

## Fair Political Practices Commission

### Memorandum

**To:** Chairman Schnur, Commissioners Garrett, Hodson, Montgomery, and Rotunda

**From:** John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

**Subject:** Adoption of Amendments to Regulation 18435 and Regulation 18450.4 -  
Requiring the phrase “paid for by” in campaign identification (Recommendation  
of the Chairman’s Task Force on the Political Reform Act)

**Date:** January 18, 2011

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**Proposed Commission Action and Staff Recommendation.** Adopt the proposed amendments to Regulation 18435 and Regulation 18450.4 that implement the recommendations of the Chairman’s Task Force on the Political Reform Act that the campaign disclosure rules of the Act<sup>1</sup> be enhanced by adding a requirement that the words “paid for by” be added to required identification.

**Reasons for the Proposed Amendments.** The 25-member Chairman’s Task Force on the Political Reform Act was formed in August 2010 by Chairman Schnur and was charged with proposing regulatory and statutory changes to the state’s 36 year-old campaign finance laws with the intent of updating and clarifying the Act. One proposal of the Task Force was to add a requirement that the words “paid for by” appear before required identification of committees and other persons in the Act. For example, Section 84305(a) provides:

“(a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization’s address is a matter of public record with the Secretary of State.

“(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

“(c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).”

Regulation 18435(b) which implements that statute provides:

“(a) A ‘mass mailing’ has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month.

“(b) The sender, as used in Government Code Section 84305, is the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing, and posting of the mailing which are reportable under Government Code Sections 84200-84217.

“(c) For purposes of this section to ‘pay for’ a share of the cost of a mass mailing means to make, to promise to make, or to incur an obligation to make, any payment:

“(1) To any person for the design, printing, postage, materials or other costs (including salaries, fees, or commissions) of the mailing; or

“(2) As a fee or other consideration for an endorsement or, in the case of a ballot measure, support or opposition, in the mailing.”

The California Supreme Court identified the purpose of the disclosure required by Section 84305 as narrowly tailored to serve a compelling state interest: “to provide the voters with important information to assist them in making a reasoned choice at the polls, the ultimate expression of their First Amendment rights.” (*Griset v. Fair Political Practices Com* (1994) 8 Cal. 4th 851 at 866) “The primary interest asserted by the FPPC in support of the statute at issue -- to provide the voters with information to aid them in making their choices at the ballot box--is virtually identical to the primary interest asserted by the federal government in *Buckley v. Valeo* (1976) 424 U.S. 1, 66-67 [46 L.Ed2d 659, 714-715]: that is, to assure that the electorate has information regarding the source of political campaign funds so as to enable the voters to better evaluate candidates for public office.” (*Griset v. Fair Political Practices Com., supra*, at 862.)

Thus, the existing regulation, while implementing the literal language of the statute, does not fully implement the purposes behind the disclosure requirement. Task Force members noted:

“Illustrating why this is needed, two mailers this campaign season were sent out in the form of slate mailers, but apparently they were not. They highlighted the California Professional Firefighters and National Organization for Women, supporting three statewide down-ballot candidates. The way the mailers were formatted, with the official logos of the endorsing organizations highlighted

on both sides, would lead any reasonable voter to conclude that the organizations paid for the mailers. But in the upper left-hand corner - in little tiny type - are the names and addresses of the three candidates' campaigns. Presumably the three candidates' campaigns pooled their resources and sent the mailer - a common practice for under-funded down-ticket campaigns. But the mailers do not expressly say that. This is hardly egregiously deceptive, but the true source of the mailers is not readily apparent."

The addition of the "paid for by" text in the required identification further implements the purpose of the statute to allow the public to easily identify who paid for the mailer.<sup>2</sup>

Similarly, the identification in the advertising disclosure provisions of Section 84504, as construed by Regulation 18450.4, lacks this implicit requirement of the statute. Regulation 18450.4(b) provides in pertinent part:

"(b) Where a 'disclosure statement' or 'disclosure' is required for an advertisement under Sections 84503, 84504, 84506, or 84506.5, the following shall apply to the committee that authorized and paid for the advertisement:

"(1) Disclosures required under Sections 84503 and 84506 shall include the name, pursuant to Regulation 18450.3, of the \$50,000 contributor or contributors. The disclosure shall explicitly indicate that the contributor or contributors were major donors to the committee by stating, for example, "major funding by" or "paid for by." In the case of a contributor that is a committee pursuant to Section 82013(a), the word "committee" shall be included in the disclosure. The aggregation rules of Regulation 18215.1 shall apply in determining when a contributor has reached the \$50,000 disclosure threshold of Sections 84503 and 84506.

