



**California Political Attorneys Association**

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October 14, 2021

VIA EMAIL

Chair Miadich and Commissioners Baker, Cardenas, Wilson, and Wood  
California Fair Political Practices Commission  
1102 Q St #3000  
Sacramento, CA 95811

**Re: Comment Letter on Proposed Behested Payment Regulations**

Dear Chair Miadich and Commissioners:

The California Political Attorneys Association (CPAA) writes to offer comments on the proposed behested payment regulations pre-noticed at the July Commission meeting. We appreciate your consideration of our feedback and believe that our proposed changes to the draft regulations will help bring greater clarity to the regulated community. Specifically, we offer comments on Proposed Regulations 18424.1 and 18424.2.

**Proposed Regulation 18424.1**

We appreciate the Commission recognizing that officials often have difficulty obtaining the necessary information to timely file behested payment reports and agree that providing officials with the ability to report based on a good faith estimate is a necessary change. We do, however, want to ensure that the proposed regulatory change does not unintentionally create a new duty for officials to file estimated behested payment reports where they do not otherwise know or have reason to know that a report is triggered.

For example: If Charity A sends out a fundraising solicitation identifying Senator Smith as a supporter of the organization but does not seek authorization to feature Senator Smith on the invitation, and the Senator does not otherwise know or have reason to know he is featured, the Senator should have no obligation to file a behested payment report (estimated, or actual).

The draft regulation provides that a good faith estimate is permitted where the official has “practiced reasonable efforts” to obtain the required information and is unable to ascertain the exact amount prior to the reporting deadline. We recommend adding an additional provision to this regulation (new section (d)) to require the official to have constructive knowledge that they

October 14, 2021

Page 2 of 4

were featured in a solicitation that would require them to file a behested payment report before an estimated is required. We propose:

(d) Where an elected officer or PUC member does not consent to use of their name or image in connection with a solicitation or does not otherwise know or have reason to know that they were featured in connection with a solicitation, a behested payment report is not required.

We believe that this change is consistent with the Commission's intent.

### **Regulation 18424.2**

We agree with the Commission's recognition there are circumstances in which an official's name or image may be featured in connection with a solicitation, but the official's role in connection with the fundraiser is very minimal and therefore a behested payment report should not be required. We believe, however, that the exception in Proposed Regulation 18424.2(c) should be drafted to more thoroughly cover circumstances where an official may be identified in some manner in connection with a fundraising solicitation, but where the official's role in the event is not significant.

Proposed Regulation 18424.2(c) currently provides: "...a payment made in response to a fundraising solicitation from a charitable organization does not result in a reportable payment made at the behest of the elected officer or PUC member where the officer or member is merely identified in the solicitation as a guest speaker for an event, and the official's involvement in the fundraising invitation does not extend beyond the role of guest speaker."

As noted in the staff memorandum, the intent of this language is to cover circumstances where an official has a "minor" role in the event. We agree that where an official plays an insignificant role in an event, identification of the official on a fundraising solicitation should not be enough to require the official to file a behested payment report. However, we think that use of the term "guest speaker" is too limited, and there are numerous other circumstances where an official plays a similar role that should also be covered by the exception.

Specifically, officials frequently serve on honorary committees for fundraising events, and the fundraising solicitations typically identify the names of all individuals serving on the honorary committee. The honorary committee is, however, just that: honorary. Officials who serve on the honorary committee do not play a significant role in the fundraising event and are not requesting or soliciting payments from attendees. Requiring officials who are identified on a fundraising solicitation as members of an honorary committee to file behested payment reports does not serve the purposes of the behested payment reporting requirement. An official is not soliciting payments when identified as a member of an honorary committee in a manner that may potentially inure favor or benefit to the donor who ultimately contributes in connection with the event. For this reason, we recommend updating this regulation to also exempt officials whose names are included as part of an honorary committee.

October 14, 2021

Page 3 of 4

Doing so would be consistent with prior FPPC advice recognizing that officials who serve in some kind of “honorary” role at an event do not play a significant role in the event or in fundraising for the organization. In the *Wiener* Advice Letter (A-14-099), the FPPC concluded that an official who was featured as an honoree at an event was not required to file a behested payment report because the official was not involved in creating the invitation and, “...there is no reason for a recipient of the invitation to believe that [the official] was soliciting a donation merely because [the official] had been identified as an honoree by the nonprofit hosting the gala.” The advice in the *Wiener* Advice Letter is inconsistent with advice later provided in the *Rivas* Advice Letter (I-19-056), whereby the FPPC advised that members of an honorary committee featured on an invitation are required to file behested payment reports. We believe that the *Rivas* letter is incorrect and that the regulation should be updated to be consistent with advice previously provided in the *Wiener* Advice Letter because officials who are identified as members of an honorary committee are not soliciting donations by their mere presence on an invitation. Doing so would also lead to more consistency in behested payment reporting: It is confusing for the public record to have multiple reports filed by officials for the same donation. If 15 officials serve on an honorary committee for an event for Charity A and Donor B gives \$10,000 in response to the invitation, 15 officials will file behested payment reports disclosing the same \$10,000 donation from Donor B to Charity A.

In addition to recognizing an exception for officials who merely serve on an honorary committee, we also think that the language in the regulation should recognize other roles, similar to guest speaker, where the official does not play a substantial role in the event and therefore should not be required to file a behested payment report. While we understand that the Commission feels it is difficult to draw bright lines, we believe that the Commission can look to a parallel federal regulation for guidance.

11 CFR 300.64 provides the circumstances under which a federal candidate or officeholder is permitted to engage in non-federal fundraising. Because federal law imposes amount and source limitations on the funds that a federal candidate is permitted to solicit, this regulation is intended to provide for the limited circumstances under which a federal candidate or officeholder can be featured in connection with solicitations for non-federal candidates or committees where the funds solicited fall outside the amount limitations and source restrictions that the federal candidate is otherwise permitted to solicit. Federal candidates and officeholders can be featured on solicitations that request funds outside of federal amount limits and source restrictions where “the Federal candidate or officeholder identified as a featured guest, honored guest, special guest, honored speaker, or in any other manner not specifically related to fundraising.” The solicitation is also required to include a disclaimer that provides that the solicitation is not being made by the federal candidate or officeholder.

Federal law has clearly made a determination that roles such as ‘featured guest, honored guest, special guest, honored speaker,’ and similar roles are not sufficiently connected to fundraising to prohibit a federal candidate or officeholder’s involvement. We propose that the Commission consider adopting language that mirrors the federal regulation, recognizing that

October 14, 2021

Page 4 of 4

these roles are not sufficiently connected to fundraising to require an official to file a behested payment report.

We propose revising Proposed Regulation 18424.2(c) as follows:

“...a payment made in response to a fundraising solicitation from a charitable organization does not result in a reportable payment made at the behest of the elected officer or PUC member where the officer or member is merely identified in the solicitation as a guest speaker, honorary committee member, featured guest, honored guest, special guest, honored speaker or in any other manner not specifically related to fundraising for an event, and the official’s involvement in the fundraising invitation does not extend beyond the ~~role of guest speaker~~ identified role.”

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We appreciate the Commission’s consideration of these proposed changes, and welcome further discussion of these changes with Commission members and staff.

Respectfully submitted,



Emily Andrews  
CPAA Regulatory Committee Chair,  
on behalf of the CPAA Board