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April 3, 2012

Honorable Ann Ravel, Chair
Commissioner Elizabeth Garrett
Commissioner Lynn Montgomery
Commissioner Ronald Rotunda
Commissioner Sean Eskovitz
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Agenda Item # 13 -- Proposed Regulation 18412

Dear Chair Ravel and Commissioners:

This comment is in general support of proposed Regulation 18412 with some questions and concerns.

The staff is to be commended for addressing this challenging subject and coming up with a reasonable approach to the reporting issues involved.

First, we agree with the proposed treatment of reporting requirements by IRC § 501c3 charities. When these entities join the fray of ballot measure campaigns, using tax deductible donations, there is no reason they shouldn't be subject to the same disclosure rules as other organizations that are similarly situated.

Second, we like the approach of setting a bright line for "reason to know" - attributed donors using the LIFO method. While there is always some unfairness involved with attributed donors, since "reason to know" often is not within the knowledge of a 501c organization's members or donors (who might demur if they had real "reason to know" their dues or similar payment to the organization made them campaign contributors), it is more fair to attribute knowledge to donors whose dues or donations are solicited after the organization has spent treasury funds for political purposes, and the use of the LIFO accounting method is consistent with that approach.

Third, treating unattributed funds to the organization itself as the default reporting mode seems fair, and better than back-attributing contributions to donors whose dues or other organizational payments were paid before they would have attained the "reason to know" status described above.

We do have some questions about the regulation as drafted:

1. Disclosure under Proposed Regulation 18412(b)

The staff memorandum in support of the regulation discusses, and subdivision (b) of the regulation states, that contributions made to an organization with knowledge that they "may be used for political purposes" must be fully disclosed. This is true, but also requires the organization to register as a recipient committee unless it segregates the solicited funds into a PAC that itself registers as a recipient committee.

We have always understood that if an organization solicits contributions to be used for a political purpose, then once it receives $1,000 or more to make contributions as defined in Government Code § 82013(a), that organization becomes a "recipient committee" and would be required to report contributions received of $100 or more in a calendar year on recipient committee campaign reports.

While proposed subdivision (c)(1) backs into that proposition, it seems indirect and could be made more clear. It is unlikely that a 501c organization will simultaneously take steps to solicit contributions to its treasury and also trip the "reason to know" threshold by making direct expenditures using donor funds that were not solicited for a political purpose. We can't recall any that have done so.

Most 501c organizations with which we are familiar simply set up a PAC, whether it is an IRC § 527 tax exempt or an affiliated 501c4 or 501c6 Issue or Ballot Measure PAC. 527s are established by 501c's in order to avoid potentially substantial federal taxes on the 501c that may result from making political expenditures without segregating the funds in a 527 vehicle that would not pay tax on such expenditures.

Perhaps subdivision (b) should note that if the organization receives such donations solicited for use for political purposes, and receives $1,000 or more, then it (or its segregated fund) must register as a recipient committee.

2. Federal PACs' Disclosure

The proposed regulation also applies to federal PACs that use their funds to make political expenditures in California elections. It specifies its application to "monthly filers." The regulation appears to put such federal PACs on the same racecourse as 501c organizations.

First, we are not clear why the regulation applies to monthly filing federal PACs and not to those that file on other federal schedules. Many federal PACs file quarterly reports, and then file pre-election reports when they are active in a particular state or nationally. The staff should consider whether its limited application creates a dual class of reporting.

Second, we do not believe that disclosure will be enhanced sufficiently to warrant requiring federal PACs to register as California recipient committees. A better approach would be for them to file major donor reports and provide a link to the FEC website containing these committees' federal campaign reports.

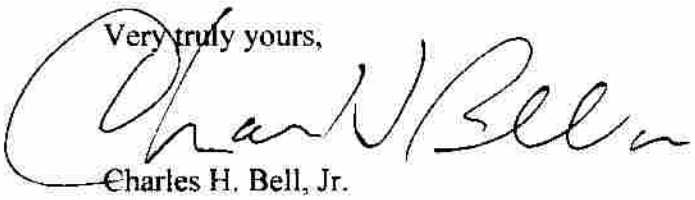
Third, we believe there are good reasons not to make the assumption that this regulation of federal PACs will capture any "hidden contribution activity." All federal PACs file regular reports and disclose at a marginally higher (but still relatively small level) $200 versus $100 contribution level. Thus, almost all activity (and virtually all relevant activity) will be disclosed regularly by such filers.

Finally, we are not aware of the circumstances under which *pro rata* contributor disclosure results in "hiding" the sources of contributions.[1] In the past, when a national political party organization would contribute to California campaigns, the *pro rata* disclosure made sense because the percentage of California contributions or expenditures made by the organization to all of its contributions was small, and using some other method such as LIFO would not significantly affect itemized disclosure. If anything, this would raise questions about why a donor from Montana or New Jersey who happened to give a large contribution to the national committee would wind up being attributed as the maker of a California contribution.

[1] We are not aware of significant claims that California 501c4s have failed properly to report sources of funds used for independent expenditures or issue advocacy ads. Some of the breathless commentary at the national level about IRC § 501c4s "hiding" donors is overblown and reflects a misconception about non-disclosure of sources of expenditures that are neither federal independent expenditures or "electioneering communications." No current federal law requires the sources of these non-independent expenditures/ non-"electioneering communication" expenditures to be disclosed.

Thank you for the opportunity to comment on this Agenda item.

Very truly yours,



Charles H. Bell, Jr.