

## 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:** Proposed Regulation 18421.5: Expenditure Reports, Committee Reporting of Payments for Online Communications

**Date:** September 9, 2013

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### **Proposed Commission Action and Staff Recommendation**

Proposed Regulation 18421.5, which the Commission discussed during the June and August Commission meetings, addresses the Commission's focus on updating the Act to match the changing practical workings of campaigns. Below is a description of the changes that staff made in response to the August meeting discussion.

### **Background and Current Law**

At the August Commission meeting,<sup>1</sup> staff received valuable comments regarding the language of proposed Regulation 18421.5. To review, the proposed regulation requires a committee to provide information when it pays a person, either directly or through a third party, to create content for a digital platform unless the content provides a clear and conspicuous statement that a committee paid the author for the content. The committees will provide the specific reporting on the Form 460, a form already required for reporting of expenditures, using both the "WEB" code as provided on the form and a description of where on the Internet (or other platform) the content appears. The regulation covers such content as a post for a blog, a video produced and posted online, and content created for social media. The regulation requires a campaign to disclose where the initial posting is made (on a supportive blog, for example), but does not require the campaign to know where the content is shared or passed on to after that initial post.

In response to comments made at the August Commission hearing, staff proposes the following changes:

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<sup>1</sup> Memorandum and regulation language from the August, 2013 meeting is available at: <http://www.fppc.ca.gov/agenda.php?id=515>.

- *Eliminate the exception regarding “in house campaign staff” on page 1, lines 4-5.* By deleting this language, the public would have access to information regarding whether or not a campaign has paid for online content. Many of the comments that staff received stated that the exception for “in house campaign staff” does not reflect the reality of running a campaign. Many campaigns do not employ a staff, rather they hire a consultant or consulting firm or a manager to run the campaign. That person or firm then hires people who will perform such duties as posting content online.

Additionally, providing an exception for some people who are posting online but not others could create confusion for the public who is the ultimate consumer. The purpose of the regulation is to provide meaningful disclosure and prevent obfuscation of who is funding communications on the Internet, which is fast becoming a primary source of information.

- *Add modifier “favorable or unfavorable” on page 1, line 5.* Adding the words “favorable or unfavorable” to modify “content” narrows the types of communications that are included in the disclosure.
- *Delete “already carry a ‘paid for by’ disclaimer and” from page 1, lines 20-21.* Deleting this unnecessary language clarifies the point that section (d) intends to capture: if a campaign buys advertisement space for placement on the Internet at regular market rates, the additional reporting proposed Regulation 18421.5 requires does not apply.

With the proposed regulation and the aforementioned changes, staff intends to keep the Act in line with the Supreme Court cases supporting disclosure by “enabl[ing] the electorate to make informed decisions and give proper weight to different speakers and messages.” (*Citizens United v. FEC*, 558 U.S. 310, 371 (2010).) By giving the electorate the information it needs to weigh the information it receives, whether from a digital or other source, the regulation provides a tool for the electorate to stay informed as they participate in California’s democracy.

### **Proposed Action**

Staff recommends that the Commission Adopt proposed Regulation 18421.5.

1 Adopt 2 Cal. Code Regs. Section 18421.5 to read

2 **§ 18421.5. Reporting an Expenditure for Paid Online Communications.**

3 (a) Purpose. This regulation requires additional expenditure reporting to inform the  
4 public when a recipient committee under Section 82013(a) pays a person, ~~other than in-~~  
5 ~~house campaign staff~~, to provide favorable or unfavorable content about a candidate or  
6 ballot measure on an Internet site other than the committee's own website.

7 (b) When reporting an itemized expenditure pursuant to Sections 84211(k) or 84303,  
8 a committee, pursuant to Section 82013(a), must specifically describe amounts the  
9 committee paid to provide content on a candidate or ballot measure by:

- 10 1) Providing content for posting on a web site or a web log ("blog"), whether  
11 one's own or another's;
- 12 2) Providing content for or posting on a social media platform or service;
- 13 3) Providing video content for posting online.

14 (c) When reporting these expenditures, whether the payment is made directly or  
15 through a third party, committees must list specific details of the payment, including, but  
16 not limited to, the amount of the payment, the payee, the name of the person providing  
17 content, and the name of the website or the URL on which the communication is  
18 published in the first instance. The committee must report the expenditure for online  
19 content using the expenditure code "WEB" and the specifics described in this section.

20 (d) Paid advertisements placed on the Internet by a recipient committee that ~~already~~  
21 ~~carry a "paid for by" disclaimer~~ and are purchased at regularly published rates are not  
22 subject to the additional reporting required by this regulation.

1 (e) The reporting in this regulation does not apply to payments that a recipient  
2 committee makes to a person for producing content solely for the committee’s own  
3 websites or social media accounts.

4 (f) The reporting requirements of this regulation are in addition to the reporting  
5 requirements of Sections 84211(k) and 84303.

6 (g) If the fact that a campaign has paid for content as described in this regulation is  
7 posted in a clearly conspicuous manner along with the posted content in each instance of  
8 the content appearing on the Internet or other digital platform, reporting is not required as  
9 described in this regulation. For example, the following type of posting would satisfy  
10 this requirement: “The author was paid by the Committee to Re-Elect Mayor Jane Doe in  
11 connection with this posting”.

12 (h) “Content” means that which is offered on a website or other digital platform in  
13 writing, picture, video, photograph or other similar format. Content does not include  
14 clicking on images to cast a “vote” or opinion, nor does it include commentary posted in  
15 response to another person’s content.

16 Note: Authority cited: Sections 83112 and 84211(k), Government Code. Reference:  
17 Sections 84211 and 84303 Government Code.

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