



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Miadich and Commissioners Baker, Cardenas, Wilson, and Wood

**From:** Dave Bainbridge, General Counsel  
Toren Lewis, Commission Counsel

**Subject:** Prenotice Discussion of Proposed New Regulation 18421.10, Reporting Payments in Connection with Amplification of Online Advertisements and Communications

**Date:** September 3, 2021

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### **Proposed Commission Action**

Staff presents a regulatory proposal related to amplification of electronic advertisements and online communications under the expenditure reporting requirements of the Act<sup>1</sup> for prenotice discussion. The proposed regulation included with this memorandum is intended to facilitate discussion and allow the Commission to provide guidance and instruction to staff prior to presenting final versions for approval at a subsequent Commission meeting.

### **Background**

#### *Amplification*

“Amplification,” is the practice of artificially increasing the apparent audience size of an online communication to give it a veneer of popularity, as well as paying to increase the online presence of a communication through sharing and other means. For example, several services offer social media “likes” and “followers” for sale. Other services sell amplification “bots,” which are automated programs that automatically retweet a customer’s content. At the April 2021 Commission Meeting, Commissioner Wood raised the issue that a lack of transparency exists when it comes to campaign reporting in this area. Proposed new Regulation 18421.10 would provide the public with more information when a committee makes a payment for the amplification of an electronic advertisement or online communication.

Staff presented a version of this regulatory proposal as part of proposed amendments to existing Regulation 18421.5 at the Commission’s June Meeting, at which the Commission instructed staff to instead present revised language as a standalone regulation for prenotice at a subsequent meeting.

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<sup>1</sup> 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 18110 through 18997 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.

## *Campaign Expenditure Reporting*

Section 84211(k) of the Act requires a committee, for each person to whom it makes an expenditure of \$100 or more, to report the following information on its campaign statements and reports:

- (1) Their name.
- (2) Their address.
- (3) The amount of each expenditure.
- (4) A brief description of the consideration for which each expenditure was made.

Existing law therefore requires a candidate or committee that makes an expenditure to pay for amplification services to report the expenditure, including a “brief description of the consideration for which each expenditure was made.” Beyond this general requirement, however, there is no explicit requirement that an expenditure made to amplify an electronic advertisements or online communications be described with sufficient specificity to inform the public that a committee had paid for a communication to be amplified. For example, when reporting an expenditure for amplification of social media messaging on its campaign statements and reports, a committee in describing the consideration for which each expenditure was made might use the codes CNS (campaign consultants), LIT (campaign literature and mailings), or WEB (information technology costs), none of which tells the public much about the purpose of the payment. By contrast, it would be much more informative if a committee reported an expenditure of \$100 paid to “XYZ Strategies for 10,000 Instagram followers.”

If the communication in question falls under Regulation 18421.5, a committee paying a third party to disseminate favorable or unfavorable online content may be required to report additional information, or, alternatively, ensure that the third party includes a disclosure statement on the communication itself. However, neither the heightened expenditure reporting requirements nor optional disclosure statement would necessarily indicate to the public that a committee had paid for a communication to be amplified.

Likewise, current law requires committees to include disclosures on campaign advertisements that identify the committee that paid for or authorized the communication,<sup>2</sup> but the advertisement disclosure rules themselves do not require a committee to inform the public with any specificity about payments to amplify advertisements through third parties.

### **Proposed Regulation**

There are two ways in which the Commission could address the issue of lack of transparency around amplification of campaign advertisements and online communications. One is by adding one or more new, more informative codes to the campaign forms, such as on Form 460, Schedule E, (Payments Made). However, the Secretary of State’s Office, which oversees electronic campaign filings, is currently working on the CAL-ACCESS Replacement System

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<sup>2</sup> “Advertisement” generally means any general or public communication that is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for elective office or a ballot measure or ballot measures. (Section 84501).

(CARS) and may be unable to implement such a change at this time. Therefore, it may be prudent to wait until the system is launched to add any new fields or codes to the campaign forms.

The second way in which the Commission could ensure greater disclosure around amplification of online messaging, put forth in proposed new Regulation 18421.10, is to require a more specific description of payments for amplification in campaign statements. Proposed new Regulation 18421.10 would require a committee that makes a reportable expenditure for amplification measures to specifically describe the payments on its campaign statements, including providing information about the number of likes, retweets, follows, etc. the committee purchased, or the number of increased views sought.

Proposed new Regulation 18421.10 would provide that “amplification” includes efforts to:

- (1) Boost, prolong, or increase the audience, presence, or visibility of a communication through sharing or other similar means.
- (2) Create or increase the appearance of support or opposition for a candidate or measure online through the purchase of followers, friends, shares, follows, reposts, comments, likes, dislikes, or similar electronic registrations of approval or disapproval that are visible to other users of an online platform, service, web application, digital application, or Internet site.

### **Summary**

Proposed new Regulation 18421.10 would provide the public with more information about amplification of online advertisements and communications by requiring committees that make expenditures for amplification to include more specific information about such payments on the committee’s campaign statements.

**Attachment:**

Proposed New Regulation 18421.10