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June 18, 2013

Chair Ravel and Commissioners Casher, Escovitz, Wynne, and Wasserman  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

**RE: Agenda Item #19: Discussion of Draft Regulation 18421.5**

Chair Ravel and Commissioners,

On behalf of California Common Cause and our 400,000 national members, please accept our comments for this important discussion for Agenda Item #19 regarding Draft Regulation 18421.5.

California Common Cause does not have a position on the current draft of the 18421.5, but has been supportive of this policy concept throughout the process. We believe there should be transparency on paid online communications because voters deserve to know when an online communication is being purchased rather than volunteered. By providing this needed transparency, voters will be able to assign a value judgment to paid political messages.

Common Cause has a vibrant social media presence which we have consistently used to promote our issues and campaigns, so compliance with these new regulations is of utmost importance to our participation in a healthy democracy. Our support, however, hinges on many pending issues that we discuss in detail below.

**What is “content”?**

We urge the Commission to have a thorough discussion as to the definition on online “content” and what it means to “provide” that content. As you are aware, the Internet allows voters and campaigns to interact in a myriad ways. However, these interactions are not static. Developers are constantly inventing new and innovative systems for people to connect, share, and collaborate. The unregulated nature of the Internet makes regulating its activities very difficult.

To promote this discussion, we have provided a series of questions the Commission should consider when discussing this regulation:

Would a photo or creating a photo-meme be considered content? Would commenting on a news article or blog post be regulated? Would an online poll be considered content? Would an unrecorded, live webcast, be regulated? Would creating a page or group on a social networking site be considered content?

What does it mean to “provide” content? Is online sharing or “liking” considered “providing content”? Is collaborating on content the same as providing the content? Is the Commission’s goal to regulate a snapshot of the Internet as it is today or to adopt regulation for future, yet unknown, means of online interaction?

**Online identities:**

One of the strongest attractions to the Internet, good or bad, is its ability to protect the anonymity of users. Online content providers regularly create pseudonyms in order to keep their identities from being exposed. In fact, many website require users to create usernames rather than use their real identities.

The draft regulation does not require the disclosure of an individual's online identity, username or other pseudonyms which will make full enforcement of this regulation extremely difficult. We urge the Commission to discuss if the disclosure of usernames should be required. Additionally the Commission should ask Commission staff how they plan to handle cases when content is created using pseudonyms.

**Definition of “in-house campaign staff”:**

Section (a) of 18421.5 allows an exemption for “in-house campaign staff”, however there is currently no definition in the draft of 18421.5 or any other Commission regulation clearly defining who, what, and when an individual is considered “in-house campaign staff.” Would the paid staff of a sponsoring organization of a committee be considered in-house campaign staff? At what point is someone considered “in-house” versus a “contract” content provider?

We would also inquire as to why in-house campaign staff is exempt from these disclosure provisions? These individuals are still able to develop online communications which may be used to convince voters on the Internet. Common Cause would urge the Commission to examine this exemption and evaluate whether the public is best served through this exemption.

**Use of the terms “favorable or unfavorable”:**

The terms “favorable” and “unfavorable” are uncommon terms in statute and regulations as they relate to political speech. The terms “support” or “oppose” are well established in statute. The terms favorable or unfavorable are broad terms to encompass a wide variety of speech or phrases which could be difficult for the regulated community to know when a line has been crossed or even for the FPPC to enforce. The Commission should evaluate the use of these terms and, if needed, make amendments to the regulations.

**Examples of disclosures:**

We believe it would best serve the public discussion if examples of the proposed disclosures were prepared for the Commission. The Commission's response to these examples would further assist the regulated community understand the intent of the regulations. To make these examples as useful as possible, we will portray real content as if they were paid for using fictitious names.

*Example 1, disclosure of a blog post on a independent blog on Redstate.org:*

Committee: Committee for a Red California

Amount: \$230.00

Payee: RedCal Communications

Person: Maggie Johnson

URL: <http://www.redstate.com/2013/06/19/mayors-against-illegal-guns-tamerlan-tsarnaev/>

*Example 2, disclosure for three photos posted on California Common Cause's Facebook:*

Committee: Committee for Common Cause

Amount: \$200

Payee: Common Communications

Person: Phillip Ung

URL:

<https://www.facebook.com/photo.php?fbid=543725955662888&set=a.157671234268364.24696.120505727984915&type=1>

<https://www.facebook.com/photo.php?fbid=541816049187212&set=a.335866033115549.69327.120505727984915&type=1>

<https://www.facebook.com/photo.php?fbid=541377559231061&set=a.157671234268364.24696.120505727984915&type=1>

*Example 3, disclosure of a comment on a Sacramento Bee article:*

Committee: Committee Against Big Boxes

Amount: \$110

Payee: Small Boxes Inc.

Person: James Cutter

URL: <http://www.sacbee.com/2013/06/19/5507182/bigbox.html#comment-935555762>

*Example 4, disclosure of a Twitter post:*

Committee: Committee for Blogging

Amount: \$2000

Payee: Social Productions Inc.

Person: Hannah Ferrela

URL: <https://twitter.com/PaulBlu/status/347407058640990209>

*Example 5, disclosure of a Youtube Video:*

Committee: Committee for Video Independence

Amount: \$5000

Payee: Social Productions Inc.

Person: Hans Brulek

URL: <http://www.youtube.com/watch?v=6dmJzmsKcxQ>

We look forward to having a vibrant discussion about this complex regulation. Please do not hesitate to contact me if you have any questions.

Sincerely,



Phillip Ung  
Policy Advocate