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March 13, 2012

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

**RE: Agenda Item #44: Discussion of Online Posting of Statements of Economic Interests
filed by Elected Judges**

Chair Ravel and Commissioners,

On behalf of California Common Cause and our 400,000 national members, please accept as our written comments on Agenda Item #44: Discussion of Online Posting of Statements of Economic Interests filed by Elected Judges.

California Common Cause believes Statements of Economic Interests are essential to reveal conflicts of interests of elected officials. Public interests groups, the media, and everyday voters look to these disclosures to examine the possible biases and conflicts that occur across all jurisdictions. Violations of the state's conflict of interest laws are so prevalent that the FPPC's agendas consistently feature large fines and violations.

We are currently working with the Commission and legislature to *increase* the amount of information detailed in SEI forms. We have strongly supported moving all disclosures to an electronic submission format to improve clarity and save on administrative costs.

For these reasons, we believe this Discussion Item is important to include on your agenda and the outcomes will set a precedent for future disclosure regulations. Below you will find our response to Mr. Morazzini and Mr. Lau's memorandum and will conclude with our recommendations.

Response #1

"Commission staff has also taken further precautions with the implementation of online posting to address privacy and security concerns unique to individual officials. Most significantly, all elected officials subject to online posting of statements of economic interests have been permitted to request the redaction of sensitive information. While the determination of whether or not information may be redacted must be made on a case-by-case basis, elected officials' requests to redact home addresses for private individuals including both family and friends have been granted liberally."

In this paragraph, staff has revealed a practice that gives us pause and concern over what and how information is redacted from public disclosure. Staff describes their regulatory authority in a paragraph preceding the one above stating: "[i]n this regard, Regulation 18313.5 expressly requires that the 'address, telephone number, and signature block of the elected official's statement will be redacted from the cover page.'" However, no regulatory or statutory citation was provided when staff described *additional* redactions were permitted by request of the elected official and done so "liberally" on a "case-by-case" basis.

Response #2:

“Accordingly, Commission staff agreed to allow judges to submit a second version of their respective statements omitting sensitive information as a supplement to their original statements [...] a judge with a specific security related concern could file a second version of his or her statement omitting sensitive information that would be used for the online posting. The judge would however continue to file an original statement containing all information required under the Act. This original statement would remain available at the Commission for staff and public review and could be compared to the online posting to ensure that the judge only omitted information with a valid privacy or security concern.”

California Common Cause has concerns with the aforementioned disclosure scheme. If the AOC’s “disclosure” proposal was to be adopted by the FPPC, then the Commission would be setting a precedent that would permit omissions from disclosure requirements. First, the AOC proposal seems to do little to prevent serious security threats if individuals are still able to view the full record at the FPPC office. Secondly, by submitting the SEI with omissions, the disclosure is, at best, opaque, and at worst, not very useful to a curious public. Depending on the amount of omitted information, we can foresee members of the public being unaware that information was omitted in the outset. There are several reasons why redactions are obvious and serve public transparency while also balancing the various security concerns. Contrary to redactions, omissions are not obvious and can be browsed over quite easily or not detected at all.

Response #3:

“To the extent that the Commission finds that privacy and security concerns for judges have not been adequately addressed, the Commission may, of course, elect to direct staff to propose a regulatory amendment to Regulation 18313.5 excluding judges from the online posting of statements of economic interests, which can be placed on the agenda for consideration at a future meeting of the Commission.”

Based on the staff memorandum, California Common Cause believes the Commission has been given an unfair dilemma of either choosing the AOC disclosure scheme or to “[exclude] judges from the online posting of [SEIs].” Based on our conversations with staff, it was not the intent of Counsel to limit the choices of the Commission. The Commission has far more liberty than to only choose between omissions or exclusions; both options of which do not further the Political Reform Act’s intent on disclosure and transparency.

Recommendations:

- We urge staff to develop proposed amendments to Regulation §18313.5, which would permit staff to redact further information at the request of the public official for security purposes on a case-by-case basis. The amendment should then be given full vetting by the public, regulated community, and the Commission.
- We urge the Commission to discuss a possible compromise that balances the security requests of the AOC and public’s desire for more transparency and disclosure from elected officials. The Commission should not be limited to choosing either omission or exclusions.
- The Commission should adopt disclosure requirements for elected officials that would be consistently applied across all elected offices. The public expects disclosure regulations to be simple and predictable. We recommend that the Commission avoid setting different disclosure rules for different levels of government or branches of government.

- We would oppose any amendment to §18313.5 that allows any elected official to be excluded from online disclosure. In today's Internet-driven society, voters expect online disclosure and proactive transparency. Exclusion from the voter's standard would be a step backwards and would not further the goals of the Political Reform Act.

I would like to close my prepared comments by expressing gratitude to the Commission's staff for working on this important issue. Mr. Lau was accessible and helpful in guiding us through the memorandum and the concerns of the AOC.

Please feel free to contact me at (916) 520-4070 or pung@commoncause.org if you have any questions.

Sincerely,



Phillip Ung
Policy Advocate