



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

This *Andrews* Advice Letter, No. A-18-035(a) rescinds the *Andrews* Advice Letter, No. A-18-035.

August 6, 2018

Emily A. Andrews
Olson Hagel & Fishburn LLP
3605 Long Beach Blvd., Suite 426
Long Beach, CA 95814-4602

Re: Your Request for Advice
Our File No. A-18-035(a)

Dear Ms. Andrews:

By vote on July 19, 2018, the Commission has determined that your question, on behalf of Save the Bay Action Fund Political Action Committee, presents issues requiring an interpretation best made through a Commission regulation pursuant to Section 83112 of the Political Reform Act.¹ (See also Regulation 18329(b)(8)(E).) Accordingly, the Commission withdraws and rescinds the staff issued *Andrews* Advice Letter, No. A-18-035, dated May 22, 2018, in its entirety.

This letter serves to notify Save the Bay Action Fund Political Action Committee they should no longer act in reliance of the previously issued advice, and any immunity pursuant to Section 83114(b) no longer applies to actions taken after receipt of this letter. We anticipate that the Commission will consider a regulation later this year that will address the issues raised in your original request.

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

Sincerely,

Brian G. Lau
Acting General Counsel

SKB:jgl

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.



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This *Andrews* Advice Letter, No. A-18-035 has been rescinded by the *Andrews* Advice Letter, No. A-18-035(a).

May 22, 2018

Emily A. Andrews
Olson Hagel & Fishburn LLP
3605 Long Beach Blvd., Suite 426
Long Beach, CA 95814-4602

Re: Your Request for Advice
Our File No. A-18-035

Dear Ms. Andrews:

This letter responds to your request for advice on behalf of Save the Bay Action Fund PAC regarding the campaign advertising provisions of the Political Reform Act (the “Act”).¹

Please note that we are not a finder of fact when rendering advice (In re Oglesby (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. May Save the Bay Action Fund Political Action Committee (“Save the Bay PAC”) omit 501(c)(3) organizations as “top contributors” on advertisements that support or oppose candidates, when such organizations restrict their funds for non-candidate use only?
2. May Save the Bay PAC omit other organizations as “top contributors” on advertisements supporting or opposing candidates when such organizations have restricted their funds for non-candidate use only?
3. If Save the Bay PAC produces an advertisement that supports both candidates and ballot measures, is a 501(c)(3) organization that qualifies as a top contributor but has restricted its funds from being used for candidate support required to be disclosed as a top contributor on an advertisement? If so may the phrase “funds not used for candidate

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CONCLUSIONS

1. No. Save the Bay PAC may not omit 501(c)(3) organizations as top contributors on advertisements that support or oppose candidates when such organizations have restricted their funds for non-candidate use only.
2. No. Save the Bay PAC may not omit other organizations from its top contributor lists on advertisements supporting or opposing candidates when such organizations have restricted their funds for non-candidate use only.
3. Yes. Save the Bay PAC must include top contributors that have restricted their funds for non-candidate use only on advertisements that support or oppose both candidates and measures. The phrase “funds not used for candidate support” may be included after the name of the 501(c)(3) top contributor on the advertisements.

FACTS AS PROVIDED BY REQUESTOR

You are the attorney for Save the Bay PAC, a general purpose recipient committee established in 2016. Heading into the 2018 elections, Save the Bay PAC is considering supporting state and local candidates and ballot measures. As a 501(c)(4) organization, Save the Bay PAC is permitted by tax law to support both candidates and ballot measures. In addition to raising funds from individuals, Save the Bay PAC anticipates it will receive funds from 501(c)(3) organizations (and possibly other types of donors) where the funds are restricted for use on non-candidate purposes only. Save the Bay PAC may run advertisements in support or opposition to candidates or ballot measures. Some advertisements may support or oppose both ballot measures and candidates. Your questions regard changes to the Act with the recent enactment of Assembly Bill 249 (Stats. 2017, Ch. 546, AB 249 Mullin), (“The Disclose Act”) requiring the disclosure of top contributors to a committee in campaign advertisements.

