California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox and Swanson

From: Hyla P. Wagner, Senior Counsel
Luisa Menchaca, General Counsel

Date: November 21, 2002

Subject: **Pre-notice Discussion of Amendments to Regulation 18116: Reports and Statements; Filing Dates**

Summary: Under regulation 18116, most reports and statements to be filed under the Act that fall due on a weekend or holiday may be filed on the next business day. This memorandum examines the issue raised by Colleen McAndrews of Bell, McAndrews, Hiltachk and Davidian of whether the weekend/holiday extension for filing reports and statements should be amended to also apply to late contribution and late independent expenditure reports, except those due on the weekend immediately prior to an election.

A. 24-Hour Late Reports and Election Cycle Reports. The Act requires candidates and committees that make contributions or independent expenditures of $1,000 or more during the "late period" to file reports of such transactions within 24 hours. (Sections 84203, 82036, 84204, 82036.5.) The late period is defined as 16 days prior to the election. (Sections 82036 and 82036.5.) For each election, the late period includes three weekends. The obligation to file late reports has been in the Political Reform Act since its passage in 1974 (then sections 84206 and 84207), although the reports were initially required to be filed within 48 hours instead of the current 24 hours.

Proposition 34 recently expanded the requirement for 24-hour reports of contributions and independent expenditures of $1,000 or more, by adding sections 85309 and 85500. These sections require state candidates and committees that file electronically to file electronic reports of contributions or independent expenditures of $1,000 or more received or made during the "election cycle" within 24 hours. The "election cycle" is defined as the 90 days prior to an election. (Section 85204.)

The traditional late reports and the electronic 24-hour reports are independent, but overlapping requirements. All candidates and committees are required to file traditional late reports for state and local elections. In contrast, only state candidates and committees that meet the thresholds for filing electronically must file the election cycle reports. The traditional late reports are filed on paper forms, by fax or overnight delivery. The election cycle reports are filed electronically.

The same information is provided on both the late reports and the election cycle reports. (A sample late contribution and late independent expenditure report is attached as Appendix 3.) Thus, the election cycle reports essentially duplicate the late reports during the last 16 days before a state election. State electronic filers generally submit an electronic 24-hour report and file a paper copy to satisfy both their election cycle and late reporting obligations.

The online disclosure provisions of the Act also reference the 24-hour reports. The online disclosure provisions were added to the Act in 1997 (sections 84600 to 84612), mandating electronic filing for state candidates and committees that meet certain financial thresholds. With respect to administering the electronic filing system, section 84602 states that the Secretary of State shall:

> "(d) Make all the data filed available on the Internet in an easily understood format that provides the greatest public access. The data shall be made available free of charge and as soon as possible after receipt. All late contribution and late independent expenditure reports, as defined by Sections 84203 and 84204, respectively, shall be made available on the Internet within 24 hours of receipt. …"

The Online Disclosure Act predated Proposition 34 and the 24-hour election cycle reports, however, presumably the same disclosure requirement applies to them. The Secretary of State's Cal Access system makes electronically filed 24-hour reports available to the public immediately upon being filed, whether they are late reports or election cycle reports.

B. The Weekend/Holiday Extension. In 1977, the Secretary of State's office, in its capacity as filing officer, requested an opinion from the Commission as to whether the deadline for filing statements and reports under the Act was extended to the next business day if the deadline fell on a weekend or a holiday. Then, as now, sections of the Government Code and the Code of Civil Procedure provided an extension of time for filing a document if a deadline falls on a weekend or holiday.

Government Code 6707 provides as follows:

> "When the last day for filing any instrument or other document with a state agency falls upon a Saturday or holiday [defined to include Sundays], such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed."

The Secretary of State's office asked whether this extension applied to reports due under the Act. In response, the Commission adopted the first version of regulation 18116 which stated:

> "Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a

> specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day."

In 1981, the Commission amended regulation 18116 to specifically state that the deadline for *late reports was not extended* if it fell on a weekend or a holiday. The rationale for excluding late reports from the weekend/holiday extension was stated in a staff memorandum as follows:

> "The staff recommends adopting a provision to require reporting of late contributions and expenditures under Government Code Sections 84206 and 84207 in order to clarify that these contributions must be reported within 48 hours, even if the time for filing ends on a Saturday, Sunday or holiday. Most elections are held on Tuesdays, and if reports are held over to Monday before the election, much of the value of the late reporting provisions will be lost." (Statement of Reasons attached to Notice of Proposed Amendment of Regulation 18116, for the May 4, 1981, Commission meeting.)

