



*Help achieve an open and accountable government*

January 17, 2019

VIA EMAIL

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

RE: SUPPORT: Agenda Item #29, Adoption of Regulations 18360.1 and 18360.2

Dear Chair Germond and Commissioners,

As sponsors of AB 249, the *California DISCLOSE Act*, which these proposed regulations would affect, we applauded the Commission in a letter on December 19, 2018 for its proposed regulations for the Commission's Streamline Settlement Program, but expressed concerns about possible unintended consequences of parts of the draft. We are very pleased that the current proposed regulation addresses most of those concerns and would like to thank the Commission, its Law and Policy Committee, and staff for its excellent work on these important regulations to allow the Commission to focus enforcement efforts more on violations that have the greatest degree of public harm, while clarifying the way those decisions are made.

Here we outline why we believe the current version addresses most of our previous concerns. We also offer a couple of suggestions that might at least partially address reasonable concerns of other public commenters. We now support the draft regulations before the Commission whether these suggestions are included or not.

First, we'd like to express support for several of the changes to the draft for Regulations 18360.1 and 18360.2 since the December Commission meeting:

- In our December 19 letter, we expressed concern about the original proposal to raise the threshold for statements to be automatically excluded from streamlining from \$25,000 to \$50,000 because \$50,000 is too high a threshold for many local races. The current draft Regulation on Page 4 line 18 to Page 5 line 13 addresses this nicely by having the threshold based on the population of the jurisdiction, ranging from \$4,000 for the smallest jurisdictions to \$100,000 for statewide campaigns.

If the Commission agrees with other public comments that it's a problem for the formulas to have lower thresholds than the current \$25,000 cap for smaller jurisdictions (which we disagree with), then we would urge the Commission to retain the current \$25,000 cap for everyone and not increase the cap above the current \$25,000 without recognizing the difference between large and small jurisdictions.

- In our December 19 letter, we expressed concern about the original proposal only automatically excluding campaign or lobbying reports in which more than 25% of the activity was unreported. The current draft page 7. lines 20-23 addresses that concern by lowering the threshold to 20% of the activity and applying the same population-based thresholds for the total amount unreported as for reports that are filed late, i.e. from \$4,000 to \$100,000 depending on the size of the jurisdiction.
- In our December 19 letter, we expressed concerns that limiting the automatic exclusions from streamlining for committees who had a prior penalty in the last five years for the same type of violation wasn't broad enough because candidates and principal officers often are in control of multiple different

committees. The new 18360.1(c)(2)(B)(b) (p.3 lines 11-12) addresses this concern by including the same candidate, committee, or principal officer in the automatic exclusions. Though we would still prefer that this exclusion be for more than 5 years, the change does address our biggest concern with this provision.

- The new Regulation 18360.2 increase in streamline penalties for violations of reports not reported until after seven days before the election is very welcome and should serve as an extra incentive for committees to rectify their mistakes in time for the public to get the information before the election.
- The amendment to Regulation 18360.2 to say that stipulations will be included Commission agendas part of the Executive Staff Report and that the Chief of Enforcement may execute all or any of the Streamline penalty stipulations after that, at his or her discretion.” is welcome, because it will allow the public and Commissioners to comment on any streamline stipulations that should be rejected before they are actually executed.

#### **POSSIBLE CHANGES TO DRAFT REGULATION 18360.1 on Page 4, Lines 15-16**

Though we do not agree with the comment by Kaufman and Hildreth that the paragraph on page 4, lines 15-16 in draft Regulation 18360.1 should be struck, we do agree that it is unnecessary to always exclude late statements and reports (other than Form 470s) from receiving warning letters if they are not filed at least seven days before the election.

Generally we agree with the premise of the draft paragraph that late statements or reports (other than Form 470s) that are not rectified in time for the public to get the information before the election are inherently harmful enough to the public that they should be excluded from receiving warning letters. But that is less true if the information that should have been reported in the late statement was reported by the committee on another report. For example, if a committee filed a 24-Hour Report for a contribution late, but reported the contribution on a Form 460, then the public is at least aware of the contribution.

