



# California Fair Political Practices Commission

September 17, 1990

Wes Van Winkle  
Of Counsel  
Law Offices of Bagatelos & Fadem  
601 California Street, Suite 1801  
San Francisco, CA 94108

Re: Your Request for Advice  
Our File No. A-90-540

Dear Mr. Van Winkle:

You are seeking advice on behalf of Taxpayers for Common Sense, a committee which opposes the passage of Proposition 134, regarding its duties and responsibilities under the campaign advertising disclosure provisions of the Political Reform Act ("the Act").<sup>1/</sup> Specifically you are requesting advice concerning the impact of the "major funding sources" disclaimer provisions of Proposition 105 on traditional campaign items, such as campaign buttons, bottleneck hanger cards and other items on which you contend that disclaimers would be impractical or costly.

#### QUESTION

Do the disclosure requirements of Proposition 105 apply to all forms of general and public advertising regardless of size, including but not limited to, campaign buttons, bumperstickers, and skywriters, or only to certain communications such as, radio, television, newspaper and magazine?

#### CONCLUSION

The disclosure provisions of Proposition 105 are applicable to all forms of general and public advertisement. The only exception made in the Act concerning the size of the advertising form affects the content of the disclosure, not the requirement to disclose.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### FACTS

Taxpayers for Common Sense is a ballot measure committee sponsored by the beer, wine and distilled spirits industry. It is opposing the passage of Proposition 134. Taxpayers for Common Sense intends to produce automobile bumperstickers, campaign buttons, bottleneck hanger cards, restaurant table "tent" cards, back-bar electronic digital read-out messages and other similar items for distribution at the "point-of-sale" of beer, wine and distilled spirits. In addition, the committee also is considering other unique and novel methods of communication, such as electronic messages at football audiences from the side of the Goodyear Blimp or skywriting over Candlestick Park during a 49er game. The message the committee wishes to convey is "No on 134", "134 No", and so forth.

It is your position that the disclaimer required by Proposition 105 on certain items is impractical or cannot be conveniently written, and, in others, too expensive. Therefore, you argue that the Commission should follow federal law and exempt certain communications from the disclaimer requirements of Proposition 105. In addition, it is your belief that neither the author of Proposition 105, nor the voters, contemplated all forms of public political communications as advertising. For that reason, you recommend that the Commission limit the coverage of Proposition 105 to radio, television, newspaper and magazine advertisements.

### ANALYSIS

Sections 84501 through 84514 were added to the Act as a result of the enactment by the voters of Proposition 105 in the November 1988 election. These provisions, effective January 1, 1990, impose specific disclosure requirements on committees which pay for or authorize an advertisement in support of or opposition to an initiative. (Section 84503.) The disclosure requirement is applicable only to any general or public advertisement<sup>2/</sup>, the content of which is more than 50 percent devoted to one initiative<sup>3/</sup> (Section 84512), paid for and authorized by any committee which has made expenditures of at least \$50,000. (Section 84502.) When required, the disclosure consists of an acknowledgment, contained in the advertisement, of the major funding sources of the organization which authorized and paid for the advertisement.

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<sup>2/</sup> Section 84503 provides that "advertisement" does not include a communication from an organization to its members.

<sup>3/</sup> An initiative is defined as "a qualified statewide initiative measure or a qualified statement referendum measure" (Section 84501).

Because Proposition 134 on the November, 1990 ballot is a "qualified state initiative," the provisions of Proposition 105 are applicable to any general or public advertisements in support of or in opposition to the proposition. The facts you have provided demonstrates that a committee, Taxpayers for Common Sense, will be authorizing and paying for the advertisements in opposition to an initiative, Proposition 134. Therefore, Taxpayers for Common Sense is subject to the disclosure requirements concerning its major funding sources pursuant to Section 84507.<sup>4/</sup>

