

December 6, 2011

Fair Political Practices Commission
Chair Ravel and Commissioners Garrett, Rotunda,
Montgomery and Eskovitz
428 J Street, Suite 620
Sacramento, CA 95814

**RE: Comments on Agenda Item 25 – Amendments to FPPC Regulations
18247.5 and 18227.5**

Dear Chair Ravel and Commissioners:

We appreciate the opportunity to comment on the proposed amendments to FPPC Regulations 18247.5 and 18227.5 regarding the requirements for political committees to periodically verify their filing status as state, local, primarily formed or general purpose committees. Please find our comments and suggestions below.

Regulation 18227.5

1. On Page 3, beginning on line 3, we strongly recommend that the Commission adopt “Review Option 1” over “Review Option 2.” Option 1 will retain the quarterly review of committee status while Option 2 proposes to require general purpose committees to review their status in connection with specified campaign reporting periods.

We favor Option 1 because the requirements are clearer and it imposes less of an administrative burden on committees who are already required to prepare and file pre-election campaign reports within 5 days and are also typically in the midst of their busiest campaign activities during pre-election reporting periods.

If adopted, Option 2 will require general purpose committees to verify their reporting status in connection with the semi-annual reporting periods in June and November and, “as necessary,” at the close of pre-election periods “in connection with a city county or state election[.]” The requirement that committees review their status “as necessary” is ambiguous because it does not clarify when pre-election reviews are legally required.

Additionally, Option 2 does not clearly set forth when committees are required to verify committee status in connection with pre-election reporting periods. For example, is a state general purpose committee

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required to conduct status review checks in connection with the pre-election reporting periods for local jurisdictions in which it makes contributions or expenditures? Are local committees required to conduct status reviews in connection with state pre-election reporting periods if they make contributions or expenditures in connection with state elections? If so, this could result in committees being under a constant obligation to review their status in connection with multiple elections in which they make contributions or expenditures.

Assuming Option 2 does not require committees to conduct status checks in connection with every election in which it makes expenditures, the primary difference between Option 1 and Option 2 appears to be that Option 2 adds the requirement to conduct a review at the end of the second pre-election reporting period. However, review after the second pre-election reporting period will not necessarily result in significantly more pre-election disclosure over Option 1 because committees are not required to amend their Statements of Organization to reflect a change in status until 10 days after the end of the review period; pre-election reports are due within 5 days after the end of the reporting period.

2. On Page 3, beginning on line 8, we support the option to exempt committees from conducting status reviews when they have not made expenditures of more than \$5,000 in a calendar quarter. We recommend that the Commission clarify that this exception also applies to committees that are established within six months of an election (See Page 3, line 10). We also recommend adding this \$5,000 review exception to Regulation 18247.5 (See Regulation 18247.5, Page 2, line 20.)
3. On Page 2, beginning on line 14, we view MD Option 1 as the most desirable of the three options. We also view MD Option 2 as an improvement over the existing regulation. However, if either option is adopted, we recommend clarifying that contributions to state committees – in addition to state candidates or measures -- also count toward the state filing threshold.
4. On Page 4, line 3 we recommend adding an additional paragraph verifying that filers may rely on the most recent Statement of Organization on file with the Secretary of State in determining the status of a committee to which they have given for purposes of the review required by this regulation. This will allow the filer to be confident that it has based its analysis required by subsection (d) the correct information.

We propose adding the following language:

(5) In conducting the calculations required by (d)(1) and (2), a filer may rely on the most recent Statement of Organization on file with the California Secretary of State's office to determine the status of a committee.

Regulation 18247.5

5. On Page 2, beginning on line 1, the proposed regulation only permits a primarily formed committee to calculate its status based on the period covering the immediate 24 months. This is in contrast to a general purpose committee which is allowed to consider two calculation periods. We see no reason to limit primarily formed committees only to one calculation period and believe the two regulations should be consistent by allowing both calculation periods.
6. We recommend making the following change to clarify that the proposed exception in (g)(2) applies to contributions from general purpose committees to primarily formed committees with the same sponsor. As currently drafted, subdivision (g)(2) only applies to general purpose committees that sponsor primarily formed committees.¹

On Page 3, strike lines 21 and 22 and on Page 4 strike lines 1 and 2 and insert:

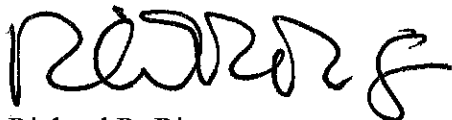
Contributions from a general purpose committee to a primarily formed ballot measure or candidate committee shall not be included in the calculations required under subdivision (d)(2) if the sponsor of the general purpose committee is also a sponsor of the primarily formed committee.

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Thank you for the opportunity to provide these comments. Please do not hesitate to contact me if you have any questions.

Sincerely,

OLSON HAGEL & FISHBURN LLP



Richard R. Rios

¹ Some in the regulated community have proposed applying this exception to include all contributions from general purpose to primarily formed committees. We support this broader exception as well.