



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich and Commissioners Baker, Cardenas, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Toren Lewis, Commission Counsel

Subject: Adoption of Proposed Amendments to Regulations 18421.5, 18450.4, and
Adoption of Regulation 18450.9

Date: August 9, 2021

Requested Action and Summary of Proposal

Staff has prepared a package of regulatory proposals related to campaign communication and advertisement disclosure under the Act.¹ The proposals largely include changes aimed at ensuring proper disclosure is achieved when committees pay third parties to post campaign advertisements and other communications online. The proposals also contain provisions intended to help clarify how disclosures should be displayed for certain types of online advertisements where there is currently a lack of clarity. Staff presented these proposed regulatory changes at the Commission's June 2021 hearing for prenotice discussion, and now presents them for adoption.

The first proposal contains amendments to existing Regulation 18421.5, also known as the "blogger" regulation, to modernize and enhance the campaign expenditure reporting required in connection with communications where a committee has paid a third party to post favorable or unfavorable content. Amendments to this regulation also help harmonize the regulation with the campaign advertising provisions of the Act.

At the request of the Commission, staff has deleted proposed amendments to Regulation 18421.5 related to amplification of online campaign communications and advertisements that were presented at the Commission's June 2021 meeting, and instead expanded these proposed changes into a standalone regulation, proposed new Regulation 18421.10, which is being presented separately for prenotice discussion.

The second proposal is an amendment to existing Regulation 18450.4 to provide a minor clarification related to video advertisements posted on social media and what disclosure must be included on such videos.

The third proposal is new Regulation 18450.9, which clarifies disclosure requirements when a committee pays a third party, such as a social media influencer, to post advertisements on

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.

social media. Additionally, the new regulation provides guidance on disclosure for advertisements paid for by a committee that are in written format, and that are posted on third-party non-social media websites.

Regulatory Proposals

Amendments to Regulation 18421.5. Reporting an Expenditure for Paid Online Communications.

The Commission adopted Regulation 18421.5, also known as the “blogger” regulation, in 2013 to require committees to include additional details on campaign reports when committees pay third parties to provide favorable or unfavorable content about a candidate or ballot measure on a website other than the committee’s own website. Regulation 18421.5 applies to expenditures for communications that may or may not meet the Act’s definition of advertisements.² Since the time Regulation 18421.5 was enacted, the platforms on which such paid content appears have expanded their presence greatly beyond traditional style blogs to other electronic formats such as applications, social media, and community news sites. Staff proposes updating the regulation to better address the expansion of platforms on which such paid content now more frequently appears, including websites, web applications, or digital applications. At the Commission’s instruction, staff has also added proposed language to Regulation 18421.5 as subdivision (b), defining the terms “digital application” and “web application,” as used in Section 84504.6 of the Act, based on commonly understood terminology.

The proposed amendments to Regulation 18421.5 also expand the current expenditure reporting requirements of Regulation 18421.5 to include more specific information about a paid online communication such as a paid social media poster’s username or handle and the title of an op-ed or article in addition to the extra reporting already required under the regulation. In addition, the changes to Regulation 18421.5 require the extra reporting under Regulation 18421.5 for each platform for which a committee pays a person to post, rather than only “in the first instance.”

Though Regulation 18421.5 requires extra reporting on campaign reports as discussed above, subdivision (g) of the current regulation permits a committee to opt out of the extra reporting if the communication includes a disclosure on the content itself. However, the form of the disclosure allowed on the content itself under Regulation 18421.5 is not consistent with what would be required by the Act if the communication was an advertisement, as the regulation was adopted before the current relevant advertising disclosure statutes. Currently, subdivision (g) provides:

If the fact that a campaign has paid for content as described in this regulation is posted in a clearly conspicuous manner along with the posted content in each instance of the content appearing on the Internet or other digital platform, reporting is not required as described in this regulation. For example, the

² Section 84501 of the Act defines advertisement generally to include 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. Regulation 18421.5 applies to communications that are in connection with favorable or unfavorable content about a candidate or measure, so the standard is slightly different.

following type of posting would satisfy this requirement: “The author was paid by the Committee to Re-Elect Mayor Jane Doe in connection with this posting.”

