California Clean Money Campaign

Help achieve an open and accountable government

December 11, 2017

VIA EMAIL

Chair Remke and Commissioners
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Dear Chair Remke and Commissioners,

The California Clean Money Campaign would like to thank the Commission for quickly addressing the initial regulations needed to implement AB 249, the *California DISCLOSE Act,* and appreciates the opportunity to comment on them.

As sponsor of AB 249, we worked closely with each of the *California DISCLOSE Act* authors since 2011, so we can speak explicitly to the intent of the bill's language. As such, we would like to congratulate the FPPC staff for doing an excellent job drafting the initial set of regulation changes needed. Our only comments on this round of regulations regard the proposed changes to Regulation 18450.1's definition of "Advertisement".

Our key concern is with draft Regulation 18450.1(a)'s requirements that certain communications be in quantities of 200 or more to be considered an "advertisement" in paragraphs (3), (4), (5), (6), and (8). That does not reflect the clear text of AB 249, the intent of its sponsor, nor, we believe, the legislature.

AB 249 clearly lays out the quantities of communications requiring different disclosures in three places:

Section 84305 describes disclosures required for mass mailings and mass electronic mailings paid for by "a candidate, candidate controlled committee established for an elective office for the controlling candidate, or political party committee", defining "mass electronic mailing" for purposes of Section 84305 as "sending more than two hundred substantially similar pieces of electronic mail within a calendar month."

Section 84310 describes disclosures required for telephone calls paid for by "a candidate, candidate controlled committee established for an elective office for the controlling candidate, political party committee, or slate mailer organization" that "are similar in nature and aggregate 500 more in number".

Sections 84504, 85404.2, and 85404.3 describe disclosures required for advertisements that are paid for by "a committee, other than a political party committee or a candidate controlled committee established for an elective office of the controlling candidate" (meaning independent expenditures and/or ballot measure ads), disseminated over the radio or by telephonic means, for print advertisements, mailers, yard signs, and billboards, and electronic media communications, respectively. Unlike Sections 84305 and 84310, these sections do not have minimal quantities required to trigger their disclosure requirements. They require disclosures for any number of ads as long as they meet the definition of "advertisement" in Section 84501.

As sponsors of AB 249, we can say that the inclusion of minimal quantity requirements for ads paid for by candidates or political parties in Sections 84305 and 84310 but not including minimal quantity requirements for ads paid for by independent expenditures or ballot measure committees was purposeful and was the

explicit intent of the bill, for the same reasons that AB 249 imposed more visible disclosure requirements on IEs and ballot measure ads than those paid for by candidates.

The key intent of AB 249 is to make sure that when voters see independent expenditure ads and ads about ballot measures, they are made aware of the funders of the ad. As AB 249 Senate floor manager Senator Ben Allen said on the floor of the Senate, AB 249 *"makes it very clear to a voter when they receive a mailer that it is coming from an independent expenditure and not a campaign."* This is important because a natural assumption of voters is that ads are paid for by candidates themselves if they don't see a very visible disclosure to the contrary. That's why Section 84506.5 explicitly requires ads to say when they are not authorized or paid for by a candidate.

Allowing candidate committees mailing fewer than 200 pieces or calling fewer than 500 people with a similar message to not include the disclosure statements, as in Section 84305 and Section 84310, fits with AB 249's intent, because the voters that see those messages will generally correctly assume that it came from the candidate. But allowing independent expenditures or ballot measure ads to avoid disclosures would lead many voters who see them to falsely conclude that the candidate paid for them, which is why Sections 84504-84504.3 purposefully require their disclosures at any quantities.

Advertisements made in quantities of fewer than 200 can be important for campaigns. A single well-placed yard sign may be seen by hundreds or even thousands of people, which could be very meaningful in any election and especially local elections. Even a mailer or email seen by fewer than 200 people could have a significant impact on a campaign, if, for example, they are targeted at opinion leaders or elected officials being asked to endorse or oppose a ballot measure.

Just as important, as people become aware of the very visible new disclosure requirements of AB 249 for ballot measures and IEs, they are likely to come to expect them. How is a voter who receives ballot measure or IE communications without a disclosure statement to know whether they are viewing an ad that violates AB 249 by not including the required disclosures, or is one that isn't required to include disclosures because it was produced in quantities under 200? Such differences would likely lead to voter confusion and numerous false reports to the FPPC of disclosure violations.

We understand that the draft amendments to regulation 18450.1 take the 200 threshold from the existing regulation, which was originally put into place partially for the laudable reason of not requiring individuals or others who don't spend enough to become a committee to comply with disclosure requirements. However, AB 249's disclosure requirements only apply to committees, so that is no longer an issue.

It is true that AB 249's section 84501(a)(2)(F) gives discretion to the FPPC to define other types of communications that are not to be considered "advertisements". However, the intent of that exclusion is to allow the FPPC to exclude other types of advertisements than the types listed in 84501(a)(2)(A)-(E) for which requiring AB 249's disclosures would be impracticable, not to allow the Commission to set quantity thresholds for being considered advertisements. It clearly is practicable and valuable for telephone, facsimile, email messages, direct mailings, print ads, and yard signs to include AB 249's disclosures. Printing fewer than 200 copies would not make it any less practicable to fit the disclosures on the ads or make them.

We therefore respectfully request that you amend paragraphs (3), (4), (5), (6), and (8) of draft regulation 184501.1(a) to only apply to ads paid for by "a candidate, candidate controlled committee established for an elective office for the controlling candidate, or political party committee", as in AB 249's Section 84305 and the clear language and intent of Section 84504, 85404.2, and 85404.3 to apply regardless of quantity.

We also request that you amend paragraph (3) of draft regulation 184501.1(a)(3) to specify that telephone communications paid for by "a candidate, candidate controlled committee established for an elective office

for the controlling candidate, or political party committee" are only considered advertisements when they are intended for delivery to more than 500 recipients, consistent with AB 249's Section 84310.

Thank you again for the opportunity to comment to ensure that the intent of AB 249 is fulfilled.

Sincerely,

Trent Lange, PhD.
President and Executive Director
California Clean Money Campaign