



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke and Commissioners Audero, Hatch and Hayward

From: Jack Woodside, General Counsel
Karen Harrison, Commission Counsel

Subject: Adoption of Proposed Amendments to Regulation 18450.1

Date: December 11, 2017

I. Requested Action

Staff proposes the adoption of proposed amendments to Regulation 18450.1 after consideration by the Commission of the options identified below.

II. Background

Regulation 18450.1 interprets Government Code Section 84501, and defines “advertisements” for purposes of the Political Reform Act’s advertisement disclosure provisions.¹ Under existing Regulation 18405.1(a)(5), yard signs require a disclosure statement only if produced in quantities of more than 200. All billboards require a disclosure statement under Regulation 18405.1(a)(6). In response to public comment at the April 2017 Commission Meeting, the Commission asked staff to consider defining a maximum size for yard signs.

As detailed at the October 2017 Commission Meeting, there is no formal restriction on the size of a yard sign. Staff has informally advised that the common size for campaign yard signs are typically 18” x 24” or 24” x 36” (6 sq. ft.) for large yard signs. Additionally, the Federal Election Commission also cites 24” x 36” as a common size for signs in the safe harbor provisions of its advertising disclaimer rules.² Accordingly, Option 1 of this proposal would establish a clear restriction on the size of yard signs. As proposed, the maximum size of a yard sign would be six square feet.

¹ The regulations of the FPPC are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source unless otherwise indicated. The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code.

² 11 C.F.R. 110.11.

In addition to the proposed restriction on the size of yard signs, Section 84501 of the Act was recently amended by AB 249 (the Disclose Act), which provides a significant overhaul of the Act's advertisement disclosure provisions. Accordingly, staff proposes amendments to conform Regulation 18450.1 to new Section 84501 by removing duplicative language and updating the definition of "advertisement" as applied to electronic media communications under AB 249.

Notably, the sponsor of the Disclose Act stated in public comments its belief that new Section 84501 requires disclosure statements on *all* yard signs and billboards. Accordingly, staff has also prepared language under Option 2 that would remove the advertisement disclosure exception for yard signs produced in quantities 200 or less.

The Commission set a 200 threshold for several forms of advertisements when it enacted Regulation 18450.1 in 2002. The threshold was intended to prevent an individual's or small group's home-made fliers or yard signs from unwittingly violating disclosure requirements. The exception from advertisement disclosure for yard signs produced in quantities under 200 is rooted in Section 84501, which provides the Commission the authority to exclude from the definition of "advertisement" any "other advertisements determined by regulations of the Commission." This broad authority to limit the definition of "advertisement" was not altered with the adoption of the Disclose Act. Accordingly, maintaining an exception for yard signs produced in quantities of 200 or less, as proposed in Option 1, appears consistent with the Commission's statutory authority.

III. Discussion and Summary of Proposed Actions

A. Yard Sign Size Restrictions

Option 1: The proposed changes to Regulation 18450.1(a)(5) through (a)(7), "Option 1," address the Commission's direction prior to the passage of AB 249 to clarify the size specifications for yard signs and larger signs. Proposed language reflects staff's proposal at the October 2017 Commission Meeting restricting yard signs to six square feet or less, as well as minor revisions based on AB 249.

Option 2: Under AB 249, new Section 84504.2 distinguishes categories of print advertisements for disclosure display separating advertisements "designed to be individually distributed, including, but not limited to, mailers, flyers, and door hangers" from advertisements "larger than those designed to be individually distributed, including, but not limited to, yard signs or billboards." Because yard signs and billboards are categorized together as large signs not designed to be individually distributed, the California Clean Money Campaign (sponsor of AB 249) submitted public comment at the November Interested Persons Meeting stating that it believed yard signs should not be distinguished from billboards. Thus, that all yard signs and billboards require a disclosure statement under AB 249. Accordingly, Option 2 eliminates the 200-quantity threshold for yard signs. In eliminating the exception, proposed size restrictions are

no longer necessary because all yard signs, large signs and billboards paid for by a committee subject to Section 84504.2 will display the required the print disclosures.³

