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VIA ELECTRONIC MAIL

Chair Miadich and Commissioners Baker, Cardenas, Wilson & Wood
California Fair Political Practices Commission
ATTN: Toren Lewis, Commission Counsel
1102 Q Street, Suite 3000
Sacramento, CA 95811
Email: TLewis@fppc.ca.gov

Re: Comment Letter on Proposed New Regulation 18421.10

Dear Chair Miadich and Commissioners:

The California Political Attorneys Association (CPAA) writes to offer comments on proposed new Regulation 18421.10 relating to reporting payments in connection with amplification of online communications, pre-noticed at the September Commission meeting. We appreciate your consideration of our feedback.

CPAA is opposed to the Commission's proposed Regulation because we believe that the regulation places an unreasonable burden on committees not narrowly tailored to the Political Reform Act's stated purpose of requiring full and truthful disclosure of campaign expenditures. With this proposed Regulation, the Commission is asking committees to reveal details regarding their confidential campaign strategy that are not required with respect to other communications. While we agree that it is important that the public be informed regarding the purpose of each expenditure made by a committee, there is a distinction between informing the public of an expenditure's purpose using a description and revealing specific details regarding confidential campaign strategy.

Furthermore, the Commission emphatically advised at the September meeting to revise the definition of "amplification" previously found in subsection (a)(1) of the proposed Regulation to remove "efforts to…[b]oost, prolong, or increase the audience, presence, or visibility of a communication…" as activity covered by this Regulation. According to the Commission's discussion in September, and the accompanying staff memo, there were concerns that defining amplification in this way "would encompass too broad a scope of activities that are not inherently misleading about the level of support or opposition for a candidate or measure." However, the activity that remains regulated – "efforts to create or increase the appearance of

support or opposition for a candidate, committee, or measure online…" – *is* a form of boosting and increasing an audience – the same activity the Commission determined should *not* be regulated in any way.

It is well known that increasing engagement on social media leads to more views of that particular post or profile page. Increasing engagement not only includes such practices as attracting more followers, but also attracting more comments and likes on a post, as well as the account's frequency in posting and the type of content posted. Using Facebook as an example, its algorithm ranks posts each user sees based on different factors, one of which is the popularity of a post. A more popular post will appear higher on a person's feed, in the same way a post that is "boosted" to the top of a feed will be viewed first. In this way, the practice the Commission seeks to regulate is not different than the "boosting" activity the Commission unanimously decided to leave alone. The committee is simply choosing to pay a third-party vendor to do its "boosting" instead of paying Facebook directly.

If the Commission proceeds with adopting some version of this proposed Regulation, we strongly support the option to remove the highlighted language from Lines 6-8 on Page 1 of the proposed draft Regulation. Specifically, this language would require the disclosure of the number of types of amplification purchased "and a detailed description of the number of shares, follows, reposts, comments, likes, dislikes, or similar electronic registrations of approval or disapproval." Aside from the practical concerns of requiring such information on a campaign report, it is important to note that a committee is not required to disclose this information in other contexts, such as the number of mailers purchased, or the number of email addresses purchased when purchasing data, or the number of television and radio stations on which a committee chooses to run ads - nor should such disclosure be required.

We believe that obtaining the information required by the current version of proposed Regulation 18421.10, without removing Lines 6-8, will be very burdensome and difficult for committees. In many instances, committees do not even pay the third-party who purchases the "amplification" directly. Instead, the third-party may be paid as a subvendor of another consultant paid by the campaign. While Government Code section 84303(b) requires a subcontractor to provide details on expenditures of $500 or more made by an agent or independent contractor on behalf of the committee, we anticipate several issues when a subvendor is the entity that purchases the "amplification."

First, campaigns often have difficulty obtaining even the information currently required by Section 84303(b) from subvendors. Leading up to a campaign reporting deadline, campaigns are often scrambling to obtain a response from the vendors about the amounts paid to ensure that they comply with the required disclosure. The proposed regulation, as written, will add another layer of information for campaigns to obtain from vendors who are often unaware of the rules regarding campaign disclosure requirements.

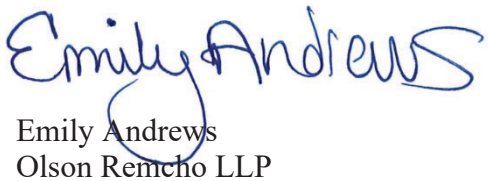
Second, the Regulation states that the information regarding the number of likes, shares, follows, etc., would be required as part of the description on a 24-hour late independent expenditure report filed pursuant to Section 84204. Given that campaigns have a difficult time

obtaining information currently required by the Act from subvendors, the likelihood that a committee will be able to obtain this information in time for a 24-hour report is extremely low. Further, because a 24-hour report for a late independent expenditure is triggered based on the date a communication is mailed, broadcast, or otherwise disseminated to the public, a campaign may not have this information at the time a 24-hour report is filed. For example, if a campaign pays their social media consultant $15,000 and files a 24-hour report when the first social media post goes live, at the time the 24-hour report is filed, the social media consultant may not yet have decided to purchase any sort of amplifying measures. Instead, the vendor may later pay another vendor to purchase amplification, at which point the campaign would need to amend the 24-hour report to include the information required by the Regulation – especially because independent expenditure costs are often reported in advance.

Given these very practical difficulties with compliance and concerns about regulating "boosting" in this way, CPAA strongly recommends the Commission reconsider this Regulation, or at the very least, adopt it *without* the highlighted language in Lines 6-8 on Page 1. If the Commission decides to move forward with requiring this information, we ask that the Commission consider requiring it only on Form 460 campaign statements under Sections 84211(k) and 84303, and not requiring the information on 24-hour late independent expenditure reports filed pursuant to Section 84204.

We appreciate the Commission's consideration of these proposed changes.

Respectfully submitted,



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