



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

To: Chair Miadich, Commissioners Baker, Cardenas, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Katelyn Greene, Commission Counsel

Subject: Adoption of Proposed Amendments to Regulations 18435.5, and 18450.11; and
Adoption of Regulations 18450.6, 18450.7, and 18450.8

Date: July 2, 2021

Requested Action and Summary of Proposal

Staff presents for Commission adoption amendments to two existing regulations and three new regulations.¹ The proposed regulations relate to disclosures on electronic slate mailers, disclosures on campaign advertisements in other languages, disclosure requirements on campaign advertisements for which specific guidance is not already provided in the Act or current regulations, disclosures for electronic campaign advertisements that are both visual and audio that typically appear on mobile phone listening applications similar to that of Spotify or Pandora Radio, and paid spokesperson campaign advertisement disclosures. Staff presented these proposed regulatory changes at the Commission's May 2021 hearing for prenotice discussion. No public comment was received. The proposed changes address recent issues that have arisen with enforcing and advising upon certain provisions of the Act and regulations.

Proposed Amendments

Electronic Slate Mailer Disclosure

Amend Regulation 18435.5 Slate Mailer Requirements

A slate mailer is defined as a mass mailing which supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.) A slate mailer organization is a person that receives at least \$500 for the production of slate mailers and exercises control over the selection of candidates and measures to be supported or opposed in the slate mailer. (Section 82048.4.)²

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.

² A slate mailer organization does not include a candidate or officeholder or a candidate's or officeholder's controlled committee, an official committee of any political party, a legislative caucus committee, or a committee primarily formed to support or oppose a candidate, officeholder, or ballot measure.

Section 84305.5 provides what disclosures are required to be placed on slate mailers and provides in relevant part:

“(a)(1) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures are shown on the *outside* of each piece of slate mail and on at least one of the inserts included with each piece of slate mail in no less than 8-point roman type which shall be in a color or print which contrasts with the background so as to be easily legible...

(2) At the top or bottom of the front side or surface of at least one insert or at the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement: NOTICE TO VOTERS THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.”

Interpreting Section 84305.5, Regulation 18435.5 currently provides that the identification and disclosure requirements found in Section 84305.5 must be followed for electronic slate mailers but does not provide specificity on how the requirements should be followed when the slate mailer is in an electronic format that does not have a physical “outside” or “side or surface” similar to that of traditional mail.

Staff recently provided advice regarding slate mailers that were to be distributed electronically on websites, email and text message with clickable links or attachments to full slate mailers. (*Mainardi* Advice Letter, No. I-19-197.) In the *Mainardi* letter, the first type of electronic slate mailer was to be preceded by an electronic image featuring either a logo or an image of the supported candidates and measures with an exhortation to click through to see the full slate mailer. Clicking on the image would take the user to a webpage with the full slate mailer as well as a downloadable PDF copy of the slate mailer for use on election day. This slate mailer was also potentially going to be distributed via email.

The second type of slate mailer was to be distributed via social media or commercial website and was to be in the form of a video with a sequence of images of some or all of the endorsed or opposed candidates or measures, with information about the candidates appearing directly below the photographs.

The question with these electronic slate mailers was what was considered to be the “outside” of the slate mailer (where name and address are required to be displayed) and what was the actual slate mailer where identification information as well as the “Notice to Voters” was required to appear. Staff advised that a clickable image leading to a full slate mailer image may

be considered the “outside” of the electronic slate mailer and, for an email or text message containing a link or attachment to the full slate mailer, the body of the email or text may be considered akin to the “outside” of the attached piece of slate mail described in Section 84305.5. (*Mainardi* Advice Letter, No. I-19-197.)

Additionally, staff has advised that when an electronic slate mailer is in the form of a series of electronic images displayed consecutively or a video containing a sequence of images, the slate mailer may comply with the slate mailer disclosure requirements by including the name, street address and city of the slate mailer organization and the “Notice to Voters” in a frame preceding or following the video or sequence of images, but each candidate or ballot measure that has paid to appear on the slate mailer must be identified with the required asterisk when mentioned. (*Mainardi* Advice Letter, No. I-19-197, *Woocher* Advice Letter, No. A-15-004.)

Staff seeks to codify this advice with proposed amendments to Regulation 18435.5.

At the prenotice hearing, Commission members presented concerns about the placement of the disclosure in relation to the other contents in the body of an email and how someone might try to hide the disclosure at the very bottom of the message. Although this situation may arise, staff recommends avoiding language that is this specific because the purpose of the proposal is to adapt current rules provided in the Act to electronic slate mailers. The current rules do not provide a specific location for such disclosures on the outside of a mailer. So long as the disclosure is placed in the body of the email, which would be considered the “outside” of the mailer, the sender would be in compliance with the statutory requirements.

Disclosure on Advertisements in Languages Other than English

Adopt Regulation 18450.6 Disclosure on Advertisements in Languages Other than English

The Act’s campaign advertisement disclosure provisions have been drafted so as to ensure that the public is able to understand them, such as requiring all disclosures to be spoken clearly, easily readable, and accessible to the average viewer under Sections 84504, 84504.1, 84504.2, 84504.3, 84504.4, 84504.5, 84504.6, and 84504.7.

