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INTERPRETIVE BULLETIN

Disclaimers on Independent Expenditures and Electioneering Communications and Communications Made to Influence or Affect the Vote on a Ballot Question

The Office of Campaign and Political Finance (OCPF) periodically issues interpretive bulletins regarding various aspects of M.G.L. c. 55, the Massachusetts campaign finance law. This bulletin is issued to provide guidance and direction regarding the interpretation and implementation of M.G.L. c. 55, § 18G.

The first paragraph of Section 18G states that “an independent expenditure or electioneering communication made by an individual, corporation, group, association, labor union or other entity **which is transmitted through paid radio, television or internet advertising**” must contain “a statement disclosing the identity of the individual, corporation, group, association, labor union or other entity paying for the advertisement.” If made by radio or television, such advertisements must include “a statement by the individual paying for the advertisement in which the person acknowledges that he paid for the message and his city or town of residence. If the radio or television advertisement is paid for by a corporation, group, association or a labor union” the statement “shall be made by the chief executive officer of the corporation, the chairman or principal officer of the group or association or the chief executive or business manager of the union” and shall be in the following form: ‘I am

_____ (name) the _____ (office held) of _____ (name of corporation, group, association or labor union) and _____ (name of corporation, group, association or labor union) approves and paid for this message.’ Such statements in television advertisements shall be conveyed by an unobscured, full-screen view of the person making the statement.” If the independent expenditure or electioneering communication is made through internet advertising, the statement “shall appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement.”

The second paragraph of Section 18G states that “An independent expenditure or electioneering communication made by an individual, corporation, group, association, labor union or other entity **which is transmitted through paid television, internet advertising or print advertising appearing larger than 15 square inches, or direct mail or billboard** shall

include a written statement at the bottom of the advertisement or mailing that contains the words "Top Contributors" and a written statement that lists the 5 persons or entities or, if fewer than 5 persons or entities, all such persons or entities, that made the largest contributions to that entity, **regardless of the purpose for which the funds were given**; provided, however, that only contributions in excess of \$5,000 reportable under this chapter during the 12-month period before the date of the advertisement or communication shall be listed. If no such contribution is received by the entity making an independent expenditure or electioneering communication, the advertisement or communication may exclude the statement. The advertisement or communication shall also include a written statement, as specified by the director, at the bottom of the advertisement or communication that directs viewers to the official web address of the office of campaign and political finance. **This paragraph shall also apply to advertisements or communications purchased to influence or affect the vote on any question submitted to the voters.**" (Emphasis added).

Discussion

I. The Statement of Approval (the first paragraph of Section 18G)

Implementation of the first paragraph of Section 18G raises several issues, including understanding the scope of the statute, identifying the person responsible for filing, and providing guidance regarding who makes the required statement and the manner in which the statement is included in the advertisement.

The primary requirement of Section 18G is the identification of the individual or group paying for a communication. A political committee that pays for a radio or television advertisement by making an independent expenditure is a "group" within the meaning of the statute. Any committee making such an expenditure must comply with the disclaimer requirement by including, in the advertisement, a statement by the chairman or other principal officer of the committee.

(1) Defining the scope of the statement of approval disclaimer: comparison with federal statute. In interpreting this language, we find it helpful to refer to the regulations issued by the Federal Election Commission which is responsible for implementing a similar federal statute. *See* 11 CFR 110.11 and 2 U.S.C. 441d. Comparing Section 18G with the federal statute highlights the limited scope of Section 18G.

Unlike the disclaimer required by the similar federal statute and regulations, the statement of approval disclaimer required by Section 18G is used only for independent expenditures and electioneering communications. In contrast, the federal statute requires a disclaimer for all public communications containing express advocacy or soliciting contributions for a candidate.

In addition, unlike the federal statute, the first paragraph of Section 18G only regulates paid radio, television and internet advertising. It does *not* regulate other forms of advertising, including print advertising, telephone communications or billboard ads.

(2) Television ads. A statement of approval disclaimer in a television ad may be conveyed in one of two ways: either by a full-screen view of the officer while the officer is making the

statement, or by a clearly identifiable photographic or similar image of the officer, that is shown by a full-screen view at the same time the statement is read. A disclaimer in a television or radio ad must be made in a manner that is not difficult to hear.

(3) Radio ads. A statement of approval disclaimer in a radio ad must be made at the same audio level as the rest of the communication.

(4) Internet ads. A statement of approval disclaimer in an internet ad must be in printed (not verbal) form. It must be of sufficient type size to be clearly readable by the viewer. Such disclaimers must be contained in a printed box, or other separate section, set apart from the other contents of the communication, and the color contrast requirement is met if the disclaimer is printed in black on a white background, or if the degree of contrast between the background color and the disclaimer text is at least as great as the degree of contrast between the background color and the color of the largest text in the communication. Social media posts, even if “boosted” or “promoted,” do not require a statement of approval disclaimer.

II. The Listing of Top Contributors (the second paragraph of Section 18G)

Section 18G also requires certain independent expenditure or electioneering communications to contain disclaimers identifying top contributors providing at least \$5,000 during the 12 months prior to the date of the communication. Unlike the first paragraph of Section 18G, however, it also requires top contributor information on communications made to influence or affect ballot questions.

