



MEMORANDUM

DATE: December 1, 2017

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 December 14, 2017

As you will recall, the staff memo prepared in connection with the Commission’s November meeting included a series of proposed amendments that would mirror the most restrictive requirements in the new state laws but apply them consistently to all types of committees. In reviewing the new state laws, some Commissioners suggested that it might not be appropriate to apply certain advertising requirements to all types of committees. Additionally, subsequent to the November meeting, staff determined that the proposal would necessarily require that City committees include two disclosures on campaign literature sent through the mail: a sender identification on the outside and a “paid for by” disclosure in a box at the bottom of the mailer. Accordingly, staff gave additional consideration to alternative approaches for the Commission’s consideration, including an option that would involve the following:

- Incorporate the relevant California Government Code sections and FPPC Regulations into ECCO. This would automatically incorporate any future updates of state campaign advertising laws into ECCO without the need for local amendments. (Local law currently incorporates the state laws that govern the filing of campaign statements; this approach has proven to be very beneficial whenever the state updates its filing laws.)¹
- In instances where state law imposes no disclosure requirements on candidates, require that local candidates follow the state’s “paid for by” rules that apply to independent expenditure committees. Doing so will increase consistency amongst the various types of committees while ensuring that candidates continue to make disclosures on their advertisements. For example, under state law, candidates are not required to include

¹ With respect to telephone communications, state advertising laws do not apply to legitimate polling calls (only to advocacy calls, which include “push polls”); however, polling calls in San Diego would still require a “paid for by” disclosure if made within 90 days of an election (under ECCO’s current “electioneering communications” provisions).

“paid for by” disclosures on yard signs; under ECCO, they would make such disclosures in the same manner as other committees. On the other hand, because candidates are required by state law to include “paid for by” disclosures on television advertisements, they would simply follow the rules in state law that have been incorporated into ECCO.

- 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:
 - ✓ Exempt general purpose recipient committees [GPRC] from major donor disclosure requirements for the reasons set forth in the staff memorandum dated November 1, 2017.
 - ✓ Maintain the current \$10,000 threshold for donors contributing to primarily formed recipient committees [PFRCs]. Staff has compiled additional data from past election cycles (see attached), which indicates that: (1) PFRCs typically do not receive many contributions over \$10,000; (1) PFRCs often receive no contributions over \$49,999; and (3) under the new state rules requiring disclosure of the top three donors, two-thirds of the candidate PFRCs would have avoided disclosing at least one major donor if the threshold was \$50,000 instead of \$10,000.
 - ✓ Consider maintaining the provision in ECCO that requires committees to identify their major donors at the time the advertising order is placed, as opposed to incorporating the seven day period contained in the new state laws. At its November meeting, the Commission considered the fact that committees sometimes do not receive information regarding non-monetary contributions (which could affect the determination regarding top major donors) in a timely manner; however, the seven day waiting period will arguably increase opportunities for committees to “game the system” to avoid disclosure of certain contributors on campaign advertisements.
 - ✓ Note that staff has conferred with Netfile (the host of the City’s free online filing system and the proprietor of software purchased by many professional treasurers) and confirmed that both its free and paid software allow committees to easily identify their top contributors (including both monetary and non-monetary contributions) for any specified timeframe.
 - ✓ Consider increasing the state’s new 12 month lookback provision for identifying major donors to 24 months. The 12 month period was apparently adopted because GPRCs, which often operate for decades, may have large donors from many years back who have no interest in supporting a current candidate or measure. By exempting GPRCs, as discussed above, only PFRCs would be required to make major donor disclosures on their advertisements under ECCO. Because PFRCs are “primarily formed” for the purpose of supporting specific candidates and/or measures, their donors can be expected to be supportive of the committee’s current

campaign activities. Expanding the lookback time period to 24 months would correspond to the standard two-year election cycle and ensure that significant contributions made to PFRCs more than 12 months earlier would not be excluded from donor disclosure.

- Include exemptions clarifying that the City will defer to the state with respect to the regulation of advertisements disseminated via email, text messages, social media posts, and a committee's own website, as well as the requirement that committees making independent expenditures to support or oppose a candidate include a disclosure indicating that the communication was "not authorized by" the candidate. In addition, include an exemption for the state's slate mailer advertising rules to maintain the City's current practice of not regulating any aspect of slate mailers.

Although this approach would not result in the exact same disclosure requirements imposed on all types of committees, it would more closely mirror state law, significantly improve consistency across the various types of committees, and greatly reduce the need for subsequent amendments whenever the state's advertising disclosure rules are modified.

MAJOR DONORS TO PRIMARILY FORMED RECIPIENT COMMITTEES

PRIMARILY FORMED RECIPIENT COMMITTEES 2016 Primary and General Elections - Candidates		
Committee Name	\$10K-\$49K donors	\$50K+ donors
Citizens for Safe San Diego (Hickey)	2	0
Citizens for Good Government (Bry)	0	0
Citizens Opposed to Hickey	1	0
Coastal Communities Fair Economy (Ellis)	8	1
Communities United for Tomorrow (Faulconer)	3	5
Neighborhood Services Coalition (Bernal)	2	0
Neighborhoods, Not Stadiums (Ellis)	0	1
San Diegans for Justice (Castellanos)	1	0
San Diegans for Safe Neighborhoods (Hickey)	4	2
Urban Neighborhoods United (Flores)	0	1

PRIMARILY FORMED RECIPIENT COMMITTEES 2016 General Election - Ballot Measures		
Committee Name	\$10K-\$49K donors	\$50K+ donors
Citizens for Fair & Honest Elections (No on K)	0	2
Citizens for Responsible Management of Major Tourism and Entertainment Resources (Yes on D)	1	3
No Downtown Stadium (No on C)	0	1
San Diegans for Full Voter Participation (Yes on K & L)	16	10
Save San Diego High (Yes on I)	1	0
Vote Yes on C With Major Funding by Chargers	0	1

PRIMARILY FORMED RECIPIENT COMMITTEES 2014 General Election - Candidates		
Committee Name	\$10K-\$49K donors	\$50K+ donors
Citizens for Fairness & Jobs (Cate)	7	1
Neighborhood Coalition Supporting Chris Cate	10	1