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November 18, 2011

VIA FACSIMILE

Chairman Ravel and Commissioners Eskovitz,
Garrett, Montgomery, and Rotunda
Fair Political Practices Commission
428 "J" Street, Suite 600
Sacramento, CA 95814

Re: *Agenda Item 4 – Adoption of Regulation 18412 and Amendment of
Regulations 18413 and 18215*

Dear Chairman and Commissioners:

We represent organizations that may be subject to the new rules for attributing funds that are used for political purposes to the organizations' donors, members, or other sources. We appreciate the opportunity to comment on the proposed regulation.

First, we urge the Commission to allow a multi-purpose organization to attribute the use of pre-"first bite" funds for additional expenditures or contributions to itself, rather than to particular donors, provided that the organization can show that its donors had no reason to know, and did not intend, that their funds would be used for political purposes. In other words, we request that the Commission withdraw the *Strout/Abegg* Advice Letter (No. A-11-143), which advised a nonprofit that it must attribute funds used for political purposes to donors who contributed to the organization after the organization took its "first bite," even if the organization had pre-"first bite" funds available.

Doing so would leave the *Rehrig* Advice Letter (No. A-07-126) in place, which advised the PTA that it could attribute to itself pre-"first bite" funds used to make additional political expenditures or contributions. The *Rehrig* letter provides:

Regarding membership dues received prior to the PTA unit making its first expenditure or contribution totaling \$1,000 or more, the

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PTA unit's past members or donors are presumed to have no reason to suspect their payments will be used for political purposes because the organization did not make contributions or expenditures prior to the "one bite." Once the PTA unit qualifies as a committee, the PTA may use any reasonable method for attributing its expenditures and contributions as contributions received from its members. *Funds on hand after the PTA unit qualifies as a committee, but received from membership dues prior to both the unit's qualifying as a committee and its use of the "one bite" exception, need not be attributed to the members if it is clear from surrounding circumstances that the members were not aware that their payments would be used for political purposes at the time of the payment. In this situation, the PTA itself would be disclosed on Schedule A as the source of the funds.*

(*Id.* at 6, footnote omitted, emphasis added.)

Second, if the Commission is not inclined to withdraw the *Strout/Abegg* Advice Letter, we urge the Commission to promulgate a regulation that exempts 501(c)(3) organizations from its rule. Simply put, 501c3 organizations are different than other multi-purpose organizations, and those differences raise serious concerns under the First Amendment and tax law when 501c3s are forced to attribute contributions and expenditures to pre-"first bite" donors.

Individuals have a First Amendment right to freely associate within organizations, and to do so anonymously. Indeed, the United States Supreme Court has declared that "compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] . . . effective . . . restraint on freedom of association." (*Gibson v. Florida Legislative Investigation Com.* (1963) 372 U.S. 539, 544.) Yet the proposal in Regulation 18412 would compel such disclosures by forcing organizations to disclose the names of those who choose to associate with it, even when those donors wish to remain anonymous and intend their donation to be used for nonpolitical purposes.

501c3 organizations are also different than other multi-purpose organizations because they receive donations from private foundations. Private foundations are strictly prohibited by federal tax law from making political expenditures. If private foundations are forced to be disclosed as the source of funds for an organization's political contributions or expenditures, misunderstandings are likely to follow, including from IRS officials, who are frequently unfamiliar with California campaign laws. Likewise, unlike other multi-purpose organizations, 501c3 organizations receive donations from individuals who had no intention of making a political expenditure and may have already claimed a tax deduction for a charitable donation.

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Finally, 501c3 organizations are different because their donors frequently – and quite reasonably – have different expectations than donors to other 501c organizations. An individual who donates to a 501c4 social welfare organization is far more likely to anticipate that their donation could be comingled with funds that are used for political purposes than an individual who donates to their local animal welfare league or PTA. Treating those donors identically defies common sense.

To satisfy the public's need to know the sources of funds used by an organization for making political expenditures, we recommend that 501c3 organizations that have not solicited funds for political purposes, have not notified their donors that they will make political expenditures, and have not received donations that are earmarked for political purposes be permitted to treat their general fund as the source of their political expenditures.

Third, if the Commission is not inclined to withdraw the *Strout/Abegg* Advice Letter or exempt 501c3 organizations from its rule, we urge the Commission to allow organizations to report the sources of funds that were not earmarked for political purposes as a "miscellaneous increases to cash" rather than contributions received by the organization. It appears that proposed Regulation 18412 would permit organizations to do so, but to ensure that the Regulation accomplishes that goal, we suggest re-drafting the second sentence of Regulation 18412(c) as follows:

... To the extent that there is no more reasonable basis for identification of persons whose donations were used in whole or in part to fund the contribution or independent expenditure, the organization shall allocate the contribution or independent expenditure among donors and identify them on a campaign report as sources of ~~who provided to the organization funds reportable as~~ miscellaneous increases to cash, employing a "last in, first out" accounting method. . . .

Thank you for the opportunity to comment on this matter.

Sincerely,


Margaret R. Prinzing

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