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July 16, 2014

VIA EMAIL

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

Dear Chair Remke and Commissioners,

The California Clean Money Campaign would like to thank the Commission for so quickly addressing regulations needed to implement SB 27 and appreciates the opportunity to comment on them.

The California Clean Money Campaign is a non-partisan, non-profit organization that has been working on the problems of money in politics in California for over a decade, with more than 100,000 supporters across the state who care deeply about improving California's campaign finance and disclosure system. We were an early supporter of SB 27 and presented signatures from more than 40,000 Californians urging the legislature to pass it.

We would like to congratulate the FPPC staff for doing an excellent job drafting the regulations for this crucial bill. We especially appreciate that the proposed regulations generally require the earliest possible reasonable disclosure, filing, and notices to maximize the chances that voters have access to the crucial information of who is funding California campaigns when they vote.

The Commission has received numerous comments from other stakeholders, most of them asking important questions and providing valuable language recommendations, many of which we are happy to see the latest staff proposal include.

However, there are some requests to significantly extend filing deadlines beyond staff recommendations. *We have major concerns about their effect on SB 27's ability to fulfil its intent of providing the electorate with information they need before the election, and urge you to reject them and stay with staff recommendations, except on a couple of places described below to simplify the language while at least partially addressing the other stakeholder's concerns.*

Extending Expedited Filing Deadlines to 5 or 10 Business Days Would Cripple SB 27's Number One Intent

The first intent listed for SB 27 is *"It provides the electorate with information as to where campaign money comes from, increasing its ability to identify the supporters of a candidate or ballot measure."*

Though we are cognizant of the need for filing deadlines to be reasonable and have a couple of suggestions to simplify the proposals, we strongly disagree with the recommendations you have been receiving from some stakeholders recommending that staff's language for expedited filing deadlines be extended to 10 business days, or even 5 business days, in close proximity to an election.

Allowing multipurpose organizations 10 business days for expedited filings would mean that multi-layer "Dark Money" non-profits of the sort used in the infamous Arizona \$11 million money laundering case would not have to report their contributors until well after the election.

Table 1. Timing of Filings Under Different Proposals for Expedited Filing Deadline

	Staff Proposal (24 hours)	Other Stakeholder Proposal (10 business days)	CCMC Proposal (3 business days, same as LIFO requirement of 18422(c)(2))
Americans for Responsible Leadership (AFRL) contributes \$11 million to Small Business Action Committee	10/15/2012	10/15/2012	10/15/2012
AFRL required to report contributors by LIFO	10/18/2012	10/18/2012	10/18/2012
AFRL overnights nonprofit filer notice to Center to Protect Patient Rights (CPPR)	10/19/2012	10/19/2012	10/19/2012
CPPR receives nonprofit filer notice	10/20/2012	10/20/2012	10/20/2012
CPPR required to file Form 460	10/22/2012	11/5/2012	10/24/2012
CPPR overnights nonprofit filer notice to Americans for Job Security (AFJS)	10/23/2012	11/6/2012	10/25/2012
AFJS receives nonprofit filer notice	10/24/2012	11/7/2012 – Day after election	10/26/2012 -
AFJS required to file Form 460, revealing actual original donors.	10/25/2012	11/21/2012 – 15 days after election.	10/31/2012 – 6 days before election.

In the Arizona case, which involved three layers of non-profits, the contribution that would have triggered the multilayer reporting would have been Americans for Responsible Leadership’s contribution of \$11 million to the Small Business Action Committee on 10/15/2012. With staff’s proposed regulations, assuming that each of the non-profits sent the required nonprofit filer notices to their \$50,000+ multipurpose organization contributors by overnight mail, the final non-profit, Americans for Job Security, would have had to file a Form 460 revealing its actual individual contributors on 10/25/2012. This is enough before the election to fulfil SB 27’s intent (see Table 1, column 2).

If they are instead given 10 business days before they have to make their expedited filing , Americans for Job Security would not have had to file its Form 460 revealing its actual individual contributors until 11/21/2012, 16 days after the election. (see Table 1, column 3).

This would be an unacceptable loss of information to the voters that SB 27 was explicitly passed to provide. Even a 5 day expedited filing deadline, as proposed by the Alliance for Justice, would make it far too easy for millions of dollars of non-earmarked contributions passed through multiple layers of non-profit organizations close to the election to avoid disclosure until it was too late for the voters to find out.

It is important to keep in mind here that these expedited deadlines only apply to multipurpose organizations that contribute \$50,000 or more, and not to every donor of \$1,000 or more. Any non-profit organization that has the capacity to give contributions of \$50,000 or more is likely to be a sophisticated organization that has legal counsel, and so should not be surprised if any donations of \$50,000 or more that they give without restriction may end up requiring them to become a campaign committee.

Increase Expedited Filing Deadline to Three Days, up to 90 Days Before Election, for Consistency with LIFO

Though accepting various stakeholders’ requests to increase the expedited filing deadline to 10 business days or even Alliance for Justice’s request to increase it to 5 business days in times close to the election would mean that contributors at the bottom of multi-layer transfers of funds would often not be revealed until after the election, their concerns that 24 hours might not be enough time are well taken.