Proposed Regulation 18450.6 provides disclosure requirements for advertisements that appear primarily in a language other than English. The proposed regulation requires the advertisement disclosure appear in the same language in which the advertisement primarily appears.

Staff has previously advised that the advertisement disclosures on political advertisements should be written or spoken in the *same language* used in the advertisement. (*Mintzer* Advice Letter, No. I-17-017.) Staff seeks to codify this advice by requiring the advertisement disclosure appear in the same language in which the advertisement *primarily* appears. Staff was also asked via email advice whether a committee’s name that is required to be disclosed on a campaign advertisement may appear in a language other than what has been listed on the committee’s campaign reports and statements. Staff advised that while the disclosure

should be in the same language as the advertisement, the committee names must remain the same as the names used on campaign filings. This maintains the public’s ability to search for the committee’s information and filings in campaign filing databases. Staff has included language in the proposed draft addressing this issue as well.

For purposes of determining the standard for when the disclosure should appear in a language other than English, staff researched similar rules in other jurisdictions. In New York Section 6-06 of the New York Campaign Finance Board Rules provides:

“(d) Languages other than English. For communications primarily in a language other than English, all required written or spoken identification required by this section must be in such language.”³

In Florida, Section 106.143 of their Campaign Finance statutes provides:

“Any political advertisement which is published, displayed, or produced in a language other than English may provide the information required by this section in the language used in the advertisement.”⁴

Staff finds New York’s standard as the most simple and straightforward option because it captures the scenario of an advertisement appearing, for example, partially in English *and* partially in another language and proposes adoption of a new regulation clarifying this issue.

At the prenotice hearing in May, Commission members asked whether “primarily” is used elsewhere in the Act or current regulations. Staff found that “primarily” is used in several areas of the Act and current regulations, but not in the context of advertisements or advertisement disclosures. The word “primarily” is also not explicitly defined in the Act or current regulations but is defined as “for the most part” in the Merriam Webster dictionary.⁵ As mentioned at the prenotice hearing, staff recommends using flexible language to avoid creating room for manipulation of the rules and pinning down a narrow definition as it relates to advertisements may be difficult since an advertisement can take on many different forms and format. Therefore, staff recommends using the plain meaning of “primarily” as it is defined in the dictionary.

³ https://www.nyccfb.info/PDF/CFB_Rules.pdf

⁴ http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0100-0199/0106/Sections/0106.143.html

⁵ <https://www.merriam-webster.com/dictionary/primarily>

Disclosures for Advertisements in Formats Not Specifically Addressed in the Act or Current Regulations

Adopt Regulation 18450.7 Disclosure for Advertisements in Formats Not Specifically Addressed

Sections 84502, 84503 and 84506.5 contain general campaign advertisement disclosure requirements such as requiring “ad paid for by” and top contributor information on campaign advertisements. Additional sections of the Act go into further detail about types of advertisements and the format of the disclosure required on each particular type of advertisement such as font size and color contrast on a given format such as video or on a billboard. However, the Act does specifically address display details for some formats, such as a campaign advertisement displayed with lasers, on a large tent or on a projection screen though disclosures are required.

Proposed Regulation 18450.7 would provide guidance on display requirements for advertisements displayed in a format not specifically addressed within the Act or current regulations when including the “paid for by” disclosure required under Section 84502, the top contributor disclosure required under Section 84503, and the disclosure for independent expenditure advertisements not authorized by a candidate required under Section 84506.5.

At the prenotice hearing in May, Commission members asked whether other states have addressed disclosure requirements for advertisements appearing in formats that this regulation is intended to address, such as those displayed with lasers.

Staff learned from conversations with the Maryland State Board of Elections that Maryland has not been presented with this issue but would require an “authority line” that provides the name and address of the treasurer of each campaign finance entity responsible for the campaign material and the name of each campaign finance entity for which each treasurer is acting.⁶ If the material published is by any other person it must include the name and address of the person responsible for the material.⁷

Further, as of January 1, 2020, New York requires that all political communications (i.e., political advertisements) contain a disclosure identifying the political committee that paid for the political communication.⁸ The disclosures are now required on all modes of political communications, with the exception of promotional items (e.g., pens, bumper stickers, buttons, shirts, bags, or balloons).⁹ Thus, an advertisement appearing with lasers or with a projector

⁶ <https://bolderadvocacy.org/wp-content/uploads/2018/06/AFJ-Maryland-campaign-finance.pdf>

⁷ *Ibid.*

⁸ [Notice to Filers Regarding Changes to NYS Election Law Relating to Political Advertisements](#)

⁹ *Ibid.*

would require the “paid for by” disclosure as required by the State of New York Election Laws.¹⁰

Additionally, after conversing with the Washington State Public Disclosure Commission, staff learned that Washington State also does not have rules specific to political advertising by projector, lasers, or similar formats. However, billboards are specified in the Washington Administrative Code as a means of a mass communication for purposes of political advertising.¹¹ Thus, these examples might be the functional equivalent of an electronic billboard and thus would require “sponsor identification” to comply with the Washington State law.¹²

