December 20, 2017

VIA EMAIL

Chair Remke and Commissioners
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Dear Chair Remke and Commissioners,

The undersigned would like to thank the Commission for quickly addressing the initial regulations needed to implement AB 249, the *California DISCLOSE Act,* and appreciate the opportunity to comment on them.

Our key concern is with draft Regulation 18450.1(a)'s requirements that certain communications be in quantities of 200 or more to be considered an "advertisement" in paragraphs (3), (4), (5), (6), and (8). That does not reflect the clear text or intent of AB 249, nor do we believe it benefits the regulated community.

We understand and appreciate that the original intent of the regulation was to avoid requiring individuals or others without the resources of committees to follow disclosure rules when they only produce small quantities of advertisements. However, now that AB 249 explicitly only requires ads by committees to include disclosure statements, advertisements by non-committees are moot.

**The proposed regulation, in fact, complicates and imposes additional burdens on committees by imposing different disclosure requirements depending on quantities of ads printed.**

A major part of the intent of AB 249 was to make disclosures on political advertisements as consistent as possible so that committees know exactly which formats to use and voters know where exactly to look for them. The proposed regulation undercuts that intent and complicates committees' disclosure requirements by making them different depending on the quantity distributed, depending on the type of ad.

The December 11th letter from the California Clean Money Campaign lays out clearly how the text of AB 249 and the intent of the bill is that any disclosures on ads that are paid for by "a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate", i.e. ads about ballot measures or independent expenditures for or against candidates, must have the required disclosures regardless of the number of ads produced.

**Having different disclosure rules for ads that are produced in quantities of 200 or fewer vs. ads that are produced in quantities more than 200 is very likely to cause confusion and potential legal jeopardy for committees that produce such ads**. For example, if the regulation is put into place as is, committees may commonly print a small direct mailing or print advertisement in quantities under 200 without the disclosure, but later decide to produce and distribute additional copies.

Is the committee then to be out of compliance due to having mailed or distributed 200 copies without disclosures that only later become required due to printing of additional copies? They'd have to keep additional records to prove that they printed 200 or fewer copies in the first place – records that would not be needed without this regulation. What if they printed an ad in-house and distributed it by hand, and so don't have any receipts or other records?

And what requirements could apply for printed materials that committees post online that they may expect to be downloaded and printed by fewer than 200 people, but turn out to have more than 200 copies printed, unbeknownst to the committee?

**These issues make having different disclosure requirements for ads printed in quantities of 200 or fewer from those printed in quantities greater than 200 an additional burden on committees** because they will (1) need to make decisions on whether or not to include disclosures based on imperfect information on the quantities that will be distributed, (2) change the design of communications once they pass the 200 threshold, and (3) keep additional records to prove how many copies were printed or communicated.

Such additional burdens on committees could be worth it if it served a valuable disclosure purpose for voters. But here, the opposite is true, because it will lead to less disclosure than AB 249 intended.

Furthermore, having different requirements for ads based on quantity is **likely lead to voter confusion and numerous false reports to the FPPC of disclosure violations**. How is a voter who receives ballot measure or independent expenditure communications without a disclosure statement to know whether it's an ad that violates AB 249 by not including the required disclosures, or isn't required to include disclosures because 200 or fewer were distributed? If they are concerned about missing disclosures, as many of our supporters would be likely be after they are educated about AB 249's new rules, they should and would report the missing disclosures as possible violations, because they have no way of knowing the number printed.

**All these reasons make clear that though the intent of 18450.1 to decrease burdens on political advertisers by saying that disclosures aren't required for small quantities of specific types of ads may be laudable, the effect on committees is likely to be just the opposite** — increasing burdens on committees by overriding AB 249's clarity on when and where disclosures are required and requiring additional record-keeping above and beyond what is needed to fulfil AB 249's intent.

**We therefore respectfully request that you amend paragraphs (3), (4), (5), (6), and (8) of draft regulation 184501.1(a)** to only apply to ads paid for by "a candidate, candidate controlled committee established for an elective office for the controlling candidate, or political party committee", as in AB 249's Section 84305 and the clear language and intent of Section 84504, 85404.2, and 85404.3 to apply regardless of quantity.

**Alternatively, you could strike paragraphs (3)-(8),** because they don't add anything to the Government Code in AB 249, which explicitly says what type of disclosures are needed on which types of advertisements, and explicitly provides quantity exceptions to required advertisements paid for by "a candidate, candidate controlled committee established for an elective office for the controlling candidate, or political party committee" in Section 84305 and Section 84310 that describe what their required disclosures look like.

Either of these solutions would lessen the burden on committees and fulfill AB 249's clear intent.

Thank you again.

FROM: California Clean Money Campaign (sponsor)
California Common Cause
Money Out Voters In
Assembly Speaker pro Tem Kevin Mullin (author)