

Fair Political Practices Commission

MEMORANDUM

To: Chair Ravel, Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: Zackery P. Morazzini, General Counsel
Heather M. Rowan, Commission Counsel

Subject: Discussion of Proposed Regulation 18421.5: Expenditure Reports, Committee Reporting of Payments for Online Communications

Date: June 20, 2013

Proposed Commission Action and Staff Recommendation

Proposed Regulation 18421.5, which will be before the Commission for adoption at its August, 2013 meeting, addresses an aspect of the Commission's focus on updating the Act for the new millennium. Currently, by reading expenditure reports, one cannot see expenditures made to support services related to Internet web logs ("blogs"), newsletters, or social media. A blog is typically a space on the Internet where a person expresses his or her thoughts, promotes ideas, products, services, or any other topic one can imagine. This regulation would require greater transparency in such online communications when a campaign pays for communication and publication. Accordingly, staff presents for discussion Regulation 18421.5, which will provide greater and more specific disclosure by those political campaigns that make payments to anyone who provides online commentary on the campaign's behalf.

Background and Current Law

In 2010, the Commission authorized a task force to gather information regarding updating the Act and its regulations in the digital age. The result, after two informative hearings, hours of testimony, and input from a variety of sources, was the Commission-approved report: *Internet Political Activity and the Political Reform Act*. Former FPPC Commissioners Timothy Hodson and Elizabeth Garrett chaired the sub-committee that heard public testimony on two occasions. The resulting report highlighted the need for greater disclosure of online activity as a bulk of campaign activity now occurs digitally.

The report carefully delineated between bloggers or online commentators who are paid by a campaign, and individuals who blog or otherwise publicize their opinions online independently from any campaign. The report made clear the difference between political activity paid for by a campaign committee, in which the public has an interest in disclosure, and activities of individuals not compensated by a campaign expressing their views online. The proposed regulation addresses only the former.

Currently, the Act's expenditure reporting provisions in Section 84211(k) require that committees disclose expenditures over \$100 made during a campaign period. In addition, the subvendor reporting provisions of the Act require that the person who provides consideration for a payment of \$500 or more, whether or not that person is the payee, must be reported. (Sections 84211(k)(6) and 84303; Regulation 18431.) Additionally, Regulation 18401 provides committees guidance in recordkeeping for reporting purposes. Regulation 18401(a)(4) requires that a campaign maintain records for expenditures of \$25 or more, including information regarding the payee and the underlying vendor providing the goods or services.

A committee that files a Form 460 must enter, for any expenditure over \$100, the name and address of the payee, the person providing services (if applicable), and enter a code which describes the expenditure or a description if no code applies. Currently, there is no code for the type of activity encompassed in this regulation. Staff has been informed that the Secretary of State's office, responsible for maintaining and receiving the Form 460, cannot make any changes in the expenditure coding at present because of the precarious state of the Cal-Access system. For this reason, all reporting of this type would require a description of the payment in the field the form provides.

As the subcommittee recommended, proposed Regulation 18421.5 requires that a committee reports the following information on its Form 460: name of recipient of payment, name of person providing services, and name of websites or web addresses on which the communications appear. The disclosure would apply to all paid communications for Internet activities and the committees would report in the aggregate to a particular payee and service-provider. By requiring the committee to report the payee and the service-provider, the regulation intends for committees to disclose those people who are actually providing content for an Internet forum and the website(s) on which it appears.

As in Regulation 18215.2, proposed Regulation 18421.5 only applies to *compensated* Internet activities paid for by a political committee. In addition, when an uncompensated individual links to a political website or communication, this activity does not trigger regulation under the PRA and would not be covered by regulations.

Additionally, proposed Regulation 18421.5 applies to those recipient committees, as defined in Section 82013(a), that are already required to disclose expenditures and file a Form 460. The regulation would not impose a reporting requirement on any individual blogger. This regulation addresses those recipient committees that pay bloggers or others who engage in Internet activity for which there is currently no specific disclosure. The regulation does not create a new category of reporting, rather it simply allows the public a method of accessing useful, specific information. Staff believes it is important for voters to be able to know if the opinions they are absorbing from online sites generate from a payment by a committee.

Since the 2012 Primary election, Chair Ravel has received several comments from online consumers stating that it is often impossible to tell whether an online article was created on behalf of a campaign or is an independent voice. While some bloggers do state when they post whether they have been compensated for the piece, essentially "self-regulating," there is no way

for the public to know which online actors practice this honor code of self-regulation. With the simple step of using Form 460's code "WEB" and adding information regarding to whom a committee makes payments for online communications, this proposed regulation directly responds to the public who would like a resource to determine whether the "news" that they consume is committee-sponsored.

On September 18, 2012, staff held an interested persons meeting to discuss proposed language. Following that meeting and after reviewing letters staff received suggesting changes to the proposed regulation (and some advocating for abandoning the proposed regulation), staff re-wrote the language to address many concerns. Staff also reached out to several interested persons who stated they wanted to be involved in the process in an effort to collect input on the re-written language. No one responded to staff's invitation.

On November 14, 2012, Chair Ravel held a "conversation" in the FPPC hearing room for any person wishing to discuss the idea of providing more specific reporting. Many people participated in a lively discussion that added multiple viewpoints to the project. Staff was able to fold those comments and ideas into the developing regulation language. The result is the draft language that was noticed for discussion today.

The proposed regulation simply provides the public with an easy-to-use means of determining who is being paid to provide Internet content for campaigns.

Proposed Action

Discuss the current draft of Regulation 18421.5 which, depending upon the result of the discussion, will be before the Commission in August, 2013.

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