



Ethics Commission

MEMORANDUM

DATE: January 5, 2018

TO: Chair and Members of the San Diego Ethics Commission

FROM: Stacey Fulhorst, Executive Director

SUBJECT: Recent State Law Amendments to Campaign Advertising Disclosure Laws
Docketed for Ethics Commission Consideration on January 11, 2018

At the Commission's December meeting, the Commission expressed its preliminary support for staff's recommendation to incorporate relevant California Government Code sections and FPPC Regulations into ECCO with the following exceptions and additional restrictions:

- In instances where state law imposes no disclosure requirements on candidates, require that local candidates follow the least restrictive "paid for by" rules in state law.
- Include a provision applying the City's current "on behalf of" disclosure rules to telephone communications made by volunteers.
- With regard to the identification of major donors on campaign advertisements:
 - ✓ Exclude general purpose recipient committees [GPRCs] from the City's major donor disclosure requirements in light of constitutional concerns (effectively defer to the state for regulation of this law).
 - ✓ Require primarily formed recipient committees [PFRCs] to include a "funding details" disclosure on their campaign ads that points to a website identifying all of their \$10,000+ donors (see additional discussion below) to replace the current local law that requires identification of the top two donors of \$10,000+ on campaign advertisements.
 - ✓ Incorporate the seven day period contained in new state law in lieu of ECCO's current requirement that advertisements identify the committee's top donors as of the date the order is placed.

- ✓ Maintain ECCO's current requirement that PFRCs look back to their inception date when determining its major donors rather than follow the state's new twelve month provision.
- Not incorporate any disclosure requirements for ads disseminated via email, text messages, social media posts, or a committee's own website, or incorporate the state requirement that committees making independent expenditures to support or oppose a candidate expressly state that the communication was "not authorized by" the candidate. In other words, defer to the state to regulate these laws.

As discussed at the December meeting, state law requires that committees primarily formed to support or oppose a state candidate or ballot measure must maintain a list of their top ten donors for publication on the FPPC's website. The relevant sections of the Government Code (which include recent updates included in AB 249) and the corresponding FPPC Regulation set forth the following with respect to these state requirements:

- All committees primarily formed to support/oppose state candidates/measures that raise \$1 million or more must maintain an accurate list of their top donors of \$10,000 or more.
- If any one of the top ten donors on the list is a committee, the list must also identify the top two donors of \$50,000 or more to the contributing committee.
- Committees must provide the list to the FPPC via email for disclosure on the FPPC's website, and must provide an updated list whenever a new donor qualifies as a top ten contributor, whenever an existing top ten donor makes additional contributions, or when a change occurs that alters the ranking order of the top ten contributors. Such updates must be provided within three business days unless the update occurs within sixteen days of an election, in which case it must be provided to the FPPC within two business days.
- The top ten donor list must indicate whether a donor is a recipient committee or major donor, and must include the committee or major donor committee identification number.
- Immediately below the advertising disclosure identifying their top three donors, committees must include the phrase "Funding Details At" followed by the FPPC's website address.

For purposes of incorporating similar website disclosures in ECCO, staff recommends the following deviations from the state law model:

- Immediately below the "paid for by" and \$50,000+ major donor disclosure required by state law, require PFRCs to state "Funding Details at www.sandiego.gov/ethics/donors."
- Because ECCO currently requires PFRCs to identify their top \$10,000+ donors on campaign ads – regardless of the total amount of contributions received by the committee

– staff recommends that the Commission maintain the same level of transparency by requiring all PFRCs (with at least one \$10,000+ donor) to comply with the website disclosure provision. Moreover, limiting website disclosures to only those PFRCs that have reached an overall fundraising threshold could result in committees splintering into multiple coordinated committees that intentionally stay under that threshold in order to avoid donor disclosure.

- Because the website disclosure option was proposed as an alternative to avoid potential difficulties associated with ranking top donors, staff recommends an approach that is much simpler than the state model. In particular, the information submitted for posting on the Commission's website would be limited to the name of the donor and, if the donor is a recipient committee, the committee identification number. Staff's proposal does not require that committees rank the donors, report the amounts of the donors' contributions, or report the donors' top two \$50,000+ contributors. This approach also alleviates the need for committees to provide updates to the Commission whenever a \$10,000+ donor makes additional contributions.
- Require committees to notify the Commission via email within three business days whenever they receive contributions that cumulatively total \$10,000 or more from a single donor. Staff recommends not following the state's model for shortening the notification period by one day during the 16 days prior to an election because (1) it complicates the rules without offering a significant benefit in exchange; and (2) it will help alleviate the Commission's recently articulated concerns regarding the extra time needed to process non-monetary contributions.

A draft strike-out reflecting the above-referenced updates to ECCO, as well as a chart comparing state and local (proposed) laws, are attached for your review.

On a final note, staff had hoped to provide updates concerning the FPPC's implementation of AB 249 at the Commission's January meeting. Unfortunately, the FPPC decided to carry over its key policy decisions to its next meeting on January 18, 2018. Accordingly, staff will plan to provide these updates at the Commission's February meeting.

Attachments