law, including the following authorities:²

23 a. RCW 42.17A.715 provides:

24
25
26 ² See also RCW 42.17A.265(10), 420.

1 "No payment shall be made to any person required to report under
2 RCW 42.17A.700 and no payment shall be accepted by any such person,
3 directly or indirectly, in a fictitious name, anonymously, or by one
4 person through an agent, relative, or other person in such a manner as to
5 conceal the identity of the source of the payment or in any other manner
6 so as to effect concealment."

7 b. RCW 42.17A.435 provides:

8 "No contribution shall be made and no expenditure shall be incurred,
9 directly or indirectly, in a fictitious name, anonymously, or by one
10 person through an agent, relative, or other person in such a manner as
11 to conceal the identity of the source of the contribution or in any other
12 manner so as to effect concealment."

13 c. RCW 42.17A.460 provides:

14 "All contributions made by a person or entity, either directly or
15 indirectly, to a candidate, to a state official against whom recall
16 charges have been filed, or to a political committee, are considered to
17 be contributions from that person or entity to the candidate, state
18 official, or political committee, as are contributions that are in any way
19 earmarked or otherwise directed through an intermediary or conduit to
20 the candidate, state official, or political committee. For the purposes of
21 this section, "earmarked" means a designation, instruction, or
22 encumbrance, whether direct or indirect, expressed or implied, or oral
23 or written, that is intended to result in or does result in all or any part
24 of a contribution being made to a certain candidate or state official. If a
25 conduit or intermediary exercises any direction or control over the
26

1 choice of the recipient candidate or state official, the contribution is
2 considered to be by both the original contributor and the conduit or
3 intermediary.”

4 d. RCW 42.17A.470 provides:

5 “A person, other than an individual, may not be an intermediary or an
6 agent for contribution.”

7 e. RCW 42.17A.485 provides:

8 “A person may not, directly or indirectly, reimburse another person for
9 a contribution to a candidate for public office, political committee, or
10 political party.”

11 f. RCW 42.17A.205 requires political committees to file statements of
12 organizations. RCW 42.17A.235 *et seq.* requires specific reporting by
13 political committees, including the reporting of the identity of all people and
14 entities who have given contributions, including pledges.

15 g. RCW 42.17A.270 requires a political committee receiving a contribution
16 earmarked for another political committee to file special reports on the
17 earmarked contribution.

18 h. RCW 42.17A.300 provides:

19 “(1) The legislature finds that:

20 (a) Timely disclosure to voters of the identity and sources of funding
21 for electioneering communications is vitally important to the integrity of
22 state, local, and judicial elections.”

23 i. RCW 42.17A.320 provides:

24 “(4) ... If the advertisement or communication is undertaken by a
25 nonindividual other than a party organization, then the following
26

1 notation must also be included: 'Top Five Contributors' followed by a
2 listing of the names of the five persons or entities making the largest
3 contributions in excess of seven hundred dollars reportable under this
4 chapter during the twelve-month period preceding the date on which
5 the advertisement is initially published or otherwise presented to the
6 public. ...

7 ...

8 (6) Political advertising costing one thousand dollars or more
9 supporting or opposing ballot measures sponsored by a political
10 committee must include the information on the 'Top Five
11 Contributors' consistent with subsections (4) and (5) of this section."

12 j. WAC 390-18-010(6)(a) provides:

13 "Political committees that sponsor political advertising costing one
14 thousand dollars or more supporting or opposing a ballot measure shall
15 comply with the 'top five contributors' provisions of
16 RCW 42.17A.320 and this information shall be clearly spoken or
17 identified as provided in RCW 42.17A.320. The 'top five' contributors
18 shall be identified pursuant to WAC 390-18-025."

19 k. WAC 390-18-025 provides:

20 "(1) For purposes of RCW 42.17A.320 (2), (4), (5) and (6), 'top five
21 contributors' means the five persons, as defined in RCW 42.17A.005, giving
22 the largest aggregate contributions exceeding seven hundred dollars during the
23 twelve-month period preceding the date on which the advertisement is
24 published or otherwise presented to the public. ...

25 ...
26

1 (3) For political advertisements supporting or opposing ballot measures
2 costing one thousand dollars, the 'top five contributors' identification
3 requirement of RCW 42.17A.320 applies to all political committees."
4

5 22. A "political committee" is defined as "any person having the expectation of
6 receiving contributions or making expenditures in support of, or opposition to, any candidate
7 or any ballot proposition." RCW 42.17A.005(37). This definition contains two alternative
8 prongs: an organization can qualify based on an expectation of "receiving contributions" or
9 an expectation of "making expenditures." *Evergreen Freedom Found. v. Wash. Educ. Ass'n*
10 (*EFF*), 111 Wn. App. 586, 49 P.3d 894, 902-03 (2002). An organization will qualify as a
11 "political committee" based on an expectation of *receiving* political *contributions* if its
12 contributors have "actual or constructive knowledge" that their funds will be used for
13 electoral political activity. *See id.* at 905. Certainly this standard is satisfied here, where the
14 GMA specifically solicited funds to be used to help defeat Initiative 522. This reporting
15 requirement has been challenged and found constitutional "[t]he state's compelling interest in
16 informing the electorate about the source of political advocacy easily extends to contributions
17 made with the *knowledge* that the contributed funds will be used for political ends." *Human*
18 *Life of Wash. Inc. v. Brumsickle*, 2009 U.S. Dist. LEXIS 4289 (W.D. Wash. 2009), *affirmed*,
19 624 F.3d 990 (9th Cir. 2010), *cert. denied* 131 S.Ct. 1477 (2011). Like here, where an
20 organization makes a special assessment of its members for an electoral purpose, it becomes
21 a political committee under the receiving prong of the political committee test. *See EFF* at
22 602-603.

23 23. Last month, in an advisory opinion, the Public Disclosure Commission
24 determined that a food and grocery cooperative would become a political committee under
25 the receiving prong even if it received contributions of less than a dollar for the 522
26

1 campaign. Even allowing its members to "round up" their grocery bill would make the coop
2 a political committee, according to the Public Disclosure Commission. Certainly the GMA
3 became a political committee when it specially assessed its members millions of dollars for
4 the No on 522 Campaign.

5 24. In addition to the declaratory relief set forth above, the Court should provide
6 the following injunctive relief:

- 7 • Protect voters by enjoining the No on 522 Campaign's illegal advertisements until
8 the Campaign complies with the law.
- 9 • Require the GMA to immediately register as a political committee and disclose its
10 donors and other required information.

11 VII. RELIEF REQUESTED

12 WHEREFORE, Plaintiffs respectfully request that this Court grant the following relief:

- 13 1. Provide the declaratory and injunctive relief requested herein;
- 14 2. Award Plaintiffs their litigation costs; and
- 15 3. Award such other and different relief as this Court deems to be just and
16 appropriate.

17 Respectfully submitted this 16th day of September 2013

18 SMITH & LOWNEY PLLC


19 By 
20 Knoll Lowney, WSBA No. 23457
21 Claire Tonry, WSBA No. 44497
22
23
24
25
26

EXHIBIT A

The Opposite of Truth



NO 522

Look into the Facts

FactsAbout522.com

THIS VOTER INFORMATION PAID FOR BY NO ON 522, OLYMPIA, WA
TOP FIVE CONTRIBUTORS: GROCERY MANUFACTURERS ASSOCIATION,
MONSANTO COMPANY, DUPONT PIONEER, DOW AGROSCIENCES LLC,
BAYER CROPSCIENCE.



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