RECOMMENDATION: To address those concerns and to simplify the regulations, we recommend changing the extended filing for time periods close to the election to match the deadline that MPOs have for reporting their contributors on a LIFO basis in Section 18422(c)(2), i.e. three business days.

As seen in Table 1, column 4, this would mean in the 2012 Arizona case that the final non-profit, Americans for Job Security, would have had to file a Form 460 revealing its actual individual contributors on 10/31/2012. This is enough before the election to fulfil SB 27's intent, while at the same time addressing stakeholders' concerns that a 24 hour expedited filing deadline is too short.

To be consistent with the non-profit filer notices that trigger the expedited filing deadlines, we would also recommend that the expedited filing deadline go back to 90 days before the election, not just 16 days, which is not nearly long enough.

Beyond 90 days before the election, the staff's recommendation of 10 business days seems sufficient, though if it is necessary to compromise with stakeholder this would be a place it could be done without significantly harming the ability of voters to get the information they need before the election.

Close Major Loophole by Treating LIFO Donors as Late Contributions During Late Contribution Period

The language as drafted has one huge loophole: Though late contributions of \$1,000 or more to a primarily-formed committee within 90 days before the election have to file late contribution reports within 24 hours, donors identified by LIFO in Section 18422(c)(2) as contributors when a MPO becomes a committee during the same period don't have to be reported until the new committee files its next Form 460. That might not be for over a month if the MPO became a committee 60 days or more before the election. Worse, it wouldn't be until after the election if the MPO became a committee after the final pre-election Form 460.

This is an unacceptable loophole that could stop voters from being able to trace the source of potentially tens of millions of dollars in contributions. In the 2012 Arizona case, if Americans for Responsible Leadership had given to the Small Business Action Committee late enough that its three business day LIFO donor identification requirement had put it after the final Form 460 Pre-Election statement on 10/25/12, it wouldn't have had to report anywhere that the Center to Protect Patient Rights was a contributor, and nobody would have been able to trace back the multi-layer chain of contributions until it filed its next Form 460 nearly three months after the election on 1/31/2013.

RECOMMENDATION: When it is within 90 days of the election, treat all contributions identified by LIFO in Section 18422(c)(2) as late contributions, giving them 24 hours to report them as such after they have been identified by LIFO. Per Section 18422(c)(1), the date the organization must list for contribution will be the date of the expenditure.

Restore Confirmation Requirement for Nonprofit Filer Notices, But More Clearly Identify What Counts as Confirmation

The latest regulations for expedited notices sent to contributing organizations in Section 18422(e)(2) remove the staff's originally proposed language that says they "shall obtain confirmation that the contributing organization received the notice." It was replaced with:

"The recipient organization shall send the contributing organization notice by electronic mail, overnight delivery or facsimile, and shall maintain a record of all notices sent."

This is a major problem, because contributing organizations could legitimately argue that they didn't file because they never received, for example, the electronic mail notice that the recipient organization sent them. Email messages are caught in spam filters all the time.

We note that Lance Olson provided an alternative to completely relieving the burden from the MPO sending the notice in his original public comment, saying:

"We do not believe the burden should be placed on the MPO sending the notice to call or otherwise verify the notice was received. However, if the confirmation will be required, the regulation should more clearly identify what will qualify as confirmation (e.g. one follow up call) so that MPOs know how to meet this obligation and can demonstrate compliance."

RECOMMENDATION: Restore the staff's original proposed requirement that the recipient organization receive confirmation, but provide additional clarity to what counts as confirmation, as Lance Olson's original comment recommended. This mean amending Section 18222(e)(2)'s current line 7-9 on p.4 as follows:

"The recipient organization shall send the contributing organization notice by electronic mail, overnight delivery or facsimile, and ~~shall maintain a record of all notices sent.~~ shall obtain confirmation that the contributing organization received the notice by a return electronic mail, overnight delivery, or by having spoken by telephone to a person of responsibility in the contributing organization or received one follow-up call acknowledging the notice from a person of responsibility. If they do not receive such a confirmation within 24 hours, then the recipient shall send a second non-profit filer notice by overnight delivery with a registered receipt."

This solution would increase the chances that the recipient organization actually receives the nonprofit filer notice without unduly burdening or putting liability on the contributing organization, because if they were unable to confirm with the recipient, their only additional obligation is to send a second notice by overnight mail with registered receipt.

It is important to note that this will be a relatively rare occurrence, because these notices only have to be sent to multipurpose organizations that contribute \$50,000 or more, not to all donors that are identified by LIFO. But it could be crucial to ensure that voters MPOs actually receive their nonprofit filer notices and voters therefore receive the information they need.

Thank you again for the opportunity to comment on these important regulations to ensure that the intent of SB 27 is fulfilled.

Sincerely,

A handwritten signature in blue ink that reads "Trent Lange". The signature is fluid and cursive, with the first name "Trent" being larger and more prominent than the last name "Lange".

Trent Lange, PhD.
President
California Clean Money Campaign