In accordance with the second paragraph of M.G.L. c. 55, § 18G and the regulations issued in accordance with the statute (970 CMR 2.20), independent expenditures or electioneering communication advertisements, and ballot question advertisements, which are transmitted “through paid television, internet advertising or print advertising appearing larger than 15 square inches or direct mail or billboard” must include a written statement at the bottom of the advertisement or mailing regarding top contributors and referring viewers to OCPF’s website.

(1) Communications covered by the Top Contributor/paid for by disclaimer requirement.

Persons and entities subject to the “top contributor/paid for by” disclaimer requirement include all individuals and entities, **including political committees**, that may make independent expenditures, electioneering communications, and expenditures made to influence or affect ballot questions. The following types of communications are covered by the second paragraph of Section 18G and 970 CMR 2.20(3):

- (a) Print advertisements. An advertisement or insert in a newspaper, magazine, or other printed publication in which the advertisement or insert is larger than 15 square inches.
- (b) Television advertising or internet advertising. Internet advertising is subject to the disclaimer requirement if the advertisement, when received by a user viewing the message using a standard display resolution (1366x768) screen, would use 15% or more of the computer screen.

(c) Electronic ads sent in video format. A video advertisement of any duration is subject to the disclaimer requirement if the advertisement uses 15% or more of a standard display resolution (1366x768) screen for any duration, including “pop up ads” that use 15% or more of a standard display resolution screen.

(d) Direct mail.

(e) Billboard ads.

(2) Communications not covered. The following communications are not subject to the disclosure requirements of the second paragraph of M.G.L. c. 55, § 18G (the “Top Contributor” disclosure):

(a) Membership communications;

(b) Yard signs;

(c) Door hangers, flyers, posters, buttons and bumper stickers (unless distributed through a direct mailing);

(d) SMS texts;

(e) Emails, unless the email contains an advertisement that exceeds 15% of the computer screen (based on the standard display resolution of 1366x768);

(f) Internet ads of limited size;

(g) Telephone messages or electronic ads sent in audio format; ~~and~~

(h) Radio ads;

(i) Social media posts, even if “boosted” or “promoted,” and

(j) An entity’s communications in its own website.

(3) Determination of which contributors to list. The “Top Contributors” to be listed in the advertisement or communication must include the following persons:

(a) The five persons or entities making contributions in excess of \$5,000 in the aggregate received by the entity during the 12-month period before the date of the advertisement or communication must be listed. Contributions received by the entity for purposes other than the making of the advertisement or communication are included. “Contributions,” in this context, do not include payments to businesses made in the ordinary course, for goods or services rendered by the business. Section 18G, in requiring disclosure of the top donors “regardless of the purpose for which the funds were given” reflects an intent to ensure that disclaimers include the names of persons who have given money or something of value to the entity outside of the

ordinary course of business, i.e., not customers who buy goods or services in the ordinary course.

For example, if a private workforce training center pays for a direct mail advertisement opposing a ballot question, it would not disclose the tuition payments of more than \$5,000 made by students, who routinely pay that amount of tuition, but it would disclose a gift from a donor of \$100,000 for a new classroom addition, received during the twelve-month period before the purchase of the advertisement.

- (b) If no person or entity has contributed more than \$5,000 in the aggregate to the entity during the 12-months prior to the date of the advertisement or communication, no top contributors must be listed. If fewer than five persons made contributions of more than \$5,000 during the 12-months prior to the date of the advertisement or communication, only those persons contributing more than \$5,000 must be listed.
- (c) If more than five persons or entities contribute the same amount, only the last five to give that amount must be listed. (For example, if seven persons give \$10,000 each, with two giving in February but the other five giving in July, only the five who gave in July need to be listed).
- (d) The contributors may be listed in any order, and do not have to be listed in ascending or descending order based upon the amount contributed.
- (e) Contributions from multiple affiliated organizations are not aggregated. For example, if a union local gives \$2,000 and another local, affiliated with the same international union, gives \$4,000, the union is not required to be listed, since the local, not the international union, is the contributor.
- (f) Instead of referring to stating “Top Donors” or “Top Contributors”, the ad may state “Paid for by” followed by a list the top five donors, if there are no other donors.

(4) Manner of disclosure.

- (a) The required disclaimer must be of a size and contrasting color that will be legible to the average viewer.
- (b) The requirement to provide the disclaimer under M.G.L. c. 55, § 18G does not affect other required disclaimer requirements, including the requirement under c. 56, § 39, for a disclaimer in print advertisements.
- (c) A PAC may refer to itself as a “PAC” rather than a “political action committee” in the disclaimer.

(5) Reference to OCPF website. All independent expenditure, electioneering communication or ballot question advertisements covered by the second paragraph of Section 18G, which are

transmitted through paid television or internet advertising , or direct mail or billboard advertising must include a written statement directing viewers to the official web address of the Office of Campaign and Political Finance, by stating “for more information regarding contributors, go to www.ocpf.us.” This requirement applies even if no “top contributors” must be listed.

If you have questions regarding this interpretative bulletin or any other campaign finance matter please do not hesitate to contact OCPF at 1-800-462-OCPF or 617-979-8300.