Several changes to the late reports sections have been made by legislation. In 1985, the time period for filing late reports was reduced from 48 to 24 hours, and the late report sections were renumbered to 84203 and 84204. (Stats. 1985, c. 1456, § 18.) The legislation that made this change was SB 726, a Commission sponsored bill, introduced by Senator Dan McCorquodale. SB 726 grew out of the FPPC's efforts to reexamine the Political Reform Act ten years after its passage through an advisory group including county clerks, the Secretary of State, legislative staff and private practitioners. SB 726 attempted to reduce the complexity of campaign reporting and ensure that useful information on contributions and expenditures was provided to the public in a timely manner.

The following are some excerpts of the legislative history of SB 726 regarding changing the deadline for the late reports from 48 to 24 hours. The Senate Floor Analysis stated:

> "In the final stages of an election it is of great importance that reports on contributions and expenditures become available as promptly as possible. … Current law requires contributions and independent expenditures of $1,000 or more, when made after the closing date of the last pre-election report and before the day of the election, to be reported within 48 hours. The proposed legislation would change this to 24 hours."

FPPC Chairman Dan Stanford stated as follows in a letter in support of SB 726:

> "In addition, SB 726 would require that 'late contributions' and 'late independent expenditures' of $1,000 or more which are made or received during the 12 days immediately prior to an election must be reported

> within 24 hours, rather than 48 hours under current law. This new provision will ensure that the public receives timely information in the closing days of a campaign." (Letter from Chairman Dan Stanford to Assemblyman Johan Klehs dated July 16, 1985.)

The City Clerk of San Diego, Charles Abdelnour, writing in support of the legislation, addressed the late reports as follows:

> "One area of disclosure which is tightened in SB 726 has caused great concern in our local political races and should be strengthened even more. That is the reporting of late contributions. Currently, late contributions must be reported within 48 hours. This bill would reduce that time to 24 hours. However, this has been interpreted to mean that a report of late contribution must be in the hands of a guaranteed over-night delivery service by that time and, therefore, not necessarily in the hands of the filing officer for another 24 hours.
>
> This has led to a campaign practice in our local jurisdiction where money is received on the Friday before an election and spent on last minute 'hit pieces.' The filing officer, because Saturdays and Sundays are non-work days and not counted toward the time limit, is not informed until the Tuesday, election day. It is then too late to disseminate the information to the public." (Letter From Charles Abdelnour to Senator McCorquodale, dated August 15, 1985.)

Senator McCorquodale's letter to the Governor Deukmejian urging his approval of SB 726 stated:

> "Reporting requirements for contributions which occur late in a campaign are strengthened. In the final stages of a campaign, it is essential that reports become available promptly." (Letter from Senator McCorquodale to Governor Deukmejian, dated September 16, 1985.)

After the passage of SB 726, the Commission adopted a conforming amendment to regulation 18116 to refer to the new 24-hour filing deadline for late reports.

In 1995, another minor change was made to late contribution reports by legislation when the 24-hour late report time frame proved to be too short for *in-kind* contributions. Senator Tim Leslie authored SB 904 to extend the reporting deadline for late *in-kind* contributions, which by nature, are harder to track than monetary contributions. According to the Senate bill analysis, there had been several instances where candidates had received late *in-kind* contributions but were unaware either of contribution itself or of the value of the contribution. These situations resulted in the candidate violating the late reporting requirements of the Act, thus making them subject to fines and penalties. With the support of the Commission and the Secretary of State, section 84203.3 was added to the Act extending the deadline for reporting late in-kind contributions from 24 to 48 hours. Section 84203.3 further provides that a candidate or

committee that makes a late in-kind contribution must notify the recipient in writing of the value of the contribution within 24 hours. In 1996, the Commission adopted a corresponding amendment to regulation 18116, stating that the weekend/holiday extension does not apply to notice by a contributor of the value of a late in-kind contribution required by section 84203.3.

C. Current Regulation 18116. This background leads to the current version of regulation 18116, which states:

> "Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. This extension does not apply to late contribution reports required by Government Code Section 84203, late independent expenditure reports required by Government Code Section 84204, or notice by the contributor of a late in-kind contribution required by Government Code Section 84203.3."

