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December 6, 2011

VIA EMAIL

Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

**RE: Comments on Agenda Item 23 – Adoption of Regulation 18412;  
Amendment of Regulations 18413 and 18215.**

Greetings:

We appreciate this opportunity to provide comments and proposed draft language for Proposed Regulation 18412. We also very much appreciate the amount of time Commission staff Counsel Larry Woodlock has spent in discussion with us on the issues raised by the draft regulation and on the details of our proposed draft.

For many years, our firm has advised tax exempt organizations on their obligations under the Political Reform Act when the organizations engage in California electoral activities. In providing these comments and the proposed draft, we are not representing any particular organization, but offer them instead on behalf of the interests of all of our clients.

Based on my conversations with Mr. Woodlock, I believe I can state that the enclosed proposed draft regulation is not based on a different understanding of the applicable law or a different reading of the 9<sup>th</sup> Circuit's decision in *California Pro-Life Council, Inc. v. Randolph*, 507 F.3d 1172 (9<sup>th</sup> Cir. 2007). However, there is clearly a different emphasis and level of detail in the enclosed proposal on the question of how the presumption created by the "first bite" that a donor knew or had reason to know that all or some portion of the donation would be used for California political purposes can be rebutted or otherwise addressed by a multi-purpose organization. As the Court stated in upholding the presumption in section 82015(b):

"...[T]he presumption is rebuttable. To the extent it can be show that the donor had no knowledge of the organization's activities, then the organization need not disclose the donation. In addition, according to CGC § 82015, if it is clear from the surrounding circumstances that the donor did not intend for the donations to be for the purpose of influencing voters, no disclosure is required." (507 F.3d, at 1185).

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The enclosed proposed regulation sets forth the various circumstances under which the presumption in 18215(b) may be rebutted, and also codifies existing Commission advice regarding the use of pre-first bite funds and the use of non-donor revenues (e.g., investment income) for an organization's political expenditures.

Again we appreciate the opportunity to work with your staff and to provide our thoughts on the proposed regulation. Certainly these are among the most challenging issues under the campaign finance provisions of the Act.

Sincerely,

**OLSON HAGEL & FISHBURN LLP**

A handwritten signature in black ink, appearing to read "Diane M. Fishburn", written over a horizontal line.

DIANE M. FISHBURN

DMH:mdm

Enclosure

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Final.doc

Draft Regulation Governing Multi-Purpose Organizations  
Proposed Regulation 18412

(a) Application

This regulation applies to multi-purpose organizations which are not organized to support or oppose California state or local candidates or ballot measures. These organizations would include tax exempt organizations under 501c of the Internal Revenue Code and out-of-state and federal political committees.

(b) Receipt of Contributions

A multi-purpose organization receives a contribution or contributions from its members or donors within the meaning of the Political Reform Act, and for the purposes of the Act's registration and reporting requirements, in all of the following circumstances:

- (1) The organization expressly solicited the funds for the purpose of making expenditures to support or oppose California state or local candidates or ballot measures;
- (2) The organization receives a donation, and the donor has expressly earmarked, conditioned or otherwise specified that the funds are to be expended to support or oppose California state or local candidates, ballot measures or committees; or
- (3) The organization has received donations, and the donor has "reason to know" that the organization may use the funds to make expenditures to support or oppose California state or local candidates, ballot measures, or committees. There is a rebuttable presumption that, at the time the donor makes the donation, the donor has "reason to know" that the funds may be so used if the organization has made such expenditures totaling \$1,000 or more in California from its donor funds during the current calendar year or in any of the four prior calendar years prior to the date of the donor's donation to the organization. For the purposes of section 18215(b)(1), a donor will not be deemed to "know or have reason to know," and the presumption may therefore be rebutted based on all of the facts and circumstances, including under any of the following facts and circumstances:
  - (A) The organization did not publicize its California expenditures through any of its normal communication channels prior to the donation of the funds.
  - (B) The donor's donation was made in response to a separate solicitation which did not reference California candidates, ballot measures, or committees, or otherwise refer to the organization's involvement in California elections.
  - (C) The donation was made in response to or in reference to other activities of the organization which did not involve the organization's expenditures in California elections.
  - (D) The donation was expressly conditioned or restricted by the donor for purposes of expenditures not involving or related to the organization's expenditures in California elections (e.g., a grant for activities in another state).
  - (E) The donation was part of a bequest, and the donor was not solicited nor did the donor specify that the bequest was made to support California candidates, measures or committees.
  - (F) The organization can demonstrate that the expenditures to support or oppose California candidates, measures or committees were made from funds which were received prior

to the date of the first contribution or expenditure in California.

- (G) The organization can demonstrate that the expenditures to support or oppose California candidates, measures or committees were made from other organizational funds including investment income, sales of goods or services, other types of non-donor revenues or from funds which were received prior to the organization's first expenditure of \$1,000 in the calendar year or prior four calendar years, provided the funds available, otherwise unrestricted, and sufficient to pay for the subsequent California expenditures.

(c) Reporting Requirements

A multi-purpose organization that has not received contributions of \$1,000 or more in a calendar year as defined in subdivision (b) is only required to file as a committee under Gov. Code section 82013(b) or (c). If an organization is required to register and file reports as a committee under Gov. Code section 82013(a) based on the receipt of contributions of \$1,000 or more in a calendar year, it shall report its contributions as follows:

- (1) With respect to the organization's expenditures made to support or oppose California candidates, measures or committees in each applicable reporting period, the organization shall report all contributions described in subdivision (b)(1) and (b)(2). If these contributions are less than the total California expenditures made during the reporting period, the organization shall report additional contributions described in subdivision (b)(3) using a reasonable accounting method to make up the difference. These contributions may be identified on a "last in, first out" accounting method or another reasonable accounting method. In addition, contributions may be allocated among donors to the organization based on the ratio of California expenditures and the organization's total expenditures in the reporting period or for the calendar year. If the total contributions which are identified as received during the reporting period are less than the total California expenditures, the organization shall report the organization as the contributor of the balance of the total expenditures. For reporting purposes, for contributions described in subdivision (b)(3) and for contributions from the organization itself, the date of receipts for the contributions shall be tied to the date or dates of the California expenditures.
- (2) If individual contributors are identified as providing \$100 or more towards the California expenditures in a calendar year, the organization shall report the contributor's name and address and shall make reasonable attempts to obtain the contributor's occupation and employer for the report. If the information is not available to the organization, it shall provide an explanation on the report of its attempts to obtain the information.
- (3) If contributors are identified as providing \$5,000 or more towards the California expenditures in a calendar year, the organization shall notify the contributor as required by Section 84105. However, contributor shall not be found in violation of the reporting requirements under Gov. section 82013(c) unless the contributor received actual notice of the requirements from the organization or a filing officer, and did not file any required reports within 90 days of the date of the notice.

(d) Committee Filing Status

A multi-purpose organization filing pursuant to this regulation shall file as a general purpose committee even if it would otherwise qualify as a "primarily formed" committee under section

18247.5 if all of its California expenditures are reported as contributions to a "primarily formed" committee or committees.