



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 1, 2017

Jonathan Mintzer
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-17-017

Dear Mr. Mintzer:

This letter responds to your request for advice regarding the campaign advertising provisions of the Political Reform Act (the "Act").¹

FACTS

You have several general questions about the Act's advertising disclosure requirements. You ask about new legislation effective October 10, 2015 (Stats. 2015, Ch. 747, AB 990 Bonilla) requiring the disclaimer language on independent expenditure mailings stating that the piece is not authorized or paid for by a candidate or a committee controlled by a candidate, to be in a box located within one quarter of an inch of the recipient's name and address as printed on the advertisement. You have noted that U.S. Post Office regulations prohibit extraneous text and graphics from appearing within three-eighths inch from the address block, and recommend a distance of one-half inch. (U.S. Post Office Publication 177.)

You also ask about disclaimers on social media platforms (such as Twitter) that limit the number of characters that can be included in the "about" section of a page, and do not allow information to be printed outside of a designated field.

QUESTIONS AND CONCLUSIONS

1. Independent Expenditure Disclaimer Box Background Color. For mailings that constitute independent expenditures for or against a candidate, does Section 84506.5(b)(2) require that the box background be a different color than the background of the advertisement, even when the disclaimer language is clearly legible? For mailers printed in black and white, is this requirement satisfied when a box with a black outline and black text is set against a white background, if the background of the mailing is also white?

¹ 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.

The Act requires any advertisement supporting or opposing a candidate that is paid for by an independent expenditure to include a disclaimer stating that it was “not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.” Pursuant to Section 84506.5(b)(2), the text of the disclaimer must be contained in a box with an outline that has a line weight of at least 3.25 pt. The background color of the box must be in a contrasting color to the background of the advertisement. The outline of the box must be in a contrasting color to both the background color of the advertisement and the background color of the box. And the text must be in a contrasting color to the background color of the box.

For mailings produced only in black and white, there are practical limitations concerning the use of a box with a background color that is a contrasting color to the background of the advertisement. Therefore, for a mailing printed in black and white, a committee complies with the requirements of Section 84506.5(b)(2) when a box with a black outline and black text is set against a white background.

2. Disclaimer Box Location. *In order to comply with both Section 84506.5(b)(1) and the U.S. Post Office regulation that prohibits extraneous information to appear within one-quarter inch of the address block, can a committee print the box containing the “not authorized by” independent expenditure disclaimer language up to one-half inch from the recipient’s address?*

Section 84506.5(b)(1) requires the “not authorized by” independent expenditure disclaimer to be located in a box within one quarter of an inch of the recipient’s name and address as printed on the advertisement. However, U.S. Post Office regulations prohibit extraneous text and graphics from appearing within three-eighths inch from the address block, and recommend a distance of one-half inch. (U.S. Post Office Publication 177.) As a practical matter, we need to harmonize the requirements of the Act with those of the postal service.

Given that postal regulations do not allow extraneous information to appear within one-quarter inch from the address block, printing the independent expenditure disclaimer up to one-half an inch away from the address block to comply with postal regulations would not raise a compliance issue under the Act.

3. Social Media Page Disclaimer in the “About” Section. *Does a committee comply with the disclaimer requirement of Regulation 18450.4 for a social media page (such as Twitter and Instagram, etc.) by including the required disclaimer language in the “about” section of the page?*

Regulation 18450.4 states:

“(a) The disclosure requirements of Sections 84503 and 84506(a)(2) [regarding top two \$50,000 donors] shall not apply to general purpose committees, as defined by Section 82027.5.

“(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 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.

* * *

“(3) The disclosures 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 below.

* * *

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

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

The Act’s regulations above require that the disclosure statement on electronic media advertisements must be clear and conspicuous, easy to read or hear, and placed where it is not easily overlooked. It must give the reader or listener adequate notice of the persons or committees that paid for the communication. These are the standards to adhere to when placing political disclaimers on social media.

A committee will comply with the disclaimer requirements of Regulation 18450.4 for a social media page (such as Twitter, Instagram or other platforms that do not allow users to print additional information outside of a designated field) by including the required disclaimer language conspicuously in the “about” section of the page or the homepage.

4. Social Media Page Disclaimer; Character Limit Constraints. Does a committee comply with the Act’s campaign advertising disclaimer requirements if its social media page (which is limited in the number of characters that can be included in the “about” section, such as Twitter’s) includes a link to the committee’s website where the proper disclaimer language appears?