D. Proposed Change. Ms. McAndrews has suggested changing regulation 18116 to state that the weekend/holiday extension that applies to regular campaign reports also applies to late reports, except on the weekend before the election. (The regulatory language proposed by Ms. McAndrews is set forth in Appendix 1.)

In addition, during consideration of the Proposition 34 regulations implementing the 24-hour election cycle reports (regulations 18539 and 18550), staff and Commissioners discussed whether the weekend/holiday extension of regulation 18116 applied to the 24-hour election cycle reports, and concluded that it did. This conclusion, however, was based on the facts that regulation 18116 did not specifically exclude the new Proposition 34 election cycle reports from the extension (though regulation 18116 predated the election cycle report sections), and that candidates were obligated to file 24-hour late reports on the two weekends before the election anyway. (Minutes of December 7, 2001, Commission meeting.) Because the Commission is now considering changing the late report filing requirement, it is appropriate also to examine whether the electronic election cycle reports should be included in the weekend/holiday extension.

In considering the proposed change, the questions to be examined are whether we are acting within statutory authority and whether it is otherwise desirable to apply the weekend/holiday extension to reports required to be filed within 24 hours during the 16-day late period and/or the 90-day election cycle period.

E. Statutory Authority. The Commission has broad authority to interpret the Act through regulations. The Commission has "primary responsibility for the impartial, effective administration and implementation" of the Act. (Section 83111.) The Commission's authority to interpret the Act includes the express power to "adopt, amend and rescind rules and regulations to carry out the purposes and provisions" of the Act,

provided such regulations are consistent with the Act and other applicable law, and to issue opinions to requestors about their duties under the Act. (Sections 83112 and 83114.)

In interpreting statutes, one looks to the plain meaning of the statute and its legislative history, applying reason and common sense to interpret the statute consistent with its purposes. (See, e.g., *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238-1239 (1992).) The Commission's authority to implement the Act through regulations has been upheld in *Californians for Political Reform v. Fair Political Practices Commission*, 61 Cal.App.4th 472 (1998) (upheld administrative overhead exception to regulatory definition of "contribution"); *Watson v. Fair Political Practices Commission*, 217 Cal.App.3d 1059 (1990) (upheld regulation 18901 interpreting section 89001's statutory prohibition on newsletters and other mass mailings); and *Consumers Union v. California Milk Producers Advisory Bd.*, 82 Cal.App.3d 433 (1978) (upheld regulation 18707.4 [then 18703] creating a narrow exception from disqualification for members of boards or commissions, who by law, are required to come from the industry that the board or commission regulates). In these cases, the courts have given deference to the Commission's administrative interpretation of the Act. In *Californians for Political Reform, supra*, the court stated that "because of the agency's expertise, its view of a statute or regulation it enforces is entitled to great weight unless clearly erroneous or unauthorized." (*Id.* at 484.)

In this situation, the Act itself does not contain a specific section concerning the deadline for filing statements that fall due on a weekend or holiday, as many other statutes do. Therefore, we must examine whether it is within the authority of the late reports and election cycle statutes (sections 84203, 84204, 85309 and 85500) and Government Code section 6707, set forth above, to make this change.

The primary purpose of the late reports and election cycle reports statutes is to provide rapid public disclosure of large contributions and independent expenditures made during the time period close to an election. Rules of statutory construction would suggest that where a statute clearly states that disclosure of a transaction must be made within 24 or 48 hours, such a specific provision would override a general rule applicable to reports filed under the Act, such as the weekend/holiday extension. In addition, when changes to the late reports deadline have been made in the past, they have been made by legislation.

However, the concept of the weekend/holiday extension is expressly authorized by Government Code section 6707. In addition, the scope of the proposed change is small, and as long as the disclosure goal of the statutes is upheld, it is reasonable that this change can be made by regulation rather than requiring legislation. We conclude that the Commission would be acting within statutory authority to apply the weekend/holiday extension to late reports and/or election cycle reports so long as such a change does not thwart the heightened public disclosure goals of those statutes.

F. Policy Considerations. Considering this proposed regulatory change requires the Commission to mesh the disclosure goals of the statute with the practicalities of reporting.

