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November 4, 2011

The Honorable Ann Ravel  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

**SUBJECT: Comments on proposed regulations on gifts and travel**

Dear Chairwoman Ravel,

On behalf of California Common Cause and the 400,000 members nationally, please accept this letter which describes our concerns with the upcoming adoption of proposed gift and travel regulations 18940 through 18950.4.

We want to first acknowledge the profound work done by the Commission's staff, specifically Counsel Bill Lenkeit, and the opportunities we have had to make suggestions and express concerns. Common Cause would like to inform the Commission that we will continue to strongly advocate for legislation to limit or ban gifts given to officials from lobbyists, lobbyist employers, and other special interests. Allowing special interests to provide gifts to elected officials threatens the ability of our government to make decisions outside of undue influence and the corruption of moneyed interests.

However, until such statutory changes are made, we are asked to provide comment on the regulations expected to come before this Commission. After thorough review, please find our general concerns below.

Common Cause believes the proposed gift and travel regulations are an improvement from current policy. We find the increased specificity to be illuminating and well-written. We also find the proposed regulations easier for every day citizens to understand. Unfortunately, in some cases, more specificity can potentially open up more opportunities for special interests to "game the system." Common Cause will work with the Commission to identify instances of loopholes or what we believe could be illegal activities.

One of our main concerns is in §18941 regarding receipt, promise, return, or acceptance of a gift. Most of the proposed regulations depend on these definitions and rules. Common Cause believes statutory changes should be made to lower the 30-day threshold to 15-days. We also believe the requirement to publicly disclose a donation or reimbursement should be made for all gifts, not just those that fall outside the arbitrary 30-day window. We think officials should report all donations and reimbursements in order for the Commission and the public to track all gift transactions. Without this added transparency on donations and reimbursements, we believe many gifts are not publicly reported and difficult to follow.

Additionally, we would add an amendment to Proposed Regulation §18941 (c)(2) Line 8: insert "or the official's immediate family" after "official." We believe this common sense amendment will prevent the

official from donating gifts to charities run or controlled by immediate family members, which, if allowed, will only retain the gift's cycle of influence on the official.

The practice of offsetting or reimbursing portions of the gift's costs is a troubling practice because officials are not required to disclose the full price of a gift through this practice. For example, if a regulated person gives an official a \$500 timepiece from Moscow, then the official reimburses the regulated person \$200; the official is only asked to report a \$300 timepiece. We believe it would greatly improve public disclosure if the official was required to report both the full amount of the gift as well as the reimbursement/offset. This would allow the public to get a complete picture of the actual cost of gifts before the offset occurred.

In addition to the concerns we have expressed about increasing disclosure, we would encourage the Commission to require some gifts described in §18942 to be publicly disclosed even if the gift is not subject to the gift limit. Specifically, we believe the public would be better served if an official was required to report plaques/trophies or bereavement offerings if given by lobbyists or lobbyist employers; under this suggestion, all other plaques/trophies or bereavement offering can be given by non-lobbyists or non-lobbyist employers without limit or disclosure.

Additionally, we believe a statutory change will be needed to strengthen the §18942 (a) (6) regarding plaques and trophies. The law should be amended to make all plaques and trophies from a single source reportable if their cumulative value is over \$250. Under current law, an official could receive numerous plaques and trophies from a single source without disclosure as long as the individual value is less than \$250.

Moreover, we have concerns with §18942 (a) (13) regarding tickets to officials in cases where the official performs a ceremonial role, specifically the regulation allowing "Any official who attends the event as part of his or her job duties to assist the official...has not received a gift or income by attending the event." We ask the Commission amend the proposed regulation to limit the number of "support staff" allowed to attend the event to no more than one. Without this limitation, we fear some officials may bring several employees with them as a perk of being employed by the official and claim it is part of their "job duties," thus avoiding the gift regulation.

We support the "option" provided by staff in §18942.2 "Definition of Home Hospitality," to allow up to one week (need to define whether that is five or seven days) of home hospitality as part of the definition. If the official receives hospitality for more than one week, then it should be reportable to the Commission as a gift and be subject to gift regulations. However, we have serious concerns with home hospitality being exempt from the gift reporting and gift limit requirements described in §18942 (a) (7), especially when lobbyist are able to provide such gifts. We strongly urge the Commission to amend the regulations in §18942 (a) (7) or §18942.2 to prohibit a registered lobbyist from providing home hospitality to an official. The proposed regulations do nothing to prevent registered lobbyists from providing home hospitality, even though such gifts would be highly influential and would most certainly exceed the lobbyist's gift limit.

