

June 17, 2014

VIA EMAIL

Ms. Hyla Wagner
Senior Staff Counsel
Fair Political Practices Commission
428 J Street, Sixth Floor
Sacramento, CA 95814

RE: SB 27 Implementing Regulations

Dear Ms. Wagner:

We submit the following comments regarding the Commission's proposed regulations implementing SB 27. Thank you for the opportunity to comment. We would request that these written comments be made of the public administrative record regarding this rulemaking.

The comments that follow are more or less in the order as presented in each draft regulation. This does not mean that some comments are not more important than others. We will attempt to emphasize the major issues/concerns in this letter as well as in person when we attend the Interested Persons meeting.

Regulation 18422

In subdivision (a), (page 1, line 3) we suggest the phrase "that raises funds from others" read instead "that receives contributions from others." The first sentence restates existing law prior to the enactment of SB 27 and should, in our view, reflect the law that applied to committees at that time.

Also in subdivision (a), (page 1, lines 8 to 10) we suggest the final sentence be removed since it simply restates the immediately preceding sentence and is thus redundant. Having two sentences suggests there are different intended meanings and since it seems clear the second sentence confirms the first, there is no reason to create any confusion.

In subdivision (b)(1) (page 1, lines 13 to 14) MPOs would be required to include in the committee name the status of the nonprofit or federal/out-of-state PAC. However, section 84222(e)(1)(A) only requires the MPO to disclose its status (along with the organization's activities or where the 990 can be accessed) somewhere on the Form 410. The statutory language does not require the MPO's status to be in its committee name. Including the status in the committee name will be confusing. It would make more sense for the committee name to simply be the name of the MPO as that name is used

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wherever it is otherwise registered (e.g., with the FEC or IRS). In addition to being confusing, the effect will be to lengthen any otherwise required disclaimers on communications to voters. Since such disclaimers now can consume valuable space intended to convey a political message, including unneeded language does not seem justified when that information is readily available on the Form 410. Finally, including the name appears contrary to the statutory language or at least beyond the Commission's authority to require.

In subdivision (b)(2), (page 1, lines 21 to 23) we recommend that language be changed to simply state that the filer shall indicate on the Form 410 it is filing pursuant to section 84222(c)(5). In the future the Commission may adopt a new Form 410 that includes a box to check indicating the filer is filing pursuant to section 84222(c)(5) and include appropriate instructions on the form for doing so.

Also in subdivision (b)(2) (page 2, line 1) we recommend that filers be able to indicate at the time of filing the Form 410 that they are electing to remain as a committee beyond the calendar year. This will eliminate the need to subsequently advise the Secretary of State. This can be done on a new Form 410. Any MPOs that make this determination later in the year can notify the Secretary of State by amending the 410 to indicate this fact.

Finally in subdivision (b)(2) (page 2, line 4) the word "reactivate" is used. We suggest "reopen" and believe that is consistent with existing FPPC regulations where the term is used. (See, for example, 18404.1.)

In subdivision (c) (page 2, lines 6 to 9) the regulation states that major donor notices be sent to contributors. However, the regulation does not state when the time period starts for the 2 weeks or 1 week required by section 84105? We believe it should be the date the contribution is disclosed on a campaign report (i.e. date filed). In any event, the date should be clear in the regulation. The Commission should also consider some sort of notice to contributors from \$1000-4999 that are disclosed pursuant to LIFO in case that activity triggers filing. Such notice would be less expedited.

In subdivision (d)(1) (page 2, lines 11 to 19) there appears to be unneeded or redundant language. For example, the first words of the regulation on lines 11 to 13 prior to "if a multipurpose organization . . ." seems unneeded. The last sentence in subdivision (d)(1) on lines 16 to 19 seems redundant. We think the relevant points are (1) the donor could be a committee required to report and (2) if so, the donor is subject to expedited reporting. This can be handled in a single better drafted sentence. We would also note that the use of the term "its source of funds" on line 14 would be better stated by using "As a contributor using LIFO" - this language would be more precise. There should also be added a definition of "contributing organization" if that will remain a term used in the regulation. Finally, on line 16 use of the term "disclosing its donors" is problematic since not all MPOs filing reports will be required to disclose their donors. We suggest this term be removed throughout the regulation wherever it appears.

In subdivision (d)(2) (page 2, lines 21-22) we recommend deleting the words “that is itself a multipurpose organization and may qualify as a committee under Section 84222(c)” since the MPO sending the notice should not have to ascertain whether the contributor is also an MPO that may qualify as a committee under Section 84222(c). Instead, we believe that determination should be made by the contributor who receives the notice.

In subdivision (d)(2) (page 3, lines 8 to 9) we recommend deleting the words “and shall obtain confirmation that the contributing organization received the notice.” We do not believe the burden should be placed on the MPO sending the notice to call or otherwise verify the notice was received. However, if the confirmation will be required, the regulation should more clearly identify what will qualify as confirmation (e.g. one follow up call) so that MPOs know how to meet this obligation and can demonstrate compliance.