ANALYSIS

Section 84501(a)(1) of the Act defines an “advertisement” as “any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures.” The Act requires communications qualifying as “advertisements” to include disclaimers. The content and formatting of these disclaimers vary greatly depending on the nature and source of the advertisement.

Advertisements paid for by Section 82013(a) recipient committees, that are not candidate controlled committees established for an elective office of the controlling candidate or political party committees, such as Save the Bay PAC, must include the words “Paid for by” followed by the name of the committee. (Section 84502.) Advertisements must also include the words “committee major funding from” followed by the names of the top contributors to the committee paying for the

advertisement. (Section 84503.)² “Top contributor” is defined as “the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of fifty thousand dollars (\$50,000) or more.” (Section 84501(c)(1).)

You state that Save the Bay PAC may receive contributions from entities such as 501(c)(3) organizations and others that have restricted their funds for use on non-candidate purposes. You wish to reflect this restriction by not listing these organizations as “top contributors” on advertisements that support or oppose candidates. However, Section 84503 applies to “any advertisement” paid for by a committee such as Save the Bay PAC, and there are no caveats or restrictions placed on the listing of top contributors. Similarly, Section 84501(c) places no caveats or restrictions on the definition of “top contributors” that would allow for the omission of top contributors that have restricted the use of its funds.³ On its face, there is no apparent exception provided in the Act’s new Disclose Act provisions that allows Save the Bay PAC to exclude top contributors from being disclosed on advertisements. Therefore, Save the Bay PAC must disclose all qualifying top contributors on its advertisements, even those that have restricted their funds.⁴

We are aware that Internal Revenue (“IRS”) Code Section 501(c)(3) tax exempt organizations are “absolutely prohibited” from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. According to the IRS website, violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes.⁵

² Additionally, if the advertisement supports or opposes a candidate and is paid for by an independent expenditure that advertisement must include a statement that it was not authorized by a candidate or a committee controlled by a candidate. If the advertisement was authorized or paid for by a candidate for another office, the expenditure shall instead include a statement that “This advertisement was not authorized or paid for by a candidate for this office or a committee controlled by a candidate for this office.” (Section 84506.5.)

³ The only provision affecting the determination of top contributors found in The Disclose Act is with respect to the order of determination. (Section 84501(c)(2).) Additionally, if a committee primary formed to support or oppose a candidate or ballot measure contributes funds to another committee primarily formed to support or oppose a candidate or ballot measure that were earmarked to support or oppose the ballot measure, the committee receiving the earmarked funds must disclose the contributors who earmarked the funds as the top contributor or contributors if the definition of top contributor is met. (Section 84501(c)(3).)

⁴ In your request for advice you noted that the Act contains provisions in Section 84222(e) that exempt a multipurpose organization from disclosing donors who designate or restrict a donation for purposes other than contributions or expenditures or prohibit the multipurpose organization’s use of its donation for contributions or expenditures on its campaign reports. Should an organization qualify as a committee under Section 84222, it would not be required to disclose donors on advertisements that they are not required to disclose as contributors on campaign reports. However, these provisions do not apply to Save the Bay PAC because it is not a Section 84222 multipurpose organization. Moreover, to the extent that Sections 84503 and 84501(c) could be interpreted to extend a similar exception, any such finding would require a policy determination best made through a Commission Opinion or by the adoption of a regulation. (See Regulation 18329(b)(8)(E).)

⁵ See (Internal Revenue Service, *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax Exempt Organizations*, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/the-restriction-of-political-campaign-intervention-by-section-501c3-tax-exempt-organizations>.)

Save the Bay PAC requests to include a statement in parentheses following the name of a 501(c)(3) organization top contributor stating, "funds not used for candidate support," on advertisements that jointly support or oppose candidates and ballot measures. There is nothing in the Act that prohibits addition of this language should Save the Bay PAC choose to include it, where it is applicable.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Sukhi K. Brar
Senior Counsel, Legal Division

SKB:jgl