Second, as Kaufman and Hildreth’s example points out, a committee would be out of luck in the proposed draft if a 24-Hour Report that should have been filed 6 days before the election was filed a day or two late in the heat of the final week of a campaign, even though it immediately corrected the error in time for the public to see it.

**Suggestion:** Amend the proposed automatic exclusion on Page 4 line 17-18 to say:

d. No late statement or report, other than a Form 470, was due prior to a relevant election and not filed at least seven days before the election or 48 hours after the report was due but before the election, whichever is later, unless the information was reported on another report or statement filed by the committee at least seven days before the election.

This amendment would (1) give committees an additional 48 hour grace period to be eligible for warning letters within the window of seven days before the election for late reports, as long as they are still filed before the election, and (2) make them eligible for warning letters if the information was reported in another report filed by the committee. Of course, other considerations could still disallow them from receiving a warning letter.

#### **POSSIBLE CHANGES TO DRAFT REGULATION 18360.1 on Page 5, Lines 15-16 and 17-18**

24-Hour Reports are specifically required in statute for late contributions and independent expenditures of \$1,000 or more because that information is especially important to quickly report to avoid public harm. The paragraphs on page 5, lines 15-16 and 17-18 of draft regulation 18360.1 strike a good balance by automatically excluding late 24-Hour Reports from streamlining, unless the committee reported the information in some other way by seven days before the election.

However, similar to the paragraph related to Warning Letters above, a committee would be out of luck in the proposed draft if a 24-Hour Report that should have been filed 6 days before the election was filed a day or two late in the heat of the campaign, even though it immediately corrected the error in time for the public to see it.

Also, as Kaufman and Hildreth's comment points out, there is not necessarily a significant harm to the public if a 24-Hour Report on a \$1,000 contribution from an individual donor of no noteworthy significance is inadvertently not reported for a \$20 million gubernatorial campaign. Our understanding is that Commission counsel currently recognizes cases like this by general applying a de minimis threshold of 0.1%, which might be appropriate to add to these provisions.

**Suggestion:** Amend the proposed automatic exclusion on Page 5, Lines 15-16 and 17-18 to say:

c. A 24-Hour Report representing more than 0.1% of the committee's total activity due during the last 16 days before the election and not filed at least seven days before the election or 48 hours after the report was due but before the election, whichever is later.

d. Any 24-Hour Report representing more than 0.1% of the committee's total activity not filed before the election if the information was not reported on another report or statement filed by the committee at least seven days before the election or 48 hours after the report was due but before the election, whichever is later.

These amendments would (1) give committees an additional 48 hour grace period to be eligible for streamlining letters within the window of seven days before the election for late reports, as long as they are still filed before the election, and (2) recognize that late 24-Hour Reports representing de minimis percentages of a large committee's contributions or expenditures may not represent enough of a public harm to be automatically excluded from streamlining. Of course, other considerations could still disallow them.

We offer these suggestions as changes we could support in case the Commission and other public commenters believe they would be helpful. We would support the new Regulation 18360.1 whether these suggestions or amendments with similar language are accepted or not.

**However, we would oppose striking those provisions entirely**, as other public commenters have requested, because the statute that imposes 24-Hour Reporting requirements inherently recognizes that contributions and independent expenditures of \$1,000 or more in the last part of elections are generally of great public import. While it may be true that these paragraphs actually remove certain late reports from eligibility for warning letters or streamlining that currently would be eligible, **whether violations are currently eligible should not be the deciding factor.** What should be the deciding factor is making clear, with automatic rules, what is, and is not eligible, based on what is likely to have public harm. The proposed regulations strike a good balance.

Thank you again for the opportunity to comment on these proposed regulations. In general, we believe these are positive changes to lessen unnecessarily burdensome penalties on small and/or unsophisticated committees, and will allow the Commission to focus more on violations that have the greatest public harm.

Sincerely,



Trent Lange, PhD.  
President and Executive Director  
California Clean Money Campaign