The arguments for applying the weekend/holiday extension to late reports (except on the weekend immediately prior to the election) have been presented by Ms. McAndrews. Ms. McAndrews' letter to the Commission concerning this issue, dated March 8, 2002, is attached as Appendix 2. Summarizing, committees and practitioners find that they are staffing their offices on the weekend and sending documents by overnight mail to timely file late reports with city and county offices that are closed. Most local clerk's offices are not open on the weekends before an election. Practitioners report that many times the unstaffed city or county fax machines cannot successfully accept the late reports that are filed because they are out of paper, etc. Ms. McAndrews points out that because of the closed offices, for many of the late reports filed on the weekends, the public does not receive the disclosure until Monday.

This point is well taken. Under the Act, duplicative or burdensome reporting requirements sometimes arise, and the Commission tries to reduce these if possible.

Several competing considerations exist involving disclosure and enforcement. First, a handful of local jurisdictions with online disclosure of campaign finances make use of the reports filed on the weekend, as does the Secretary of State with respect to state candidates. Also, the fact that late reports are filed on the weekend and are waiting at local clerks offices first thing Monday morning may enable the clerks to make that disclosure available early on Monday. Applying the weekend extension, the information from Saturday or Sunday might come in late Monday, and would possibly not be available until Tuesday.

In addition, the Enforcement Division has expressed concern that this proposal complicates the deadline for filing late reports and will make it harder to monitor timely filing of late reports. There are always a sizeable number of violations for failure to timely file late reports, and this change will make it somewhat harder for local clerks and enforcement staff to detect late report violations. In terms of the late report filing instructions to committees, it also results in a slightly more complicated rule. Instead of telling committees "late reports must be filed within 24 hours," the new rule will be that "late reports must be filed within 24 hours, however, the weekend/holiday extension applies, except on the weekend prior to the election." From the Enforcement Division's perspective, filers might use this change to claim they did not know the late reports deadline.

With respect to the 24-hour election cycle reports, the rationale for including them in the weekend/holiday extension is less clear. A state filer's electronic report of a contribution or independent expenditure is immediately posted on the Secretary of State's website when it is sent in. The disclosure is immediate, and the argument that the filer is struggling to file reports to a closed government office does not apply. On the other hand, the election cycle covers a longer period than the traditional late period (90 days

versus 16), making it more of a routine campaign report, and this may argue that the standard weekend/holiday reporting extension should apply. In addition, simplicity argues that the same rule should apply to both the late reports and the election cycle reports, especially since these are similar and overlapping requirements.

G. Filing Officers. Most local city and county clerk's offices are not open on the weekend before elections. The Secretary of State is open on Saturday the two weekends before the statewide primary and general election. Paper late reports can be viewed there on those weekends and electronic reports are posted immediately on its website.

In addition, we contacted the filing offices in San Diego, Los Angeles, Santa Monica, San Francisco, and Sacramento to ask about their procedures for handling late contribution and late independent expenditure reports and try to gather information to assist in determining what impact the proposed change might have. (Note that the information below does not represent the official position of the local jurisdictions on the proposed change.)

In San Diego, there is no online disclosure yet, and the clerk's office is closed on weekends before the election. San Diego stated that anything that is faxed after 5 p.m. on Friday is not time-stamped until Monday morning. They thought that postponing weekend filings would not delay disclosure much. Presumably many of the smaller cities and counties that do not have online campaign disclosure would have procedures similar to San Diego.

Los Angeles City Ethics is generally closed the weekends before the elections, but sometimes if there is a very competitive race, they come in. For example, in an election when there was a competitive mayoral election and lots of open seats, they came in. They receive hard copy late reports and summarize the information from the late reports on their website. Late reports filed on the weekend are updated on the website Monday morning. They receive about 99 percent of their late reports by fax, and the rest by messenger. They observed that the press is always interested in the late independent expenditure reports near the election.

The clerk's office in Santa Monica is closed on the weekends. When late reports are faxed over the weekend, they enter them in the data base for the website and put them out in notebooks for the public first thing Monday. They received many late contribution reports and late independent expenditure reports in the last election. If the reports came in on Monday instead of over the weekend, they thought they would probably still get disclosure out on Monday, depending on how many reports there were. When the late reports are coming in, they give them top priority.

At the San Francisco Ethics Commission, someone comes in the two weekends before the elections to make the late contribution and late independent expenditure reports information available on their website within 24 hours of receipt. They receive the late reports by faxes and manually enter the data onto their website. They noted that in the past March election, they received over $60,000 in reported activity on late

contribution and late independent expenditure reports on the weekend before the election, and probably even more on the weekend before that. They have over 7,000 visits a day to their website. They think the 24-hour disclosure is valuable.

