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FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Baker, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Erika M. Boyd, Senior Commission Counsel

Subject: Adoption of Amendments to Regulations Implementing SB 1360, Disclosure in Advertisements

Date: June 5, 2023

Executive Summary

Staff recommends adopting the following proposed amendments to conform with changes made to Chapter 4, Article 5 of the Act, Disclosure in Advertisements, by SB 1360:

- Regulation 18402 – Insert reference to Section 84502 regarding disclosure of committee name;
- Regulation 18450.3 – Insert reference to Section 84504(b) regarding disclosure of committee name;
- Regulation 18450.4 – Correct cross-reference in subsection (b); insert new subsection (d) related to top contributor name delineation as required by Section 84504.1(b)(4);
- Regulation 18450.6 – Insert reference to Section 84502 regarding disclosure of committee name;
- Regulation 18450.8 – Correct cross-reference in subsection (a);
- Regulation 18450.9 – Correct cross-references in subsections (a) and (b) add subsection (c) specifying formatting requirement for specified social media ads.

Staff also proposes adding provisions to Regulation 18450.4 making it clear that television campaign advertisement disclosure rules apply to television content that is delivered via connected television (CTV) or delivered via streaming services. Finally, staff recommends a non-substantive amendment to Regulation 18450.8 removing an unnecessary statutory reference in subsection (b).

The proposed amendments were presented for prenotice at the Commission's April 2023 meeting and no public comments have been received to date.

As noted at the April meeting, after further conversations with the sponsor of SB 1360, staff no longer recommends removing subdivision (b) of Regulation 18450.9 that requires social media advertisements done by a third party to link to the website or account of the committee paying for the advertisement.

Additionally, staff proposes adding subdivision (c) to Regulation 18450.9, specifying the formatting required for disclosures found on social media advertisements paid for by a political party or candidate controlled committee for elective office as required by Section 84504.4(b).

Reason for Proposed Actions

On September 30, 2022, the Governor signed SB 1360 (Umberg) into law. In relevant part, SB 1360 made changes to some of the disclosure requirements currently found in Chapter 4, Article 5 of the Act.¹ This regulation package seeks to make conforming changes to current regulations, as well as address issues in the regulations requiring further clarification or clean-up.

Background

Amendments to Section 84502 - Disclosure; Committee Name

Section 84502 specifies that certain advertisements must include the words “Ad paid for by” followed by the name of the committee as it appears on the committee’s most recent Statement of Organization (Form 410), filed with the Secretary of State. Newly enacted subdivision (e), however, now provides for the option of using a shortened committee name on the following types of advertisements: 1) video advertisements disseminated over the internet; 2) print advertisements larger than those designed to be individually distributed subject to Section 84504.2(b); 3) electronic media advertisements subject to Section 84504.3(b); and 4) text message advertisements subject to Section 84504.7.

In these instances, the committee name may be shortened by either of the following:

(1) Displaying only enough of the first part of the committee name to uniquely identify the committee. If the committee is a sponsored committee, then the name displayed must include the portion of the committee name that identifies the sponsor or sponsors, unless all of the sponsors are disclosed on the ad as top contributors as required by Section 84503. For example, if ACME Corporation is not listed as a top contributor, then a committee named “Yes on 99, Californians for a Better Tomorrow, a coalition of X, Y, and Z. Sponsored by ACME Corporation” may be disclosed as only “Yes on 99, Californians for a Better Tomorrow. Sponsored by ACME Corporation.”

(2) If the advertisement is paid for by a committee that has top contributors and is subject to Section 84503, then the committee name may be replaced by displaying the words “Committee ID” followed by the committee’s identification number.

An entity or organization qualifies as a sponsor of a committee through various means such as providing 80% or more of the committee’s funding or controlling the

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 18104 through 18998 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.

solicitation/expenditure decisions for the committee. (Section 82048.7.) A committee sponsor must be listed on the Form 410, Statement of Organization, for a committee, as well as be included in a committee name.² (Section 84102; Regulation 18419.) Additionally, specified committees must disclose the names of the top three contributors of \$50,000 or more in their advertisement disclosures. (Section 84503.) In some instances, a committee sponsor will also qualify as a top contributor.

These changes trigger proposed amendments to Regulations 18402 and 18450.6.