In subdivision (d)(3) (page 3, beginning with line 10) we think the regulation should clarify if the subdivision applies to all reports or should apply different time frames for filing different reports. For example, should there be different deadlines for timely filings Form 497 vs. 460? If an MPO qualifies as a primarily formed committee when it first registers then the contributors to the MPO will appear to have missed filing LCRs if they otherwise qualify as major donors or recipient committees. The regulation should clarify (1) if they're required to file the 497(s) and (2) if so, how long they have to comply.

Also in subdivision (d)(3) (lines 16 to 17) the words “having its funds reported on the first recipient organization’s campaign statements, or being otherwise put on notice” should be deleted. Major donor notice or "nonprofit filer" notice is appropriate to put the donor on notice, but not the fact that the recipient reported it on a campaign report. That would require a nonprofit to monitor Cal-Access for filings by every organization it gives to after July 1, 2014. In addition, MPOs cannot monitor all the local filing officers. The regulation should provide for actual notice (e.g. conversation, phone call, etc.) but not "otherwise put on notice." Perhaps the Commission could require the MPO to maintain documentation of when notice was actually received to demonstrate compliance.

Also in subdivision (d)(3) (page 3, line 19) we think 2 days is too short a time period for the MPO who receives notice to register and file campaign reports. At least 10 business days seems more reasonable to allow the organization time to understand the filing requirements and make arrangements for necessary reporting .

Finally with respect to subdivision (d)(3) (page 20) we think the time to register and file reports outside the 90 day period should be 30 calendar days..

In subdivision (e) (page 3, lines 21to 22) we think applying all of the record keeping provisions of the PRA is too onerous for MPOs. A narrower requirement would seem to be appropriate.

In subdivision (f) (page 4, line 3) we think the words “shall be tied to the date or dates of its expenditures” should be changed to read “is the date of the expenditure to which the contribution is attributed under LIFO” or something similar so it is clear.

Regulation 18422.5

In subdivision (a)(2) (page 1, lines 10 to 12), the last sentence, we don’t believe the burden to determine whether the contributor is a major donor or recipient committee or to provide the date of the most recent contribution should be imposed on the committee. We would note that major donors could become recipient committees after the contribution is received under SB 27 and the committee with this contributor on its list should not be required to monitor this information.

In subdivision (a)(3) (page 1, lines 15 to 16) regarding the change of name of a contributor, we are concerned this imposes an additional burden if it means that when a contributor to the committee submitting the list changes its name the Commission must be notified. The committee submitting the list should not be required to monitor the change in name of its contributors unless the committee has received a subsequent contribution and is required to update this information in its own records. If this language is deleted, the balance of subdivision (3) is unnecessary since the statute already provides for a new list in these circumstances.

We have a final comment regarding this regulation. The statute provides that the Commission is to adopt regulations governing the posting of the top contributor information by the Commission. We don't see that anywhere. Also, if committees are required to send this information within 24 hours, then presumably there is some urgency in having the Commission post this information (within the same amount of time?) so that the public has access to the information timely. If the Commission will only post once per week as they do with Form 462 it does not make sense to impose a 24 hour reporting deadline on the committee submitting this information.

Regulation 18427.1

In subdivision (a)(2) (page 1, lines 17 to 18) there is use of the term “multipurpose group.” We think that should be changed to “multipurpose organization.” Also, the words “that made a contribution from general funds” should be deleted as unnecessary and a term that may be unfamiliar to many organizations.

Also in subdivision (a)(2) (page 1, line 21) there is a reference to a fact sheet. We have yet to see this fact sheet. Will it also be publicly noticed and subject to comments before being posted to the Commission’s website?

Also in subdivision (a)(2) (page 2, lines 10 to 11), the sentence beginning with “The Form 497” should be changed to read “State committees that are required to file Form 497 are

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required to file this form electronically even if the \$25,000 has not yet been met." This clarifies that this only applies to state committees since local filers don't file Form 497 with the Secretary of State, and therefore do not electronically file under this requirement.

In subdivision (b)(2) (page 3, lines 10 to 16) we think the language could be improved to be more precise and accurate. We will try to have suggested language at the IP meeting.

Additional Regulatory Action Needed

In addition to the regulations noticed for this meeting, we believe that Regulation 18419 will need to be amended to conform to Section 84222(f). Also, as mentioned above, the Commission is required to adopt regulations governing its obligations and procedures for posting the top contributor lists it receives. We request that this regulation be included with Regulation 18422.5 for consideration by the Commission so that the two regulations are consistent.

Thank you for the opportunity to comment.

Very truly yours,

OLSON HAGEL & FISHBURN LLP

/s/ Lance H. Olson

LANCE H. OLSON

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