In Sacramento, the city clerk's office was closed on the weekend in the last two elections. Sacramento has online campaign disclosure. They receive the late reports by fax or messenger and physically input the data for their online system. They stated that if an election were hotly contested, they might have someone come in and post the late reports on their website.

Conclusion. Staff concludes that the Commission has the statutory authority to apply the weekend/holiday extension to late reports and election cycle reports if this change would not impair the heightened disclosure goals of those statutes.

Staff does not have a consensus recommendation on the change. The Technical Assistance Division is supportive of the change as a small, practical measure that would assist filers. The Enforcement Division opposes the change because it would complicate the late reports filing rule, as discussed above. The Legal Division is neutral. We think Ms. McAndrews' argument about filing with city and county clerk's offices that are closed is very strong, but have some reservations about the change given the express 24-hour time period stated in the statute and the fact that a few jurisdictions use the weekend disclosure.

If the Commission decides to apply the weekend holiday extension to late reports, except the weekend prior to the election, staff recommends that it add the election cycle reports to regulation 18116 and have the same rule apply to those.

With respect to the regulatory language attached as Appendix 1, Option A is the language originally proposed by Ms. McAndrews. Option B also embodies Ms. McAndrews' change, stating it in the affirmative and including election cycle reports. To retain the current 24-hour rule for late reports, the Commission would make no change.

Appendices

Appendix 1 - regulatory language
Appendix 2 - Ms. McAndrews Letter to the Commission dated March 8, 2002
Appendix 3 - late contribution report and late independent expenditure report

Amend 2 Cal. Code Regs. Section 18116 as follows:

18116. Reports and Statements; Filing Dates.

Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. **[Option A:** This extension does not apply to late contribution reports required by Government Code ~~Section~~ section 84203, late independent expenditure reports required by Government Code ~~Section~~ section 84204, or notice by the contributor of a late in-kind contribution required by Government Code ~~Section~~ section 84203.3 when the due date for these three types of reports falls on the weekend immediately prior to an election.**]**

[Option B: This extension applies to late contribution and independent expenditure reports required by Government Code sections 84203 and 84204, notice by the contributor of a late in-kind contribution required by Government Code section 84203.3, [and electronic election cycle reports of contributions and independent expenditures required by Government Code sections 84309 and 85500], except when the due date for these reports falls on the weekend immediately prior to an election.**]**

NOTE: Authority cited: Section 83112, Government Code.
Reference: Sections 82036, 82036.5, 84203 and 84204, Government Code.

BELL, McANDREWS, HILTACHK & DAVIDIAN, LLP
ATTORNEYS AND COUNSELORS AT LAW
1441 FOURTH STREET
SANTA MONICA, CALIFORNIA 90401
(310) 458-1405
FAX (310) 260-2666

FAIR POLITICAL PRACTICES COMMISSION
02 MAR 11 AM 8:54

CHARLES H. BELL, JR.
COLLEEN C. McANDREWS
THOMAS W. HILTACHK
BEN DAVIDIAN
JOSEPH A. GUARDARRAMA

ALLISON R. HAYWARD
OF COUNSEL

455 CAPITOL MALL, SUITE 801
SACRAMENTO, CA 95814
(916) 442-7757
FAX (916) 442-7759
www.BMHlaw.com

March 8, 2002

VIA FEDERAL EXPRESS

The Honorable Karen Getman
Chair, Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

The Honorable Sheridan Downey
Commissioner, Fair Political Practices Commission
428 J Street
Sacramento, CA 95814

The Honorable Tom Knox
Commissioner, Fair Political Practices Commission
Knox, Lemmon & Anapolsky
1 Capitol Mall, Suite 700
Sacramento, CA 95814

The Honorable Gordana Swanson
Commissioner, Fair Political Practices Commission
2 Portuguese Bend Road
Rolling Hills, CA 90274

Re: Regulatory Calendar - March Work Plan Revisions

Dear Chairman Getman and Commissioners:

This letter follows up on my comments at the December 7, 2001 meeting during the adoption of Regulations 18539 and 18550 (New Online/Electronic Reports). Again, I urge the Commission to review the burdens imposed on all filers by weekend late report filings balanced against the perceived benefits.