Amendment to Section 84503 - Top Contributor Disclosure

Section 84503 requires the disclosure of top contributors in specified instances. Previously, subdivision (b) provided that a top contributor name “**need** not include” such terms as incorporated, committee, political action committee, or corporation, unless the term was part of the contributor’s name in common usage or parlance. This language has been amended to “**shall** not include.”

This change triggers a proposed amendment to Regulation 18450.3.

As noted at the April 2023 meeting, while not a change to the statutory language, the Commission has yet to advise on interpretation of the phrase “common usage or parlance,” such that staff anticipates questions being raised as to the parameters of these terms. The Commission inquired as to the use of the terms in other areas of California law, and the law of other states as well. Aside from the Disclose Act, the only other instance of “parlance” being used in state law is found in the Elections Code. The word “parlance” was added to the Elections Code via SB 47 in 2019, in reference to the inclusion of a top contributor’s name on an initiative petition. To staff’s knowledge, the Attorney General’s office – charged with interpreting the Elections Code – has also not advised on this term.

The term “common usage” is used in various places throughout state law, including the Fish and Game Code (Section 8045), the Business and Professions Code (Section 12107.1), and the Health and Safety Code (Section 113729.5). If questions come in regarding application of this phrase, staff will take a closer look at defining these terms and whether interpretation of these terms under other state laws may be applicable here as well.

Amendments to Section 84504.1 - Disclosure; Video and Television Ads

Section 84504.1 requires advertisements paid for by a committee, other than a political party committee or candidate controlled election committee, to include top contributors as necessary when the advertisement is a video. New subdivision (b)(4) specifies the following regarding the disclosure of top contributor names:

² Alternatively, if the sponsored committee has more than one sponsor and the sponsors are members of an industry or other identifiable group, the name of the committee shall include a term identifying that industry or group. (Regulation 18419(b)(1).)

(4) If the name of one or more top contributor exceeds the width of the screen and is required to wrap onto a second line, then the names of contributors shall be clearly marked, using a highly visible symbol or minimum vertical separation defined by the Commission, to indicate where one top contributor name ends and the next begins.

Accordingly, staff has proposed changes to Regulation 18450.4 to define a highly visible symbol and minimum vertical separation.

Amendments to Section 84504.3 - Disclosure; Electronic Media Ads

Section 84504.3 provides advertisement disclosure rules for electronic media advertisements. Amendments to Section 84504.3 changed the subdivision lettering in this Section requiring non-substantive cross-reference amendments in Regulations 18450.4, 18450.8 and 18450.9. Additionally, Section 84504.4(b) references Section 84504.3(h) for advertisement disclosure rules applicable to social media advertisements for political party committees and candidate controlled committees for elective office. Because amendments to Section 84504.3 changed Section 84504.3 subdivision lettering, the Section 84504.4(b) reference to Section 84504.3(h) now references different language that does not include formatting requirements for these types of advertisements.

Therefore, staff proposes adding language to Regulation 18450.9 that would provide guidance on formatting for disclosures on social media advertisements required by Section 84504.4(b).

Connected Television (CTV)

As streaming services continue to proliferate and viewers receive content via mediums other than traditional broadcast or cable networks, staff proposes adding a definition of “television” to Regulation 18450.4 to clarify that advertisements viewed via OTT or CTV require the same disclaimers as a traditional television advertisement transmitted via a broadcast, cable, or satellite provider.

OTT (over-the-top) is a means of providing television and film content over the internet. “Over-the-top” implies that a content provider is going over the top of traditional broadcast services, such as cable or network programming. OTT is the platform that *delivers* the content via video streaming and includes such providers as Amazon Prime, Disney+, Hulu, Netflix and YouTubeTV.

CTV (connected TV) is a subset of OTT then, in that it allows a television set to be used to stream content over the internet. OTT delivers the content, while CTV allows one to *view* the content. Common devices classified as CTV include: 1) Smart TVs – TVs with built in internet connection and media platforms; 2) Connected Devices – these plug directly into a TV and stream content from the internet (eg., Amazon Fire Stick, Apple TV, Roku); and 3) Gaming Consoles – can act as a connected device via built in capabilities (eg., Nintendo Switch, Xbox).

While “television” is not currently defined by statute or regulation, in various sections the Disclose Act does draw a distinction between “videos disseminated over the internet” and “advertisements on television” (see Sections 84504.1(a) and 84504.5(b)), Reasoning that advertisements viewed via CTV are more similar to those viewed on traditional television, in that the viewer cannot interact with the screen and content appears in a similar format, staff therefore recommends adding subdivision (c) to Regulation 18450.4. This subdivision defines “television” to include CTV and requires the same disclosures thereon.