"(2) Where two or more contributors of identical amounts meet the threshold for the top two contributors, the order of disclosure shall be made beginning with the most recent contributor of that amount.

"(3) The disclosures required by Sections 84503, 84504, 84506, and 84506.5 shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified ...."

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<sup>2</sup> A large number of other jurisdictions have the same requirement proposed here. For example, Alaska advised in the election FAQ: "What kind of 'paid for by' identifier must be placed on a political communication created by a candidate or an individual? Clearly identify all political communications with the words 'paid for by' followed by the name and address or principal place of business of the person paying for the communication." A cursory review of other laws found similar requirements imposed by the FEC, Missouri, Minnesota, Indiana, Iowa, Montana, Delaware, and North Dakota.

By amending Regulation 18450.4 to add the text “paid for by” further implements the purpose of this statute and regulation to allow the public to discern who paid for the mailer.

**Proposed Amendments to Regulation 18435 and Regulation 18450.4**

The proposed amendment to Regulation 18435 simply adds a new paragraph (d) which provides:

“The identification required by Section 84305 shall be preceded by the words ‘Paid for by.’ These words shall be presented in the same size and color as the identification required by Section 84305, and shall be immediately adjacent and above or immediately adjacent and in front of the required identification.”

Similarly, Regulation 18450.4(b)(1) is amended to add the following:

“Disclosures shall include “paid for by” in the same manner as, and immediately adjacent to and above, or immediately adjacent to and in front of, the required identification. In addition, disclosure Disclosures required ~~under~~ by Sections 84503 and 84506 shall include the name, pursuant to Regulation 18450.3, of the \$50,000 contributor or contributors. The disclosure shall explicitly indicate that the contributor or contributors were major donors to the committee by stating, for example, “major funding by” or ~~“paid for by.”~~ “committee contributors:” or “top contributors:” In the case of a contributor that is a committee pursuant to Section 82013(a), the word “committee” shall be included in the disclosure. The aggregation rules of Regulation 18215.1 shall apply in determining when a contributor has reached the \$50,000 disclosure threshold of Sections 84503 and 84506.”

By adding the language to this general subdivision in 18450.4(b)(1), we make the requirement apply to the methods of communication detailed in (b)(3) of the regulation (video, audio, print, and electronic media).

1 Amend 2 Cal. Code Regs. Section 18435 to read:

2 **§ 18435. Definition of Mass Mailing and Sender.**

3 (a) A "mass mailing" has been made when over two hundred substantially similar pieces  
4 of mail have been sent within a calendar month.

5 (b) The sender, as used in Government Code Section 84305, is the candidate or  
6 committee who pays for the largest portion of expenditures attributable to the designing,  
7 printing, and posting of the mailing which are reportable under Government Code Sections  
8 84200-84217.

9 (c) For purposes of this section to "pay for" a share of the cost of a mass mailing means  
10 to make, to promise to make, or to incur an obligation to make, any payment:

11 (1) To any person for the design, printing, postage, materials or other costs (including  
12 salaries, fees, or commissions) of the mailing; or

13 (2) As a fee or other consideration for an endorsement or, in the case of a ballot measure,  
14 support or opposition, in the mailing.

15 (d) The identification required by Section 84305 shall be preceded by the words "Paid  
16 for by." These words shall be presented in the same size and color as the identification required  
17 by Section 84305, and shall be immediately adjacent and above or immediately adjacent and in  
18 front of the required identification.

19 Note: Authority cited: Section 83112, Government Code. Reference: Sections 82041.5 and  
20 84305, Government Code.

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1 Amend 2 Cal. Code Regs. Section 18450.4 to read:

2 **§ 18450.4. Contents of Disclosure Statements. Advertisement Disclosure.**

3 (a) The disclosure requirements of Sections 84503 and 84506(a)(2) shall not  
4 apply to general purpose committees, as defined by Section 82027.5.

5 (b) Where a “disclosure statement” or “disclosure” is required for an  
6 advertisement under Sections 84503, 84504, 84506, or 84506.5, the following shall apply  
7 to the committee that authorized and paid for the advertisement:

8 (1) Disclosures shall include “paid for by” in the same manner as, and  
9 immediately adjacent to and above, or immediately adjacent to and in front of, the  
10 required identification. In addition, disclosure Disclosures required under by Sections  
11 84503 and 84506 shall include the name, pursuant to Regulation 18450.3, of the \$50,000  
12 contributor or contributors. The disclosure shall explicitly indicate that the contributor or  
13 contributors were major donors to the committee by stating, for example, “major funding  
14 by” ~~or “paid for by.”~~ “committee contributors:” or “top contributors:” In the case of a  
15 contributor that is a committee pursuant to Section 82013(a), the word “committee” shall  
16 be included in the disclosure. The aggregation rules of Regulation 18215.1 shall apply in  
17 determining when a contributor has reached the \$50,000 disclosure threshold of Sections  
18 84503 and 84506.