At the December meeting, I commended the Commission for the practical approach used in Regs. 18539 and 18550 that permitted an extension of time for the newly required 90 day late contribution reports that fall on a Saturday, Sunday or holiday to allow them to be filed the next regular business day thereafter. It was pointed out that

this decision was permitted by the Commission's own regulation, Section 18116.[1]

Commissioners at the October meeting had expressed general concern about the filing duties imposed by statutes when the triggering events occur on a Saturday or Sunday, and that prompted my suggestion that traditional late contribution reports, currently excepted out of the next regular business day extension in Regulation 18116, merited regulatory review as invited by a footnote in the staff memo in December.

Representatives of Common Cause and the Secretary of State's office rose to urge caution since both fear devious contributors in the last weekend before an election timing their contributions so that reporting occurs too late to be disclosed to the public and media. For this rare and clever tactic (most campaigns must have the funds in hand significantly before the last weekend to pay cash up front to media outlets, printers and the post office), I concur that the final weekend reporting is important.

Perhaps the final weekend 24 hour reporting could be preserved while excepting out prior weekends. At the state level, in well funded campaigns and ballot measures, there is intense interest by the media. We were told the Secretary of State's office remained open on the Saturday before the statewide primary and general election. However, investigation may reveal this is not the case in local elections during any weekends.

What I hope to stimulate by this letter is a more indepth consideration of the impacts on all treasurers, committees and candidates, especially the hundreds of local campaigns run in even as well as odd years balanced against the goal of real (and not illusory) disclosure for this 16 day late reporting period. The 16 day late contribution period before a Tuesday election encompasses three weekends. See the pro forma calendar at attachment 1.

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[1]Section 18116. Reports and Statements; Filing Dates

"Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specific period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. This extension does not apply to late contribution reports required by Government Code Section 84203, late independent expenditure reports required by Government Code Section 84204, or notice by the contributor of a late in-kind contribution required by Government Code Section 84203.3.

Section 18116 was first adopted by the Commission in 1977. Perhaps the Commission, during a 2002 regulatory review, could critically assess the experience of treasurers, committees, the media, and others over the past 25 years and evaluate whether the goal of disclosure is actually being achieved. Is anyone capturing the prompt reporting rendered over weekends and communicating it to voters?

To tempt you along, I want to share the following facts and observations:

1. The recent primary LCR period began Sunday, February 17. On Monday, February 18 (President's holiday), we had to staff our offices to monitor faxes, email, or voice mail in case a client received or made a contribution requiring a late report. I personally tested the system to see if any filing officer would receive a fax that day and make it available to the media. I called the Secretary of State Political Reform Division as well as the main number and got nothing but an unanswered phone and a voice mail message that they were closed for the holiday. The Los Angeles County Registrar of Voters phone rang without answer. The San Francisco Registrar Recorder phone was answered but the person told me they were closed and if I had a question about late reports, I should call back on Tuesday. I also called San Diego and several small cities where we had local campaigns.

2. The next weekend, on Saturday, February 23, we again staffed our offices and in fact had to file state level late contribution reports. The Los Angeles Country Registrar of Voters fax did not answer with repeated tries throughout the afternoon. Attempts were made to call the Secretary of State to confirm the number and to see if there was another fax number to be used. No one answered at the Secretary of State. Likewise, no one answered in San Francisco; and no one answered at numerous numbers we had at the Los Angeles County Registrar. (Someone ended up trekking to Fed Ex, late Saturday, to send the LA copy of the LCR; on Monday, we were informed that the LA County fax machine had crashed - out of paper, out of toner, and memory filled up - and no one had checked it until Monday).

3. There are numerous tricks of the trade used by experienced personnel to solve the burdens of the weekend LCR requirements. Just a sample: we generally cajole clients to not make or receive contributions after 3:00 on Fridays during late periods. Some campaigns have contributions sent to post office boxes and do not open them until Mondays thus claiming the contributions were not in fact "received." However, fundraisers that are held on Friday nights, or Saturdays require careful monitoring since those contributions are collected on site by agents of the campaign and thus "received".

LCRs would then be due on Saturday or Sunday. Contributions made or received on Sundays can be reported within 24 hours on Mondays but sometimes contributions made or received on Saturday are faxed to us on Sunday so we have to monitor both days.

4. Despite the above, I have spent many late Fridays, Saturdays, and Sundays grinding out late reports when clients fail to recognize the burden, the notice arrives on my desk, and because the peril is so huge, a responsible agent must forgo his or her schedule and file the LCR.