The federal law to which you refer (2 U.S.C. § 441d; 11 CFR § 110.11) concerns expenditures made by persons for the purpose of financing communications that expressly advocate the election or defeat of a candidate or solicit contributions through forms of general public political advertising, which are expressly enumerated as "broadcasting station," "newspaper," "magazine," "outdoor advertising facility," "poster," "yard sign," "direct mailing" or any other form of general public political advertising. (2 U.S.C. § 441d; 11 CFR § 110.11(a)(1).) The federal law requires a disclaimer which will give the reader, observer, or listener adequate notice of the identity of the persons who paid for (and, where required, who authorized) the communication. The federal law further enumerates forms of general public political advertising to which the disclaimer requirements do not apply. (11 CFR § 110.11(a)(2).) These consist of "bumper stickers," "pins," "buttons," "pens," and similar small items upon which the disclaimer cannot be

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<sup>4/</sup> This section reads as follows:

**§ 84507. Disclosure of Major Funding Sources.**

Any advertisement authorized by a committee shall include a statement that each of the following, where applicable, is a major funding source:

(a) Any industry which is both the largest industry contributor to the committee and whose combined contributions to the committee are five hundred thousand dollars (\$500,000) or more, or are fifty thousand dollars (\$50,000) or more and constitute 25 percent or more of all contributions.

(b) A person whose contributions to the committee are one hundred thousand dollars (\$100,000) or more and who is the largest contributor.

(c) Corporations as a group when their combined contributions to the committee are one hundred thousand dollars (\$100,000) or more and constitute 50 percent or more of all contributions, and unions as a group when their combined contributions to the committee are one hundred thousand dollars (\$100,000) or more, and constitute 50 percent or more of all contributions.

(d) Out-of-state contributors as a group, when their combined contributions to the committee are one hundred thousand dollars (\$100,000) or more, and constitute 50% or more of all contributions.

conveniently printed. In addition, the disclaimer requirements do not apply to "skywriting," "water towers," or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable. (11 CFR § 110.11(a)(2).)

In two important respects, the federal law on communications/advertising is unlike state law on initiatives/advertising. First, federal law requires the advertisement disclose who paid for the communication, and where required, who authorized the communication. State law requires the advertisement disclose the "major funding sources" of the committee which authorized and paid for the advertisement. Secondly, the federal statute expressly lists forms of advertisements to which the disclosure requirements apply. It follows, therefore, that it was permissible to set forth the exceptions in the regulations. The provisions of Proposition 105 do not enumerate forms of general or public advertisements and do not create exceptions to the forms of advertisements ("any") or to the disclosure requirements for impracticability or cost. The only provision which recognizes the issue of size, Section 84510, does not negate the disclosure requirement but merely limits the disclaimer.<sup>5/</sup>

Looking to the plain meaning of the statute as well as to the overall legislative scheme,<sup>6/</sup> we have concluded that the disclosure provisions of Proposition 105 are applicable to all forms of general and public advertisement. (Fishburn Advice Letter, No. A-90-363 (lawn signs), copy enclosed.) For that reason, we have advised you telephonically that bumper stickers and pins must contain a disclosure appropriate for the size of the form of the advertisement.

We are continuing to redefine our advice concerning Proposition 105, and are in the process of drafting further regulations to implement its provisions. We recognize that

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<sup>5/</sup> Section 84510 provides as follows:

If disclosure of two funding sources is required by Section 84507, the committee is only required to disclose one funding source on any advertisement which is:

(a) an electronic broadcast advertisement of less than 25 seconds, or

(b) a newspaper, magazine, or other public print media advertisement which is less than 25 square inches.

<sup>6/</sup> When the voters approved the Act in 1974, concern was expressed over the influence of large campaign contributors in, and the high voter dependency on, paid advertising for information regarding state ballot measures. (Section 81001, 81002.)

certain "advertisements" do not readily lend themselves to the inclusion of a disclaimer. However, staff feels constrained to interpret conservatively the express language of the statute. The advice you have been provided in this letter may change if the Commission adopts a regulation which reaches a different conclusion from that suggested in this letter.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please do not hesitate to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel

*Deanne Stone*

By: Deanne Stone  
Counsel, Legal Division