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August 15, 2019

VIA EMAIL

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

RE: Request to remove opposition from AB 1217 (Mullin), the *Issue Ad DISCLOSE Act*

Dear Chair Miadich and Commissioners,

As a supporter of AB 1217, and as sponsors of AB 249, the *California DISCLOSE Act*, which AB 1217 is related to and relies in part on, we believe that the newly in-print version of AB 1217, dated August 14, 2019, now addresses all three substantive requests by the Commission to remove its opposition, and so would respectfully like to request that the Commission do so.

The Commission analysis and discussion in last month's hearing raised three specific concerns that led to its vote to Oppose Unless Amended:

> 1. The provisions of these non-campaign related communications are being added to the Chapter and Article of the Act previously exclusive to campaign advertisements. Inserting unrelated, non-campaign terms and requirements into the campaign advertising sections will severely complicate portions of the Act already filled with complexity.
>
> 2. Enforcing the provisions of this bill would require resource-heavy investigations of issue and electioneering ads because there would be no corresponding disclosures filed with filing officers disclosing "lobbying-available donations" and payments for communicating.
>
> 3. Establishes pre-election timing thresholds (60 days before a general or special election, 30 days before a primary election) that are substantively different than current electioneering requirements under Section 85310 (within 45 days of any election).

As the Commission discussed at your last meeting, Concern 1 was addressed in the July 8 amendments to AB 1217, with all of the code of AB 1217 now being separated from the *DISCLOSE Act* provisions and moved into a new Article 6 in the Government code (new Sections 84551 through 84559).

The new August 14 amendments should also fully address concern 3, because they amend AB 1217's definition of "electioneering communication" to match the time range of Section 85310, as requested by the Commission:

> *84551. For purposes of this article, the following definitions apply:*
>
> *(a) (1) "Electioneering communication" means any general or public communication that clearly identifies a candidate for elective state office, but does not expressly advocate for the election or defeat of the candidate, and that is disseminated, broadcast, distributed, or published <u>during the period beginning 45 days before an election.</u>*

The last of the Commission's specific substantive concerns, number 2, is now addressed in the manner that we discussed in Speaker pro Tem Mullin's office with Chair Miadich and Commission staff on June 18th, i.e. by requiring that persons that make covered electioneering communications or issue advocacy communications

retain records necessary for enforcement. Specifically, the August 14th amendments include the two following record-keeping requirements:

> *84555. A person who has made payments or promises of payments totaling ten thousand dollars ($10,000) or more in a calendar year for electioneering communications shall maintain records of the following:*
>
> *(a) All payments made for electioneering communications.*
>
> *(b) The payments and any earmarking used to calculate the names of the persons who made the three highest cumulative payments of ten thousand dollars ($10,000) or more to the person paying for each electioneering communication.*
>
> *…*
>
> *84559. A person who has made payments or promises of payments totaling ten thousand dollars ($10,000) or more in a calendar year for issue lobbying communications shall maintain records of the following:*
>
> *(a) All payments made for issue lobbying communications.*
>
> *(b) The payments and any earmarking used to calculate the names of the persons who made the three highest cumulative payments of ten thousand dollars ($10,000) or more to the person paying for each issue lobbying communication.*

Obviously, these record-keeping requirements are not the full filing disclosures that would be ideal. But as we discussed with Chair Miadich and staff in the June 18th meeting, the Secretary of State is currently not in a position to take on additional filings while it is in the middle of its Cal-Access project. When we floated the possibility of amending the bill to have new disclosures instead be filed with the Commission, Chair Miadich and staff expressed that that wasn't something the Commission would likely wish to take on at this time.

The consensus in the meeting seemed to be that the best solution for now was to instead amend the bill to require necessary record-keeping for enforcement, which Sections 84555 and 84559 do, and then to revisit additional disclosure filings in another bill after the new Cal-Access site is online.

The only other specific concern raised in the staff analysis is that "Commission staff believes this bill could lead to legal challenges over its constitutionality". This of course is always a possibility, as was a similar concern that staff raised about AB 249 the *California DISCLOSE Act*. However, that concern over AB 249 did not lead the Commission to oppose it, and in fact, legal challenges have yet to materialize, so we would hope that potential concern over legal challenges wouldn't cause the Commission to oppose AB 1217, either.

Thank you again for the opportunity to comment on the Commission's position on AB 1217. We believe that the author's amendments on these three specific issues raised by the Commission show a good faith effort to address them as discussed, and will happily work with the Commission and author on any remaining issues, so we would respectfully request that you remove your opposition.

Sincerely,

Trent Lange, PhD.
President and Executive Director
California Clean Money Campaign