5. In 13 years of practice, I have never known of a local agency that remained open on the weekend before an election to collect LCRs for media inquiries.

6. The California Civil Code is the model for Regulation 18116. It allows other types of government filings to be delayed until the next business day when a due date falls on a weekend or holiday. (Cal. Civ. Code §12a).

7. Once a client's frightened secretary forgot to fax a copy of a late contribution until she remembered late on a Friday night. She drove back to the office and faxed it at 9:00 p.m. Luckily, by monitoring the fax machine at our office on Saturdays in late periods, we avoided a violation and fine.

8. With bounty hunters who compare filings at the Secretary of State of contributions received by campaigns with late filings, it is shooting ducks in a barrel to find violations and collect fines.

9. The Commission has recently shown little mercy for inadvertent clerical errors for missed LCRs (as my personal finances will attest) so the system comes close to strict liability. It can be entrapment for the unwary.

10. Most of our clients are shocked when we tell them there is no Saturday or Sunday exception and the amount of the fine exposure. On several occasions, innocent wrong assumptions were made that a Friday contribution could, of course, be reported on Monday.

11. In 2001 and 2002, our Santa Monica office alone was or will be involved in the following late contribution report periods:

Election	Late Period
65th AD Special	1-21-01 to 2-5-01
24th SD Special	2-18-01 to 3-5-01
65th AD Run Off	3-18-01 to 4-2-01
LA School Board	3-25-01 to 4-9-01
LA City Primary	4-5-01 to 4-09-01
24th SD Run Off	4-15-01 to 4-30-01
March 6 General Law Elections	4-15-01 to 4-30-01
49th AD Primary	4-29-01 to 5-14-01
LA School Board Run Off	5-20-01 to 6-4-01
LA City Run Off	5-31-01 to 6-4-01
LA 4th CD Special	8-26-01 to 9-10-01
LA 4th CD Run Off	10-7-01 to 10-22-01
San Francisco Election	10-17-01 to 11-5-01
San Francisco Run Off	11-25-01 - 12-10-01
LA 2nd CD Special	11-25-01 - 12-10-01
Statewide Primary	2-17-02 to 3-4-02
April 9 Local Elections	3-24-02 to 4-8-02
Statewide General	10-20-02 to 11-4-02

Please see the 2001 calendar at attachment 2 with these dates marked on the weekends.

12. The zero tolerance by Common Cause and the Secretary of State for loopholes for creative donors must be balanced against the hundreds if not thousands of local committees who are burdened by weekend late periods when no one receives the data. Perhaps research could ascertain the number of local committees burdened versus the large state committees of interest to Common Cause.

13. E-filing holds out a chimera for getting instant access, however, this applies only to the richest committees and donors and provides no benefit for local disclosure. Secondly, with the reluctance shown at the last meeting to let go of paper filings, e-filing has now only increased reporting burdens and not relieved them. In addition to faxing and fedexing paper copies of all late contribution reports, and maintaining proof of filings, we now must maintain voluminous paper copies of confirmations of e-filings (one recent SOS confirmation document was 10 pages long).

The bottom line is this type of inquiry is what the PRA asks of the Commission. After 27 years, a fresh look at the reporting models is worthy. I urge you to seek input from all segments of the political community and see what other stories emerge. The Commission has the regulatory authority to modify the due dates of the late reports as you have just done for the 90 day 24 hour reports. See my proposed draft of Regulation 18116 at attachment 3. Other variations on the theme may emerge. If a problem arises, the current system can always be restored.

We would be happy to work with staff, a task force, an interested persons meeting, or other forums or groups to explore the issues discussed above.

Respectfully,

Colleen C. McAndrews

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cc: Mark Knouse, Executive Director
Luisa Menchaca, Chief, Legal Division
Carla Wardlaw, Chief, Technical Assistance

CCM:rw

Attachment 1

2002 Pro Forma Calendar for 16 Day Late Period

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
						[illegible]
[illegible]	E-14	E-13	E-12	E-11	[illegible]	[illegible]
E-8	E-7	E-6	E-5	E-4	[illegible]	[illegible]
E-1	Election					

[1]In 2002, E minus 15 was a state holiday for government offices. With the current March statewide primary, Presidents Day will likely always fall in the 16 day LCR period.