Where character limit constraints render it impracticable to include the full disclosure information specified, the committee may provide abbreviated advertisement disclosure on the social media page. The abbreviated disclosure must contain at least the committee's FPPC number and when possible, a link to the webpage on the Secretary of State's website, displaying the committee's campaign finance information, if applicable. (Regulation 18450.4(b)(3)(G)(4).) The Act requires full disclaimers where possible. If abbreviated disclaimers are used a committee must be able to show why it was not possible to include the full disclaimer.

When a social media page limits the number of characters that can be included in the "about" section (such as Twitter), so that it is not possible to include the full disclosure information, a link to the committee's website where the proper disclaimer language is displayed would meet the disclaimer requirements.

Again, a disclosure statement on electronic media advertisements must be clear and conspicuous, easy to read or hear, and placed where it is not easily overlooked. When using a link to lead to disclosure, to meet these standards, the link should be obvious, appropriately labeled, and take readers/viewers directly to the disclosure on the click-through page.

5. Disclaimers on Social Media Posts. Do social media posts posted by a committee (such as tweets, Instagram pictures, Facebook posts, etc.) require a disclaimer?

In addition, the definition of what constitutes an "advertisement" for purposes of the advertisement disclosure rules of Sections 84503-84506.5, excludes some items from the definition of advertisement because it is not possible to put the disclaimers on them, such as small campaign buttons and pens, campaign t-shirts, sky writing, etc. (Regulation 18450.1(b).) Included in this list is "an electronic media advertisement where inclusion of the *full disclaimer* required by Sections 84503-84506.5 or *even the abbreviated disclaimer* required by Regulation 18450.4(b)(3)(G)(iv) would be impracticable because it is technologically impossible to incorporate the disclaimer and the inclusion of the disclaimer would severely interfere with the committee's ability to convey the intended message so that it can be understood by the audience." (Regulation 18450.1(b)(3).)

Social media posts that meet the definition of advertisement require the disclaimers. Only those posts that do not meet this definition would be excluded. Ordinary social media posts put up by a committee (such as tweets, Instagram pictures, Facebook posts, etc.) would not require a disclaimer. However, where the social media posts consist of campaign advertisements (such as a photograph of or digital versions of a print advertisement), disclaimers would be required.

6. Disclosure Requirement for Online Ads of Limited Size; Link to Social Media Page. If a committee has a Facebook or other social media page but not a website, can it meet the Act's campaign advertising disclosure requirements for online advertisements by including a link to the social media page and have the disclaimer language appear on that page?

When an advertisement is limited in size (e.g. a micro bar, a button ad, a paid text advertisement that is limited to 500 characters or less in length, or a small paid graphic or picture link), Regulation 18450.4(b)(3)(G)(1) provides that the disclosure must be displayed via rollover display, link to a webpage with disclosure information, or other technological means that provide the user with disclosure information. In the *Bauer* Advice Letter, No. I-16-099, we advised that the

campaign may satisfy the disclaimer requirement by providing a rollover display, click-thru URL to a web page, informational Facebook page with full disclaimer information, or other technological means that provide the user with full disclaimer information.

Consistent with our prior advice, when a committee has a Facebook or other social media page but not a website, it meets this disclosure requirement by including a link to the social media page containing the disclaimer language, assuming the page is accessible to the general public and not restricted. As noted in question 4, when using a link to lead to disclosure, the link should be obvious, appropriately labeled, and take readers/viewers directly to the disclosure on the click-through page.

7. Disclaimer Language in Advertisements. *Does a committee comply with the Act's campaign advertising disclaimer requirements if it prints a disclaimer in the language used for the majority of the advertisement?*

When a significant portion of a *slate mailer* appears in a language other than English, Regulation 18435.5 requires that the Notice to Voter disclaimer also appear in that language.

In the case of an advertisement disclaimer, we have advised that disclaimers on political advertisements should be written or spoken in the same language used in the advertisement. Again, the standard is that the disclaimer must be legible and audible, and understood by the intended public. (Section 84507.)

8. Disclaimer size in "oversize print media." *For "oversize print media," such as billboards, must each line of the applicable disclaimer be five percent of the advertisement's total height?*

Regulation 18450.4 (b)(3)(D) states that disclosure statements on over size print media (e.g., yard signs or billboards) must constitute at least five percent of the height of the advertisement. The purpose of this provision is to ensure that the disclaimer is in large enough font to be read. Consistent with our prior advice, each line of the disclaimer for oversize print media must be five percent of the total height of the advertisement.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel



By: Zachary W. Norton
Senior Counsel, Legal Division

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