

**Fair Political Practices Commission
Memorandum**

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

From: Sukhi Brar, Commission Counsel
Brian Lau, Commission Counsel
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Subject: Adoption of Regulations 18401.1 and 18435.5 – Slate Mail (Recommendation of the Chairman’s Task Force on the Political Reform Act)

Date: January 18, 2011

Proposed Commission Action and Staff Recommendation: Adopt Regulation 18401.1 setting recordkeeping rules for slate mailer organizations and Regulation 18435.5 improving slate mailer disclaimer requirements.

Background: The Chairman’s Task Force on the Political Reform Act has submitted several recommendations for improving slate mailer recordkeeping and disclosures, several of which can be accomplished by regulatory change. In addition, the Commission’s Subcommittee on Internet Political Activity recommended that the same disclaimer requirements that apply to slate mailers sent by traditional mail should apply to slate mailers sent by electronic mail. The proposed slate mailer regulations implement these recommendations.

A “slate mailer” is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.) A “mass mailing” is defined as over 200 hundred substantially similar pieces of mail sent in a calendar month. (Section 82041.5; Regulation 18435.)

A slate mailer organization is any person who, directly or indirectly, does all of the following:

“(1) Is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers.

“(2) Receives or is promised payments totaling five hundred dollars (\$500) or more in a calendar year for the production of one or more slate mailers.” (Section 82048.4.)

However, a slate mailer organization does not include a candidate or officeholder or his or her controlled committee; an official committee of any political party; a

legislative caucus committee; or a committee primarily formed to support or oppose a candidate, officeholder, or ballot measure.” (Section 84208.4(b).)

A person or entity that qualifies as a slate mailer organization must file a statement of organization within 10 days after it has received or has been promised \$500 or more for producing one or more slate mailers. (Section 84108.) Thereafter, the organization must file periodic campaign statements as specified in Sections 84218, 84219, and 84220.

No slate mailer organization or committee primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless the mailer contains an appropriate disclosure as specified in Section 84305.5. These requirements include a “Notice to Voters” that the slate mailer is not an official publication of a political party and that those candidates and committees who have paid to appear in the mailer are noted by an asterisk. The organization or committee sending a slate mailer must also disclose its name, street address and city.

1. Regulation 18435.5 – Slate Mailer Requirements.

Proposed Regulation 18435.5 improves five aspects of slate mailer disclosures. First, the regulation clears up confusion that has arisen when a third party pays for a candidate or measure to appear in a slate mailer. Under the slate mailer statute, a candidate or measure that has paid to appear in a slate mailer must have an asterisk by its name. In addition, if a third party pays for a candidate or measure to appear in a slate mailer, an asterisk must also appear by the candidate or measure’s name. (Section 84305.5(a)(4) and (b).) However, this requirement is not expressed as simply as it could be in the statute and there has been some confusion within the regulated community as to whether an asterisk is required when a third party pays for a candidate or measure’s appearance in a slate mailer. Therefore, Regulation 18435.5(a) clearly states that if a third party pays for a candidate or measure to be in a slate mailer at the behest of any candidate or committee, the candidate or measure must be identified with an asterisk.

Second, the Task Force recommends that the disclaimer explaining the meaning of an asterisk next to a candidate or measure’s name should be located on the same page of the mailer where the list of candidates and measures with asterisks is most prominently located, so that the meaning of the asterisk is readily apparent. Regulation 18535.5(b) implements this recommendation.

Third, the Task Force made recommendations to ensure that slate mailer disclaimers are readable. Regulation 18435.5(c) clarifies that the Notice to Voters must appear in a reasonable degree of color contrast between the background and the statement, and must appear on a plain background, not superimposed over an illustration or a patterned background. As to what constitutes adequate color contrast, the regulation includes a safe harbor derived from a Federal Election Commission regulation (11 Code of Federal Regulations 110.11(c)). The safe harbor provides that a disclaimer has

adequate color contrast if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the disclaimer is no less than the color contrast between the background and the largest text used in the communication. This addresses a problem identified by the Task Force's slate mailer group: several slate mailer disclaimers reviewed were difficult to read because the disclaimer message was printed in pink on a red background, or was printed in black on top of a brown picture of an eagle. The regulation will prevent slate mailer organizations from producing mailers with unreadable disclaimers.