The proposed regulations in §18943, "Gift to official through family member," should be written to include "Option 1". By including OPTION 1, the Commission can adopt regulations that will be strict and will capture those who fall in either condition and require reporting of a gift or income.

We would also urge the Commission to adopt Option 1 suggested by staff in §18946.2 "Exception – Valuation of Gifts, Attendance at Invitation-Only Events." Option 1 will require officials to report the value of a gift received if the official attends an invitation-only event and only consumes "minimal

appetizers.” By choosing this option, the Commission will adopt regulations consistent with the reporting requirements if the official consumed a full meal. Our experience is some invitation-only events will serve high-priced appetizers to guests, which on the price alone should require reporting. If the Commission does not adopt Option 1, we have concerns about the potential loophole that may be created by allowing officials to determine when they consume “minimal” appetizers at “nominal” value.

In §18946.1 concerning “Exception – Valuation of Gifts: Passes and Tickets” subsection (a), we disagree with the suggestion that an unused or un-transferred ticket has no reportable value thus no influence on an official. A ticket to the Major League Baseball World Series or National Football League Super Bowl has substantial value and influence associated with it even if the official does not use, transfer it or receive a personal benefit. We suggest if tickets have a fair market value greater than \$200 before the events conclusion, that the tickets still be reportable and publicly disclosed, but not part of the gift limit, even if unused and un-transferred.

In §18946.4 pertaining to “Exception – Valuation of Gifts: Attendance at Nonprofit or Political Organization Fundraising Events” subsections (b) and (c), we are troubled by the proposed regulation which permits a 501(c)(3) nonprofit and political fundraiser to provide two tickets, an increase from one, to an official and not be considered a personal benefit. One ticket has been the standing regulation for some time and which properly accounts for the official’s attendance. We assume the additional ticket is for the officials spouse, child, staff, or other individual who may accompany as a guest. We respectfully ask Commissioners to inquire if such an increase is warranted from the perspective of increasing public disclosure or simply warranted for an official’s convenience. On another note, we would add that modern day non-profits may register as lobbyist employers. Because of this reality we suggest non-profit lobbyist employers be subject to the personal benefit regulations if they provide tickets or invitations to a fundraiser.

In §18946.6 regarding “Exceptions – Valuations of Gifts: Air Transportation” subsection (b), we strongly disagree with this regulation because it requires officials to report the price of a first class ticket for a commercial flight for the same trip even if the flight occurs on a private charter plane. We believe this regulation greatly undervalues the price of a flight on a private charter plane. For example, a commercial one-way, non-stop, first class flight from Sacramento, CA to Richmond, VA is valued at \$1,500 + tax<sup>1</sup>; in comparison, a private charter flight is valued at \$1,050 to \$7,600 *per hour*<sup>2</sup>. Allowing officials to undervalue these private flights discourages full disclosure and transparency to the public. We urge the Commission to deny this proposed regulation or amend it to allow for accurate valuation of these flights.

Finally, we would like to reiterate Common Cause’s commitment to partnering with the Commission on future regulatory changes. It is paramount that regulations are updated and clarified to adapt to changes in the culture of political influence. Our experience confirms the public’s belief that officials and outside parties will continually seek opportunities to get around new regulations. Transparency and strict disclosure coupled with vigilance from the Commission and other government watchers continues to be the only way to expose these activities to the public.

Please feel free to contact me at [pung@commoncause.org](mailto:pung@commoncause.org) or (916)520-4070 if you have any questions regarding our suggestions.

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<sup>1</sup> American Airlines first class, non-stop flight from Sacramento, CA to Richmond, VA estimated on October 17, 2011 for departure October 30, 2011.

<sup>2</sup> New Flight Charters flight pricing, PMB 4067, Jackson Hole, WY 83001; price determined by “aircraft class”. <http://www.newflightcharters.com>.

Sincerely,

A handwritten signature in black ink that reads "Phillip Ung". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Phillip Ung  
Policy Advocate