If the communication is an advertisement, the Act may require “Paid for by” language and additional information such as top contributors. Therefore, proposed amendments to Regulation 18421.5 clarify that the disclosure requirements in the regulation are in addition to the disclosure requirements for advertisements.

Based on feedback received at the June Commission meeting, staff also proposes deleting original subsection (d), which exempts “Paid advertisements placed on the Internet by a recipient committee that are purchased at regularly published rates” from the additional expenditure reporting requirements of Regulation 18421.5. In its place, proposed new subsection (i) clarifies that Regulation 18421.5 applies to content which a committee pays someone to provide, but does not apply to an advertisement created by a committee (or its agent), which the committee provides to another person to display on a website, web application, or digital application other than the committee’s own website (such as a paid social media banner advertisement). These proposed amendments are intended to clarify the scope of the existing regulation, not to expand or narrow its interpretation.

Amendments to Regulation 18450.4. Video and Television Advertisement Disclosure.

The Legal Division has received questions regarding whether videos posted on social media that qualify as advertisements under the Act only require disclosure on the landing page of the committee and not on the videos themselves. The questions arose because Section 84504.3(h) states that for electronic advertisements posted on social media, disclosures shall only be required on the profile or landing page of the committee. However, Section 84504.3, in subdivision (g), also specifies that electronic media advertisements in the form of videos shall comply with the disclosure requirements for videos under Sections 84504.1 or 84504.5 of the Act, depending on the type of committee that paid for the advertisement. Sections 84504.1 and 84504.5 require disclosures to be placed directly on the video; in some cases, Section 84504.5 requires disclosures to be spoken as well. The Legal Division has advised that advertisements in the form of videos that fall under Section 84504.3, no matter where they are posted, must follow the video disclosure rules, including on social media. California Clean Money Campaign, the sponsor of the legislation that enacted these provisions, has advised that this advice is consistent with the intent of the law.

The amendments to Regulation 18450.4 clarify that a video posted on social media that is required to include disclosures under Section 84504.3 must contain the disclosures on the video, and not only on the committee’s profile or landing page.

Adoption of Regulation 18450.9. Website Advertisements and Third-Party Social Media Advertisements.

Proposed Regulation 18450.9 addresses disclosure requirements for social media posts made by third parties and written posts on non-social media websites that are not the committee’s website.

As noted previously, advertisements on social media that fall under Section 84504.3(h) are only required to include disclosures on the committee's profile or landing page and are not required to include the disclosures on each individual post, comment, or other similar communication. When a committee posts an advertisement from its own social media account, the post automatically links back to the committee's profile page where the disclosures can be found. However, when a committee pays a third party or influencer to post an advertisement, there is no automatic link back to the committee's profile or landing page and thus no way for the viewer to easily access such disclosures.

The Legal Division has informally advised that an influencer paid by a committee to post an advertisement on social media should tag the committee in the influencer's post, so that viewers can link back to the committee's profile or landing page to view the advertisement disclosure. Proposed Regulation 18450.9 codifies this advice.

With regard to non-social media websites, Section 84504.3(d) of the Act requires a disclosure at the top or bottom of every publicly accessible page of a website paid for by a committee when the content meets the definition of an advertisement. However, when a committee pays a third party to post content on a non-social media blog-style website that is not the committee's own blog or website, it is not clear where the disclosure should be located. In informal email advice, the Legal Division has advised that a committee should include disclosures on the individual website/blog post. This makes practical sense when the entire page is not the committee's page and there may be multiple posts, some of which may not be campaign related. Proposed Regulation 18450.9 provides that a post on non-social media websites or blogs on websites that are not the committee's website(s) must have disclosures at the top or bottom of each individual post, rather than the top or bottom of every page of the website.

Summary

The proposed amendments to existing Regulation 18421.5, 18450.4, and proposed new Regulation 18450.9 would provide the public with more information about online content paid for by committees at a time when campaigns are increasingly paying third parties to post online content.

Attachments:

Proposed Amendments to Regulation 18421.5
Proposed Amendments to Regulation 18450.4
Proposed New Regulation 18450.9