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December 19, 2018

VIA EMAIL

Chair Germond and Commissioners
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Item 34, Proposed Regulation 18360.1

Dear Chair Germond and Commissioners,

As sponsors of AB 249, the *California DISCLOSE Act*, which these proposed regulations would affect, we'd like to applaud the Commission for addressing the issue of which violations should be eligible for the Commission's Streamline Settlement Program and its consideration of regulations to expand them so that enforcement can focus most on those violations that have the greatest degree of public harm, while providing streamlined procedures and reduced fines for those violations with lesser degree of public harm. This is especially appropriate for violations that may have been inadvertent mistakes by those with lesser degrees of sophistication or that have other extenuating circumstances.

However, in doing so, it is crucial that the new regulations not allow streamlining for violations that could have potentially significant impact on elections. This is especially true because the streamlining process not only abbreviates and standardizes the Stipulation, Decision, and Orders presented to the Commission, it also reduces the fines to levels that are so trivial, e.g. $100 plus 1% of the advertisement buy for advertising disclosure violations, that sophisticated committees may simply consider them to be a cost of doing business, and an incredibly minor one at that.

We believe that most of the rules proposed in draft Regulation 18360.1 do a good job of delineating which types of minor violations should be eligible for streamlining, and which should not. However, the following issues are significant potential loopholes for violations that could have an impact on elections, so we would respectfully request amendments to the proposed regulations:

1. RAISING AUTOMATIC EXCLUSION THRESHOLD FROM $25,000 TO $50,000 FOR VIOLATIONS OF CAMPAIGN STATEMENTS OR REPORTS IS REASONABLE AT THE STATE LEVEL, BUT NOT THE LOCAL LEVEL.

The current cap per campaign statement or report to be eligible for streamlining is $25,000. The proposed regulations raise that so that only campaign statements or reports greater than $50,000 are automatically excluded. While raising the automatic exclusion threshold to $50,000 may be justified for state campaigns in which $50,000 represents a relatively small amount, $50,000 can be a huge amount in many local races in which false or delayed campaign statements of under $50,000 could have a major impact. In fact, in many smaller jurisdictions, such false or delayed campaign statements could have a major impact if they are over merely $10,000.

Request: Amend the proposed automatic exclusion on p.4 line 17-18 to:

> "The campaign statement or report at issue was required to report greater than $50,000 in contributions received or $50,000 in expenditures made*, or $10,000 in contributions received or $10,000 in expenditures made in the case of jurisdictions having fewer than 100,000 residents*."

2. AUTOMATICALLY EXCLUDING ONLY CAMPAIGN OR LOBBYING REPORTS THAT LEAVE MORE THAN 25% OF ACTIVITY UNREPORTED COULD ALLOW SIGNIFICANT VIOLATIONS WITHOUT SERIOUS PENALTY.

For campaign and lobbying reports of $50,000 or under, the proposed regulations only automatically exclude for aggravating circumstances campaign or lobbying reports when the amount of unreported activity is more than 25% for the reporting activity. This could allow committees to have extraordinarily small streamlining penalties when they failed to report up to $12,500 in activity on one of their reports.

It would be more appropriate to have a hard dollar threshold than a percentage threshold because a committee that has $50,000 in campaign contributions, expenditures, or lobbying for a period is more likely to have a sophisticated political treasurer than a committee that has only $8,000. This current proposed part of the draft would therefore give automatic exclusions to larger and more sophisticated committees that fail to report $12,500 but not to smaller committees who fail to report just over $2,000 — which is backwards. We therefore recommend a hard threshold for exclusion here, such as $5,000.

On top of that, the Political Reform Act clearly contemplates that contributions of $1,000 or more from a single source and independent expenditures of $1,000 or more are of special import by requiring reports of them within 24 hours if they're made in the 90 days prior to an election. Contributions and expenditures of $1,000 are given such import in the Political Reform Act that failure to list of them in campaign reports should also automatically exclude them streamlining. Maxed-out contributions to local candidates that have contribution limits less than $1,000 should similarly be excluded, because clearly their jurisdictions consider that threshold to have an important effect on their elections.

Request: (1) Change p. 6, lines 17-18 to say:

> A. Campaign Reporting: The total amount unreported was more than *$5,000* ~~25% of the total contributions or expenditures~~ for the committee for the reporting period*, the committee made independent expenditures aggregating $1,000 or more to support or oppose a single candidate or ballot measure during the reporting period, or there are any single sources that made contributions totaling at least $1,000 or the contribution limit for the jurisdiction in contributions to the committee for the reporting period, whichever is less*.