Proposed Regulatory Actions

Amend Regulation 18402 – Committee Name

Staff proposes inserting a reference to Section 84502 in subdivision (c), as that Section will now permit the shortening of a committee name in specified instances.

Amend Regulation 18450.3 - Top Contributor Disclosure for Affiliated Entities

In instances where a top contributor is a committee pursuant to Section 82013(c) (a major donor committee) and must be disclosed as a result of aggregated contributions, Regulation 18450.3 currently requires the contributor to be listed using the “name of filer” found on the major donor’s most recent campaign statement.

Proposed amendments now specify that in accordance with Section 84503(b), the top contributor’s name shall not include such terms as incorporated, committee, corporation, etc., unless the term is part of the contributor’s name in common use or parlance.

Amend Regulation 18450.4 - Video and Television Advertisement Disclosure

Proposed non-substantive amendment updates cross-reference to Section 84504.3(g) in subdivision (b) to Section 84504.3(f).

Staff proposes the addition of subdivision (c), defining “television” to include advertisements viewed via CTV and OTT and specifying these advertisements will have the same disclosures as those for television.

Staff proposes the addition of subdivision (d), defining which symbols may be used to clearly mark top contributor names as required by Section 84504.1(b)(4). Additionally, subdivision (d) specifies that there must be sufficient vertical separation of names such that the text is easily legible.

Amend Regulation 18450.6 - Disclosure on Advertisements in Languages Other than English

Regulation 18450.6 details disclosure requirements for advertisements that appear primarily in a language other than English. Subdivision (b) currently requires the use of the committee's full name on its most recent Statement of Organization (Form 410) in such instances.

Proposed amendments would permit use of the shortened committee name for those advertisements specified in Section 84502(e). For ease in reference, the specific advertisements where the shortened name is permissible are listed in the Regulation.

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

Proposed non-substantive amendment updates cross-reference to Section 84504.3(g) in subdivision (a) to Section 84504.3(f).

Regulation 18450.8 applies to disclosures on advertisements on listening applications that use an audio and visual format simultaneously. In reviewing this Regulation staff noted that subdivision (b) specifies the audio portion of the advertisement must follow the disclosure requirements for radio advertisements as found in Sections 84504 and 84504.4. The requirements for radio advertisements found in Section 84504.4 are already included in the requirements found in Section 84504, such that staff recommends deleting the reference to 84504.4. This not only removes unnecessary cross-references from the Regulation, but also helps to ensure that the Regulation need not be amended in the future should there be a relevant change to Section 84504.4.

Amend Regulation 18450.9 - Website Advertisements and Third-Party Social Media Advertisements

Proposed non-substantive amendment updates cross-reference to Section 84504.3(d) in subdivision (a) to Section 84504.3(c). Additionally, proposed amendment to subdivision (b) updates the cross-reference to Section 84504.3(h) to Section 84504.3(g).

Staff proposes the addition of subdivision (c), specifying the formatting required for the disclosures on social media ads paid for by political party and candidate controlled committees for elective office required by Section 84504.4(b). These would be the same formatting requirements applicable to social media advertisements done by other types of committees.

Summary of Public Comment & Responses

The proposed amendments to these Regulations were presented to the Commission for prenotice discussion at the April 20, 2023, Commission meeting. No comments have been received from the public to date.

Education/Outreach Efforts

Commission staff will distribute the Regulations to interested parties by means of the “Newly Adopted, Amended or Repealed Regulations” email list and update the “Newly Adopted, Amended or Repealed Regulations” page on the website. Staff will also review all relevant educational materials (including political advertising disclosure charts, campaign manuals, committee naming fact sheet, etc.) and update accordingly.

Conclusion

The proposed regulatory amendments aim to make conforming changes as necessary in regard to changes made to the advertisement disclosure requirements by SB 1360, as well as other clarifying amendments.

Staff recommends adoption of the proposed amendments.

Attachments:

- Proposed Amendments to Regulation 18402
- Proposed Amendments to Regulation 18450.3
- Proposed Amendments to Regulation 18450.4
- Proposed Amendments to Regulation 18450.6
- Proposed Amendments to Regulation 18450.8
- Proposed Amendments to Regulation 18450.9