Fourth, Regulation 18435.5(d) specifies that the Notice to Voters must appear in the same language in which the slate mailer is written. For example, if a slate mailer is written in Spanish, the Notice to Voters must be in Spanish. This Task Force recommendation ensures that the required Notice to Voters is comprehensible to the audience the mailer is intended to reach. Specifically, the regulation provides that the Notice to Voters must be written in the same language in which "eight words or more" of the slate mailer are written. Staff prefers this standard as more straightforward than requiring the disclaimer to be printed in the same language in which "a substantial portion" or "a majority" of the slate mailer is written.

Fifth, Regulation 18435.5(e) provides that the slate mailer identification and disclaimer requirements of Section 84305.5 apply to slate mailers distributed electronically, in addition to those sent by traditional mail. This paragraph implements a recommendation made both by the Task Force and by the Commission's Subcommittee on Internet Political Activity.

Together with the slate mailer legislative changes recommended by the Task Force, these regulatory changes will help voters understand the slate mailers they receive.

2. Regulation 18401.1 – Required Recordkeeping for Slate Mailer Organizations.

As addressed above, slate mailer organizations are required to report receipts and disbursements for the production of slate mailers under Sections 84218-84220 and to provide required disclosure statements on slate mailers under Section 84305.5. To ensure compliance with both the Act's reporting and disclosure requirements, it is essential that slate mailer organizations maintain adequate records of their receipts and payments, as well as copies of any slate mailers they have sent. Section 84108(a) provides that slate mailer organizations must comply with the recordkeeping requirements of Section 84104. However, Commission rules for maintaining records, found in Regulation 18401, are only applicable to candidates, campaign treasures, and elected officers. Accordingly, staff is proposing Regulation 18401.1 requiring slate mailer organizations to maintain records in a manner comparable to campaign committees.

More specifically, proposed Regulation 18401.1 requires slate mailer organizations to maintain all of the following:

- Detailed accounts, records, bills, and receipts necessary to prepare required campaign statements.
- An original sample of any slate mailer sent by the organization, including basic information relating to the mailer such as the date of the mailing, the number of pieces mailed, and the method of postage or delivery.
- Copies of documents reflecting the receipt of payments or obligations incurred by the organization relating to any slate mailer it has sent such as canceled checks, wire transfers, credit card charge slips, bills, receipts, invoices, statements, and vouchers.

Attachments: 1 – Section 84305.5
2 – Regulation 18401.1
3 – Regulation 18435.5

§ 84305.5. Slate Mailer Identification and Disclaimer Requirements.

(a) No slate mailer organization or committee primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless:

(1) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures are shown on the outside of each piece of slate mail and on at least one of the inserts included with each piece of slate mail in no less than 8-point roman 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 street address of the slate mailer organization or the committee primarily formed to support or oppose one or more ballot measure is a matter of public record with the Secretary of State's Political Reform Division.

(2) At the top or bottom of the front side or surface of at least one insert or at the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

NOTICE TO VOTERS

THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

(3) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures as required by paragraph (1) and the notice required by paragraph (2) may appear on the same side or surface of an insert.

(4) Each candidate and each ballot measure that has paid to appear in the slate mailer is designated by an * . Any candidate or ballot measure that has not paid to appear in the slate mailer is not designated by an * . The * required by this subdivision shall be of the same type size, type style, color or contrast, and legibility as is used for the name of the candidate or the ballot measure name or number and position

advocated to which the * designation applies except that in no case shall the * be required to be larger than 10-point boldface type. The designation shall immediately follow the name of the candidate, or the name or number and position advocated on the ballot measure where the designation appears in the slate of candidates and measures. If there is no slate listing, the designation shall appear at least once in at least 8-point boldface type, immediately following the name of the candidate, or the name or number and position advocated on the ballot measure.

(5) The name of any candidate appearing in the slate mailer who is a member of a political party differing from the political party which the mailer appears by representation or indicia to represent is accompanied, immediately below the name, by the party designation of the candidate, in no less than 9-point roman type which shall be in a color or print that contrasts with the background so as to be easily legible. The designation shall not be required in the case of candidates for nonpartisan office.

(b) For purposes of the designations required by paragraph (4) of subdivision (a), the payment of any sum made reportable by subdivision (c) of Section 84219 by or at the behest of a candidate or committee, whose name or position appears in the mailer, to the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures, shall constitute a payment to appear, requiring the * designation. The payment shall also be deemed to constitute authorization to appear in the mailer.

