

From: Nayantara Mehta [nayantara@afj.org]
Sent: Tuesday, June 17, 2014 8:50 AM
To: Hyla Wagner
Subject: SB 27 Nonprofit Disclosure Regulations

Dear Hyla,

I'm writing on behalf of Alliance for Justice to share a few thoughts about the proposed SB 27 nonprofit disclosure regulations. Unfortunately, I won't be able to attend the Interested Persons Meeting today, so I hope you will accept this email as our informal (and preliminary) contribution to the conversation.

In case you aren't familiar with Alliance for Justice and our interest in this issue, I'll give you a brief overview. Alliance for Justice is the leading expert on the legal framework for nonprofit advocacy efforts, providing definitive information, resources, and technical assistance that encourages organizations and their funding partners to fully exercise their right to be active participants in the democratic process. Since 2004, we have worked with over 1,200 small, medium and large nonprofit organizations in California, and have provided free technical assistance to 125 progressive nonprofit organizations on ballot measure activity in California since 2010. Our hands-on work with nonprofits trying to comply with the state's campaign finance laws has taught us that well-intentioned rules to require increased transparency often result in new administrative burdens for nonprofits. We work to ensure that proposed policies do not unnecessarily impede legitimate and important participation by nonprofits in our democratic process.

We were pleased with the balance that SB 27 struck: ensuring public knowledge of the true sources of money being spent to influence important policies in California, while recognizing that multipurpose nonprofit organizations should be able to spend a reasonable amount of their existing funds without incurring complex filing and reporting obligations.

As the FPPC drafts the regulations to implement SB 27, we hope staff will take into account the following, in order to not unduly burden legitimate nonprofit multipurpose organizations influencing ballot measures in California:

- Proposed Section 18422: A contributing multipurpose organization would be required to file a statement of organization and initial campaign statements – within two days of qualifying as a committee in the 90 day period before an election, and within 10 days outside of this period.
 - AFJ's concern: We believe two days is an unreasonably short period of time. A more reasonable period of time would be at least five business day; a work week would allow nonprofits unfamiliar with the details and nuances of filing to better understand the relevant issues and requirements, and identify the appropriate donors.
 - Outside of the 90-day period, we urge the FPPC to consider clarifying that the 10-day period means 10 business days. That small change would provide needed clarity, and would ideally give smaller and less sophisticated nonprofits more time to understand the requirements of the law and to submit the correct information.
 - We would like to see more clarity on when and how an organization qualifies as a committee. The proposed language states that an organization knows or has reason to know about its qualification as a committee upon receiving either the "nonprofit filer" or major donor notices, having its funds reported on the recipient organization's

campaign statement, or “or being otherwise put on notice.” Our primary concerns are with the latter two scenarios.

- Many nonprofit organizations will not be regularly checking the filings of organizations they may donate to; such a standard puts a heavy burden on nonprofits, requiring them to monitor everywhere they have given. Especially with the currently proposed short two-day window for filing, this language seems destined to lead to missed deadlines by nonprofits that do not know to regularly check campaign filings. In jurisdictions with paper filings, an organization not in the area would find it next to impossible to access these filings to learn of its qualification and subsequent filing obligations.
 - The language of “or being otherwise put on notice” is unclear and potentially confusing. We would encourage the new regulations to provide clear example of what constitutes notice of committee qualification, so nonprofits do not inadvertently miss complying with filing obligations because they were not aware they had such an obligation.
- Proposed Section 18422: The receiving organization must obtain confirmation that the contributing organization received the “nonprofit filer” notice.
 - AFJ’s concern is that this burden should not be on the organization receiving the donation. Further, it is not clear what constitutes a sufficient effort to ensure that the contributing organization received the notice. For example, how much follow-up is required to ensure receipt of the notice? What if the person from whom a nonprofit sought to obtain this confirmation does not answer the phone, return phone calls, or respond to emails? Is one attempt to obtain confirmation sufficient? We request that the new regulations provide more clearly defined parameters for what constitutes a sufficient effort to receive confirmation, including how an organization attempting to comply can demonstrate and confirm compliance, as required in the Recordkeeping section of the regulations (“A multipurpose organization shall maintain all records necessary to establish its compliance”).

Thank you for your time and willingness to consider input from the regulated community. I would be happy to speak with you or provide further written information about our work with nonprofits and the concerns we raised.

Best,
Nayantara

Nayantara Mehta
Senior Counsel
Alliance for Justice, West Coast Office
436 14th Street, Suite 425 • Oakland, CA 94612
510-444-6070 (phone) • nayantara@afj.org • www.BolderAdvocacy.org

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