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November 19, 2019

VIA ELECTRONIC MAIL

Chair Miadich and Commissioners Cardenas, Hatch and Hayward
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

RE: Comments on Proposed Regulation 18450.2

Dear Chair Miadich and Commissioners:

I write to provide comments regarding the Commission's proposed adoption of Regulation 18450.2, which defines the term "authorized and paid for" in the definition of "advertisement" for purposes of disclaimers. We appreciate the opportunity to provide input on these proposed regulatory changes.

As drafted the proposed regulation provides that a communication is "authorized and paid for" by a committee pursuant to Government Code section 84501 if any of the following are met:

- (1) The committee pays for the communication,
- (2) The committee pays for the largest portion of the costs of the communication,
- (3) The committee coordinates the expenditure for the communication with a non-committee that pays for the communication, or
- (4) The committee disseminates an electronic media communication with nominal costs (except for social media advertisements not requiring disclosures under Section 84504.3).

The proposed regulation also indicates that paying for a communication includes making a payment for "any costs associated with the design, production, or dissemination of the communication." (Proposed Regulation 18450.2(c).)

We write to recommend that the Commission consider revising the language in paragraph (1) of subdivision (a) to provide greater clarity on the

distinction between that test and the one found in paragraph (2) of the same subdivision.

When read in conjunction with the new definition of “paying for a communication” found in subdivision (c) of the proposed regulation, which includes paying for “any costs” associated with the communication, all committees that meet the standard in (a)(2) will necessarily meet the standard in (a)(1), thereby rendering the language in (a)(2) unnecessary.

Based on the language in the staff memo stating that “clarification is needed so that the disclosure ... discloses the appropriate committee” and the inclusion of the language in (a)(2) referencing the committee paying the largest portion of the costs for the communication, it appears that the intent is for (a) (2) to qualify as an alternative test rather than being covered by the test in (a)(1).

In order to clarify this distinction, we suggest a minor revision so that (a)(1) reads as follows: “The committee pays for the full costs of the communication;”. This will avoid overlap in the tests and provide the regulated community with more clarity on how the disclaimer rules apply.

Very truly yours,

OLSON HAGEL & FISHBURN LLP

A handwritten signature in blue ink that reads "Kelly Liang". The signature is written in a cursive, flowing style.

KELLY LIANG

KEL/MWL