B. AB 249 Amendments

In light of new Section 84501, staff is proposing additional clarifying changes to Regulation 18450.1. The proposed amendments remove redundant language, harmonize new statutory language, and improve readability.⁴ Significant amendments include:

- Redundant language in Regulation 18450.1(a)(2) defining advertisements as communications “placed in broadcast, print, or electronic media” has been removed. The terms “video,” “web site” and “social media” are added to further define “electronic media communications” and reflect the language of new Sections 84504.1(a) and 84504.3(f) and (g).⁵ The term “generally accessible” is added to “electronic communication systems” to anticipate other methods for disseminating electronic media communications.
- New Section 84501(a)(2)(A) through (E) now incorporates the content of existing Regulation 18450.1(b) regarding communications that are exempted from the definition of advertisement. The amendments to Regulation 18450.1 remove the duplicative language from Regulation 18450.1(b).
- New Section 84501(a)(2)(E) provides that an electronic media communication is excluded from the definition of “advertisement” if the inclusion of the required disclosures would be impracticable or would severely interfere with the committee’s ability to convey the intended message because of the nature of the technology used to make the communication. Existing Regulation 18450.1(b)(3)(B) provides that a committee that claims this exception has the burden of proof. This language remains in proposed Regulation 18405.1(b) with minor nonsubstantive clarifications.
- New Section 84501(c)(1) states the definition of “top contributors” (persons from whom the committee paying for an advertisement has received its three highest cumulative

³ New Section 84504.2 applies to print advertisements paid for *by a committee* other than a political party or candidate controlled committee established for an elective office of the controlling candidate. Since the provision no longer applies to individuals or small groups that are not committees, the need for a 200-quantity threshold is arguably diminished.

⁴ Nonsubstantive changes reflect the Commission’s direction during prenotice discussion at the October Commission Meeting. Specifically, the Commission noted “electronic media advertisement” was defined with the term “advertisement” in contradiction to good drafting principles.

⁵ Newly added Section 84504.1 refers to advertisements including “videos disseminated over the Internet.” Newly added Section 84504.3 regarding “electronic media advertisements,” refers to advertisements made “via social media.” (Section 84501.3, subdivisions (f) and (g).)

contributions of \$50,000 dollars or more). Current Regulation 18450.4(b)(1) provides that the aggregation rules in Regulation 18215.1 apply in determining when a contributor has reached this \$50,000 threshold.⁶ Staff proposes that this definitional language in Regulation 18450.4(b)(1) be moved to Regulation 18450.1, with updated section references. Regulation 18450.4 will be proposed for repeal in January 2018, as the remaining language in the regulation is no longer applicable under AB 249.

C. Other Public Comment

Additionally, the San Diego Ethics Commission raised the issue of amending the current 200 threshold for requiring disclosure statements applicable to phone calls. (Regulation 18450.1(a)(3).) They requested raising the threshold to 500 for consistency with Section 84310, which prohibits the use of campaign funds for “robocalls” over 500 unless “paid for by” or “authorized by” disclosures are made in the call.

Section 84310’s prohibition applies to candidates, candidate controlled committees for the elective office of the controlling candidate, political party committees and slate mailer organizations but, as revised by AB 249, it does not apply to telephone calls paid for by an independent expenditure. New Section 84504 requires disclosures under Sections 84502 (“paid for by”), 84503 (“top contributors”), and 84506.5 (for independent expenditures “not authorized”) for telephone calls paid for by a committee, excluding a political party committee or a candidate controlled committee for the elective office of the controlling candidate.

While there is some overlap between the requirements of Section 84310 and Regulation 18450.1(a)(3), staff does not propose changes to the telephone call thresholds in Regulation 18450.1(a)(3) at this time. The Legislative purpose stated in the Disclose Act is to help voters by disclosing who or what interest paid for a political advertisement. Raising the telephone call threshold level in Regulation 18450.1 would reduce the level of disclosure for ballot measure committees and independent expenditure committees and is not in keeping with the stated purpose of AB 249.

Attachment: Proposed Regulation 18450.1

⁶ Regulation 18215.1 provides that contributions are aggregated when made by separate entities, or an individual and an entity, if the entities are controlled or directed by the individual or by a majority of the same persons.