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VIA FAX

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Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

**Re: Comments on Proposed Changes to Regulation 18616
Agenda Item
January 21, 2016 Commission Meeting**

Dear Commission Assistant:

We are submitting these comments to the Commission for its consideration on the proposed amendments to Regulation 18616. Our firm represents clients with lobby reporting obligations and prepares hundreds of lobby reports each year. We are familiar with both the reporting requirements and the practical complexities and burdens which arise in preparing lobby reports.

Certainly we understand the spirit and intent of the proposed changes is to provide more public disclosure of lobbying payments, and we believe that this is an important and laudable goal.

However, we have two major substantive concerns which we would ask the Commission to consider, both of which we believe are in the spirit of this proceeding and the law. Our particular focus is on the large number of nonprofit organizations which often conduct their policy advocacy through employees and not lobbying firms, and who report all of the expenses related to these activities in the reporting category addressed by the proposed regulatory changes of all "other payments to influence legislative or administrative action," but similar concerns certainly arise for other types of filers. These concerns were raised with your staff at the Interested Persons meetings and in informal comments made in December, and can be summarized as follows:

The \$2,500 per calendar quarter threshold to disclose lobbying expenses is very low and would both obscure disclosure of the types of payments which are the focus of the new requirements, and impose significant administrative costs and burden to lobby filers.

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Payments made to non-lobbyist employees should be included in the category of overhead and similar expenses and reported in the total overhead amount for the quarter, or alternatively, reported as a separate lump sum amount for the quarter.

The proposed \$2,500 threshold applies to payments made to a payee over a calendar quarter, so a \$2,500 threshold would certainly capture the reporting for many relatively small payees. This imposes a burden on the filers without any identifiable benefit to public disclosure. Also as staff points out in its memorandum, an exception for overhead payments and similar expenses is reasonable so these types of expenses do not “shroud” the important payments which will disclose the nature and extent of the filer’s lobbying activities. In our view, to minimize the administrative costs and burdens and to put the appropriate public light on large payments for grassroots lobbying, consulting and the other types of payments described in the staff memorandum, we suggest that a more appropriate threshold for reporting these types of payments would be \$10,000 in a calendar quarter.

Also, under the amendments as proposed, a lobby filer would be required to list each employee by name, address and specific amount paid during the quarter based on their gross salaries. We ask the Commission to consider including these payments in the proposed lump sum total for overhead and similar expenses. Alternatively, we would ask that the payments made to non-lobbyist employees be reported as a lump sum similar to the proposed reporting for overhead expenses and the reporting of payments to in-house lobbyist employees.¹

These are the individuals within many organizations who are not registered lobbyists, and while they may engage in some direct lobbying communications, they do not qualify as lobbyists. The payments to these employees are reportable by the organization because they spend 10% or more of their time in a calendar month in activities related to the organization’s state lobbying activities, and the reportable payments are based on the percentage of time spent in these activities and their gross salaries. (Government Code section 86116(h)(1).) The activities may include, for example, supporting the organization’s lobbyists, researching or drafting technical or scientific comments on proposed agency regulations, doing background research for the advocacy activities, organizing member advocacy activities, and other activities related to the organization’s state public policy advocacy program.

We ask that the Commission recognize that there is little if any value to the public in the disclosure of the individual names and addresses or the salaries paid to these individuals. Very importantly, these employees also have legitimate privacy concerns in the disclosure of this information.

¹ The reporting of payments to an organization’s registered lobbyists is based on the lump sum total of the salaries and other payments made to the lobbyists during the quarter. (See Gov. Code section 86116(c).) The lobbyist’s address and salary are not itemized separately.

The Commission has precedent in the area of campaign disclosure, where committees are not required to report the names, addresses and specific amounts paid to employees of major donors who provide in-kind services to a committee; these amounts are reported as a lump sum amount. This has been the Commission's long-standing view. See the Commission's 1979 Opinion, In the Matter of: Opinion requested by Vigo G. Nielsen (No. 79-002, May 1, 1979) where the Commission held that a major donor committee was not required to report the name, address and salary of employees whose services constituted in-kind contributions to a recipient committee, an exception to the \$100 itemization threshold for reporting expenditures. This opinion was based on a balancing of the same considerations we have stated here, i.e., the information had little value to the voters and thus did not further the public disclosure purposes of the Act, and the employees' legitimate privacy concerns.²

In closing, we also ask the Commission to consider moving back the implementation date of this regulation to January 1, 2017 to coincide with the 2017-2018 legislative session, in order ensure a smooth transition, and avoid imposing new filing requirements when many organizations are engaged in election activities.

The proposed changes include an effective date of July 1, 2016. The first report covered by the new requirements would be due October 31, 2016 for the third quarter reporting period. Certainly this October will be one of the busiest months in an election year for both filers and the FPPC, and would be an unfortunate time to implement a new set of reporting requirements and a revised reporting form.

Moreover, the state lobby registration and reporting requirements are based on cumulative reporting for each two-year legislative session, and it would be more sensible to tie the new requirements to the beginning of a new legislative session, or January 1, 2017 to allow time for the filers, reporting software vendors, the FPPC and the Secretary of State to take the necessary steps to come into compliance.

Also since the majority of state lobbyists will be attending the lobbyist ethics course in late November, 2016, this would be an opportune time to provide training on the new requirements to ensure a smooth transition for the new session.

² The Commission's current Campaign Manual 5 provides as follows: **Staff Time.** *If an employee spends more than 10 percent of his or her compensated time in any one month engaged in campaign activities that expressly advocate the support of or opposition to a candidate or measure (e.g., phone banks or precinct walking), the employer must report the payments as nonmonetary contributions. The names, addresses, and the specific salaries of the employees are not required to be disclosed. (See FPPC Campaign Disclosure Manual 5 - Information for Major Donor Committees, Chapter 4.18.)*

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We appreciate your consideration of our comments.

Very truly yours,

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