History: Added by Stats. 1987, Ch. 905; amended by Stats. 1991, Ch. 403; amended by Stats. 1992, Ch. 1143; amended by Stats. 1993, Ch. 472; amended by Stats. 1994, Ch. 923; amended by Stats. 1996, Ch. 893; amended by Proposition 208 of the November 1996 Statewide General Election; Proposition 208 version preliminarily enjoined January 6, 1998; Proposition 208 version permanently enjoined March 1, 2001; pre-Proposition 208 version revived by operation of law; On September 20, 2002, the Federal District Court for the Eastern District of California issued a preliminary injunction prohibiting the FPPC from enforcing this subdivision against the slate mail organizations which had sought the injunction; repealed and new section added by Stats. 2004, Ch. 478, effective September 10, 2004.

1 Adopt 2 Cal. Code Regs. Section 18401.1 to read:

2 **§ 18401.1. Required Recordkeeping for Slate Mailer Organizations.**

3 (a) A slate mailer organization has a duty to maintain detailed accounts, records, bills,
4 and receipts as necessary to prepare campaign statements and comply with the provisions of
5 Chapter 4 (commencing with Section 84100) of the Act.

6 (b) In respect to each distinct slate mailer sent by a slate mailer organization, the
7 organization's duty as specified in subdivision (a) includes the duty to maintain the following:

8 (1) The date of the mailing, the number of pieces mailed, and the method of postage or
9 delivery.

10 (2) An original sample of the mailer, or an electronic copy of the mailer if sent
11 electronically.

12 (3) Cancelled checks or copies of cancelled checks containing legible images of the front
13 and back of the checks obtained from a financial institution, wire transfers, credit card charge
14 slips, bills, receipts, invoices, statements, vouchers, and any other documents reflecting the
15 receipt of payments or obligations incurred by the organization relating to the mailer.

16 (c) A slate mailer organization shall maintain the accounts, records, bills and receipts
17 specified in subdivisions (a) and (b) for a period of four years following the date the campaign
18 statement to which they relate is filed.

19 NOTE: Authority cited: Section 83112, Government Code. Reference: Sections 84048.3,
20 84048.4, 84218, 84219, 84220, and 84305.5 Government Code.

1 Adopt 2 Cal. Code Regs. Section 18435.5 to read:

2 **§ 18435.5 Slate Mailer Requirements.**

3 (a) Section 84305.5 requires a slate mailer to identify the slate mailer
4 organization or committee sending the slate mailer, and to designate by an asterisk (*)
5 each candidate and each ballot measure supported or opposed in a slate mailer for which
6 payment of \$100 or more has been received by the organization or committee (either
7 from the candidate, another committee, or from any other person “at the behest” of a
8 candidate or committee as defined in Regulation 18225.7).

9 (b) The slate mailer Notice to Voters required by Section 84305.5 shall appear on
10 the page of the mailer or the portion of the communication near where the endorsed
11 candidates or measures noted with an asterisk are most prominently listed so that the
12 explanation of the meaning of the required asterisk, indicating that the candidate or
13 measure committee paid for its appearance on the slate publication, is apparent.

14 (c) To ensure that it is easily legible, the Notice to Voters required by Section
15 84305.5 shall appear with a reasonable degree of color contrast between the background
16 and the statement and must appear on a plain background, not superimposed over an
17 illustration or a patterned background. A disclaimer satisfies the color contrast
18 requirement of this paragraph if it is printed in black text on a white background or if the
19 degree of color contrast between the background and the text of the disclaimer is no less
20 than the color contrast between the background and the largest text used in the
21 communication.

22 (d) To ensure that the Notice to Voters is comprehensible to the audience the
23 mailer is intended to reach, the Notice to Voters must be written in any language in which

1 eight words or more of the slate mailer is written. For example, if a slate mailer is
2 written predominantly in English but eight words or more of the slate mailer is written in
3 Spanish, the Notice to Voters must be written in English and Spanish.

4 (e) In addition to applying to slate mailers sent by traditional mail, the slate
5 mailer identification and disclaimer requirements of Section 84305.5 apply to slate
6 mailers distributed electronically.

7 NOTE: Authority cited: Section 83112, Government Code. Reference: Section
8 84305.5, Government Code.