Overall, research revealed that states generally have the same or similar rules as one another by requiring the “paid for by” disclosure (or a disclosure of similar nature) on these types of advertisements, but statutes in other states are different from the Disclose Act in that they do not provide separate disclosure rules for each type of medium used to distribute the advertisement such as print, radio, audio, video, etc., with the exception of a few states. The State of Michigan, for example, separates their advertisement disclosure requirements by print, radio, and television but does not provide specific guidance for other advertisement displays at this time.¹³

Staff is presenting an alternate draft of the regulation in addition to the version that was presented for prenotice discussion. The draft presented at prenotice sets forth the disclosure requirements for advertisements that currently do not have disclosure requirements under the Act but are nonetheless required to include disclosures and also sets forth the font size requirements depending on the size of the advertisement. The alternate draft contains general language requiring that written advertisements that do not already have a specific disclosure requirement under the Act, but are nonetheless required to include disclosures, include those disclosures in a readily legible manner, regardless of the size of the advertisement.

Disclosure for Advertisements on Listening Applications that are Both Audio and Visual

Adopt Regulation 18450.8 Disclosure for Advertisements on Listening Applications that are Both Audio and Visual

Currently, Section 84504.3, which addresses disclosures on electronic media advertisements, provides disclosure rules for electronic media advertisements in “audio only” format, which require disclosures to be spoken. Section 84504.3 has separate disclosure requirements for electronic media advertisements that are in the form of an image or video. Electronic advertisements that are images require disclosures to be displayed in written format. Electronic advertisements that are videos require written disclosures and, in some cases, spoken disclosures.

¹⁰ [State of New York 2021 Election Law \(ny.gov\)](#)

¹¹ [WAC 390-05-290:](#)

¹² [RCW 42.17A.320: Identification of sponsor—Exemptions. \(wa.gov\)](#)

¹³ Communications with the State of Michigan Bureau of Elections revealed they are currently working to streamline their advertisement disclosure requirements for advertisements that are not currently covered by Michigan law.

Proposed Regulation 18450.8 addresses a current gap in guidance on advertisement disclosures where the advertisement appears both in a visual and an audio format on an application intended mostly for listening but also has a visual aspect, such as the music application Pandora. Via informal email advice, staff has advised that disclosures on these advertisements need only appear on the visual portion of the advertisement and not on the spoken portion. However, these advertisements are typically found on mobile phone applications where the majority of users are only consuming the audio portion and not viewing the associated image or video. For these reasons, staff recommends treating the spoken portion of the advertisement as “audio only” requiring spoken disclosures and treating the visual position as one that requires disclosures to be displayed in written format as required by Section 84504.3’s image rules or video rules unless a spoken disclosure is already required.

Paid Spokesperson Disclosure

Amend Regulation 18450.11 Spokesperson Disclosure

Section 84511 requires additional “spokesperson” disclosures on a ballot measure advertisement when a committee has paid for a person to appear as well as the filing of an additional report disclosing the activity under certain circumstances.

Regulation 18450.11 provides additional guidance on the paid spokesperson disclosure requirements. Proposed amendments to Regulation 18450.11 would require a committee to include the paid spokesperson disclosure and file the report required under Section 84511 if the committee coordinated with a person that paid for the appearance of an individual in an advertisement, but that person does not qualify as a committee.

This amendment comes as a result of the FPPC Enforcement Division encountering an advertisement through the AdWatch program that involved an official appearing in a ballot measure advertisement and the committee that paid for the advertisement did not pay for the official to appear in the advertisement. Rather, a foundation, which qualified as a major donor committee, paid the official to appear and the ballot measure committee disclosed a non-monetary contribution for the payment.

Staff concluded that the foundation, as a major donor committee, was required to include a spokesperson disclosure and file the report required under Section 84511. Had the foundation not been considered a major donor committee, the Act is unclear as to whether a paid spokesperson disclosure and report would have been required. Accordingly, Commission staff presents amendments to Regulation 18450.11 to require a committee to include a paid spokesperson disclosure and file the report required under Section 84511 when it coordinates with a person that paid for the appearance of an individual in an advertisement and that person does not qualify as a committee.

Summary

The proposed amendments to existing Regulations 18435.5 and 18450.11 and the proposed new Regulations 18450.6, 18450.7, and 18450.8 will provide needed guidance related

to advertisement disclosures under the Act. Specifically, these regulations will address disclosure requirements for electronic slate mailers, disclosures for advertisements that appear primarily in a language other than English, disclosures for advertisements that are displayed in a format not specifically addressed by existing rules, disclosures for hybrid visual and audio advertisements that appear on mobile phone listening applications and paid spokesperson disclosure when a committee coordinates with a person who pays the cost for the appearance of an individual in an advertisement, but that person does not qualify as a committee.

Attachments: Proposed Regulations 18435.5 and 18450.11 for amendment and Regulations 18450.6, 18450.7, and 18450.8, for adoption.