3. ADVERTISING AND MASS MAILING DISCLOSURES NEED AUTOMATIC EXCLUSIONS FOR LARGE EXPENDITURES.

AB 249, the *California DISCLOSE Act*, was passed after 7 years in a very in-depth legislative process that included signatures from hundreds of thousands of Californians supporting it. One of the most important parts of the *California DISCLOSE Act* was its very strict and clear disclosure formatting rules to stop committees from using tricks they'd been using for years with font types, sizes, and colors to make it more difficult for voters to read the disclosures on television and other types of ads.

Though the draft for Regulation 18360.1 appropriately delineates examples of violations of the *DISCLOSE Act*'s formatting rules that could be considered minor for small and unsophisticated committees, as written the draft could allow sophisticated committees to spend millions of dollars on ads violating AB 249's clearly written formatting requirements, making it harder for millions of voters to read the top contributors.

The regulation must have a streaming exclusion for advertising and mass mailing disclosures for larger committees, the same as it has now for committees needing to file large contribution or lobbying reports.

Request: Add to "Automatic Exclusions because of Aggravating Circumstances" on p.9 for Advertising and Mass Mailing Disclosures the same threshold as for campaign and lobbying reports:

> *"C. The campaign statement for the committee was required to report greater than $50,000 in contributions received or $50,000 in expenditures made, or $10,000 in contributions received or $10,000 in expenditures made in the case of jurisdictions having fewer than 100,000 residents."*

4. CRUCIAL ADDITIONS TO "PRIMARY PENALTY PAID TO THE COMMISSION FOR THE SAME TYPE OF VIOLATION WITHIN THE LAST FIVE YEARS" AUTOMATIC EXCLUSION.

Page 3 of draft Regulation 18360.1 automatically excludes from streamlining regulations "Prior penalty paid to the Commission for the same type of violation occurring within the last five years." This is appropriate, but doesn't go nearly far enough.

a) Five years is far too short. Why should a committee that received a penalty for the same type of violation 6 years ago be allowed to have streamlined and extraordinarily small penalties for the exact same type of violation? In fact, if it's the same type of violation, why should they even be eligible for a streamlined penalty? Are they expected to remember their mistake for 4 or 5 years, but "forget" about it after 6 or 10 years?

b) The exclusion must also include warnings from the Commission. While it is reasonable to streamline for unsophisticated committees that have not been penalized for a specific type of disclosure violation, it is not reasonable to streamline when they've been explicitly warned about that same kind of violation.

In fact, when stakeholders to AB 249 the *California DISCLOSE Act* requested that its Section 84510 be amended so that only "intentional" violations of its advertising disclosure formatting requirements be subject to fines up to three times the cost of the advertisement, legislators and other stakeholders had grave concerns about the difficulty of proving that a violation was "intentional". They were convinced by the argument that continuing to violate the same provisions would be deemed to be intentional if they'd received a warning.

c) Automatic exclusions for prior penalties and warnings must apply to the same candidate, proponent, sponsor, or principal officer, and not just the same committee. Candidates very often have different committees for each election. Each new ballot measure has different committees, even if they have the same proponent from one measure to the next. The same with committee sponsors and principal officers.

It is true that automatically excluding every committee that has a treasurer or political attorney with a prior similar violation from streamlining might automatically exclude almost every committee that uses them from streamlining, because treasurers and political attorneys often have hundreds of committee clients, some of which will have had FPPC penalties or warnings. However, if a specific candidate has received a penalty or warning on a type of violation, they should know well the rules for that type of violation. The same goes for specific ballot measure proponents, committee sponsors, and committee principal officers.

Request: Amend p.3 lines 9-10 to:

> (v) Prior penalty paid to the Commission *or warning from the Commission* for the same type of violation ~~occurring within the last five years~~ *by the committee, the candidate, or the sponsor or principal officer of the committee.*

Thank you for the opportunity to comment on proposed Regulation 18360.1 to expand and put down in regulations the current types of violations that are eligible for streamlined procedures and reduced fines. In general, we believe these are positive changes to lessen unnecessarily burdensome penalties on small and/or unsophisticated committees that will allow the Commission to focus more on violations that have the greatest degree of public harm.

However, we strongly believe that the above amendment requests are crucial to stop the new regulations from letting off the hook serious violations that could impact elections at both the state and local levels.

Sincerely,

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