

October 18, 2023

Chair Miadich and Commissioners Baker, Ortiz, Wilson & Wood
California Fair Political Practices Commission
1102 Q St., Suite 3000
Sacramento, CA 95811

Re: Request for Delayed Implementation of Regulation 18410 (Agenda Item #5)

Dear Chair Miadich and Commissioners:

I write to provide comments and request a delay in implementing the amendments to Regulation 18410, which seeks to update Form 410 Statement of Organization (“Form 410”) until the Legislature passes legislation to safeguard the financial information of political committees. Specifically, I want to highlight ethical concerns the Form 410 updates present for attorneys who advise political committees.


California attorneys practice law under a robust ethical body of rules governed by statute and the State Bar of California. One of the most fundamental ethical rules for attorneys is the duty to keep a client’s confidences secret at every peril to themselves. (See Bus. & Prof. Code § 6068(e)(1)). This duty extends beyond privileged information to any information that could be detrimental to a client. (Cal. State Bar Formal Opn. No. 1981-58; see generally Rest.3d Law Governing Lawyers, § 59, p. 455). Intertwined with an attorney’s duty of confidentiality is an attorney’s duty of competence, specifically the duty to safeguard a client’s information against unauthorized disclosure by the lawyer or their agents. (Rules Prof. Conduct, Rule 3-110(B); see also Cal. State Bar Formal Opn. No. 2010-179).

As the Fair Political Practice Commission is aware, legal counsel is routinely retained by individuals and entities involved in the political process to assist them with forming, managing, and terminating political committees. Form 410 is a central step in that process. The proposed amendment would change Form 410 to include bank and signer information. As outlined by other commenters, notably the California Political Attorneys Association, the proposed addition of this financial information on Form 410 puts political committees, which are already a target of fraud, at a heightened risk of revealing their sensitive financial information to bad actors.

If the amendments to Regulation 18410 are enacted without proper safeguards, attorneys who advise and assist political committees would, at a minimum, risk undermining the spirit of their ethical obligations by knowingly subjecting their clients’ sensitive information to a system that will subject the political committees to a “significant risk of fraud.”¹

I appreciate the FPPC’s past delay of the amendments to Regulation 18410 and the FPPC’s willingness to engage the Legislature to address these concerns. However, I respectfully request that the FPPC again delay the amendments to Regulation 18410 to protect political committees engaging in the democratic process from fraud and to assist attorneys from a potential ethical dilemma.

Sincerely,



Alexander J. Lee, Esq.

¹ Comment Letter from Tao S. Lau, Senior Vice President of California Bank & Trust to Fair Political Practices Commission (October 12, 2023).