

California Expands Its Regulation of Express Advocacy in New Rulemaking

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Moving to significantly broaden the types of communications regulated under state law, the California Fair Political Practices Commission (FPPC) revised and expanded the regulatory definition of express advocacy at its October 14, 2010, meeting. The regulation goes into effect on December 15, 2010. Once in effect, the amended rule will convert some previously unregulated statements from issue advocacy into express advocacy, which may involve additional disclosures. A copy of the amended regulation can be found at [www.fppc.ca.gov/legal/New-regs/18225\(amend\).pdf](http://www.fppc.ca.gov/legal/New-regs/18225(amend).pdf).

As the FPPC has publicly acknowledged in a press release and staff memoranda prior to the amendment, the FPPC previously considered the term “expressly advocates” to include only the so-called magic words—terms such as “vote for,” “vote against,” etc. Now the amendment changes the definition of “expressly advocates” so that it would include a communication that is “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure” if such communication is made within 60 days of an election.

The regulation offers several examples of statements that both would and would not be “susceptible of [such a] reasonable interpretation.” Not only would statements such as “No on Measure A” qualify as express advocacy, but statements like the following would qualify as well:

- Only Nancy Brown can clean out City Hall”;
- “Joe Green will earn your trust”;

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- “Bob Boone is an unqualified, special interest puppet”; and
- “Shirley Hall—bad for California, bad for you.”

By contrast, under the FPPC's regulation, the following three non-exclusive statements are susceptible to a reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure:

- Assemblymember Nancy Brown needs to be tough on criminals. Call her and tell her to stand firm on AB 100”;
- “Poor children need a home, too. Support the Mayor's stance against more budget cuts”; and
- “Thank you, Supervisor Smith, for continuing to support our farmers.”

An organization paying for communications that “expressly advocate” the election or defeat of a California candidate or measure will generally be subject to disclosure obligations. The exact disclosure obligations will vary depending upon the amount of money spent on the communication and the identity of the person or entity sponsoring the communication.

FPPC Chairman Dan Schnur recently sent a letter to 150 states' election and campaign finance officials explaining California's recent regulatory action and urging these officials to similarly increase disclosure obligations in their own jurisdictions.