19 (2) Where two or more contributors of identical amounts meet the threshold for  
20 the top two contributors, the order of disclosure shall be made beginning with the most  
21 recent contributor of that amount.

22 (3) The disclosures ~~required by Sections 84503, 84504, 84506, and 84506.5~~ shall  
23 be presented in a clear and conspicuous manner to give the reader, observer or listener

1 adequate notice of the identity of the person(s) or committee(s) that paid for the  
2 communication, as specified below.

3 (A) Video: The information shall be both written and spoken either at the  
4 beginning or at the end of the communication, except that if the disclosure statement is  
5 written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a  
6 sixty second broadcast, a spoken disclosure statement is not required. The written  
7 disclosure statement shall appear with a reasonable degree of color contrast between the  
8 background and text of the statement must be of sufficient size to be readily legible to an  
9 average viewer and air for not less than four seconds.

10 (B) Audio: The information shall be spoken in a clearly audible manner at the  
11 beginning or end of the communication and shall last at least three seconds.

12 (C) Print Media: All disclosure statements on printed materials designed to be  
13 distributed personally or through the mail shall be printed in type no less than 10 points in  
14 size and printed in a contrasting color to the background on which it appears.

15 (D) Over Size Print Media: All disclosure statements on printed materials that are  
16 larger than those designed to be individually distributed (e.g., yard signs or billboards)  
17 shall constitute at least five percent (5%) of the height of the advertisement and printed in  
18 a contrasting color.

19 (E) If a single print media advertisement consists of multiple pages, folds, or  
20 faces, the disclosure requirement of this Regulation applies only to one page, fold, or  
21 face.

22 (F) Each communication that would require a disclosure if distributed separately,  
23 and that is included in a package of materials, must contain the required disclosure.

1 (G) Electronic Media: The disclosure statement on electronic media  
2 advertisements must be presented in a clear and conspicuous manner. A disclosure is not  
3 clear and conspicuous if it is difficult to read or hear, or if the placement is easily  
4 overlooked. An electronic media disclosure statement is considered clear and  
5 conspicuous if it meets the following, as applicable to that advertisement:

6 1. Text or Graphic Electronic Media Advertisement: The disclosure information  
7 in a text or graphic electronic media advertisement must appear in letters at least as large  
8 as the majority of the text in the advertisement, or alternatively, if the advertisement is  
9 limited in size (e.g. a micro bar, a button ad, a paid text advertisement that is limited to  
10 500 characters or less in length, or a small paid graphic or picture link) the disclosure is  
11 displayed via rollover display, link to a webpage with disclosure information, or other  
12 technological means that provide the user with disclosure information. In addition, the  
13 disclosure information must be visible for a period of at least four seconds and appear  
14 with a reasonable degree of color contrast between the background and text of the  
15 statement as to be legible.

16 2. Audio Electronic Media Advertisement: In an audio format electronic media  
17 advertisement, the disclosure information must be spoken in a clearly audible and  
18 intelligible manner at the beginning or end of the communication and shall last at least  
19 three seconds.

20 3. Video Electronic Media Advertisement: In a video electronic media  
21 advertisement which also includes audio, the disclosure information shall be both written  
22 and spoken either at the beginning or at the end of the communication, except that if the  
23 disclosure statement is written for at least five seconds of a broadcast of thirty seconds or

1 less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not  
2 required. The written disclosure statement shall appear with a reasonable degree of color  
3 contrast between the background and text of the statement must be of sufficient size to be  
4 readily legible to an average viewer and air for not less than four seconds.

5 4. Electronic Media Advertisement Disclosure – Exception: In electronic media  
6 advertisements whose size, space, or character limit constraints (i.e., SMS text message)  
7 render it impracticable to include the full disclosure information specified in Sections  
8 84503, 84504, 84506, 84506.5, or subsection (b)(3)(G)(1) of this regulation, the  
9 candidate or committee sending the mass mailing may provide abbreviated advertisement  
10 disclosure containing at least the committee’s FPPC number (i.e., “FPPC # 185734”) and  
11 when technologically possible a link to the webpage on the Secretary of State’s website  
12 displaying the committee’s campaign finance information, if applicable.

13 Note: Authority cited: Section 83112, Government Code. Reference: Sections 84503,  
14 84504, 84506 and 84506.5, Government Code.