Attachment 2

Late Period Weekends in 2001

2001 CALENDAR

January 2001

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2001

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28			

March 2001

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

April 2001

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

May 2001

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

June 2001

S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

July 2001

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

August 2001

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

September 2001

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

October 2001

S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

November 2001

S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

December 2001

S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

Late Independent Expenditure Report

CALIFORNIA FORM 496

This form may be used to report a late independent expenditure. This form must be filed by fax, telegram, guaranteed overnight delivery, or personal delivery. **Regular mail may not be used.** State law or local ordinance also may require Form 496 to be filed electronically.

Any committee that makes independent expenditures totaling $1,000 or more to support or oppose a **single** candidate or a **single** ballot measure during the 16 days immediately prior to the election in which the candidate or measure is being voted on must file a late independent expenditure report. (Gov. Code section 85501 prohibits a candidate's controlled committee from making an independent expenditure.)

What is an "Independent Expenditure?"

An "independent expenditure" is an expenditure made in connection with a communication (e.g., a billboard, advertisement, mailing) that expressly advocates the nomination, election, or defeat of a clearly identified candidate, or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to–or at the behest of–the affected candidate or committee.

Where to File:

File with the filing officer(s) who would receive campaign statements if you were a committee primarily formed to support or oppose the candidate or measure.

When to File:

File **within 24 hours** of making the independent expenditure(s) and each time $1,000 or more is spent to support or oppose a single candidate or measure during the 16 days immediately prior to the election in which the candidate or measure is being voted on.

How to Complete:

Report Number. Assign a unique identifying number to each late independent expenditure report you file. You may use any number (such as 1, 2, 3, PR-1, PR-2, PR-3, etc.) and the report numbers do not have to be sequential.

Amendment. To amend a late independent expenditure report, assign a new unique identifying number as the Report Number, check the Amendment box, and enter the identifying number of the report you are amending. (Committees filing electronically with the Secretary of State: Use the filing number assigned by Cal-ACCESS.) Describe the amendment in the space provided at the bottom of the form.

Part 1. Identify the candidate or ballot measure supported or opposed. Use a separate form for each candidate or measure. (Example: A committee makes an independent expenditure by running an advertisement opposing two candidates. The ad costs $4,000 and features the candidates equally. The committee must file a separate late independent expenditure report for each candidate and disclose $2,000 for each candidate.)

Part 2. Provide the date, amount and a description of the independent expenditure made (e.g., radio advertisement, billboard, mailing).

Part 3. New Proposition 34 Requirement for Recipient Committees. Disclose contributions of $100 or more received after the closing date of your last campaign statement (Form 450 or 460) through the date of the independent expenditure. If no previous campaign statement has been filed, disclose contributions of $100 or more received since January 1 of the current calendar year.

Disclose the name and address of the contributor and, if the contributor is an individual, his or her occupation and the name of his or her employer. If the contributor is self-employed, disclose the name of the business. Also disclose the date and amount of the contribution, the contributor code, and type of contribution. Enter the interest rate if the contribution is a loan.

Once you have disclosed a contribution on this form (Form 496), it is not necessary to report that contribution on any additional Form 496 filings you make during the late reporting period.

NOTE

Both late independent expenditures made and contributions received must also be reported on the next regular campaign statement you file. In addition, a Supplemental Independent Expenditure Report (Form 465) must be filed. Refer to the Information Manual on Campaign Disclosure Provisions of the Political Reform Act for instructions.

Late Independent Expenditure Report

Type or print in ink.
Amounts may be rounded to whole dollars.

LATE INDEPENDENT EXPENDITURE REPORT

NAME OF FILER		Date of This Filing _____	Date Stamp	CALIFORNIA FORM 496
AREA CODE/PHONE NUMBER	I.D. NUMBER *(if applicable)*	Report No. _____		For Official Use Only
STREET ADDRESS		☐ Amendment to Report No. _____ (explain below)		
CITY	STATE ZIP CODE	No. of Pages _____		

1. List Only One Candidate or Ballot Measure

NAME OF CANDIDATE SUPPORTED OR OPPOSED			NAME OF BALLOT MEASURE SUPPORTED OR OPPOSED			
OFFICE SOUGHT OR HELD/DISTRICT NO.	SUPPORT	OPPOSE	BALLOT NO./LETTER	JURISDICTION	SUPPORT	OPPOSE

2. Independent Expenditures Made *Attach additional information on appropriately labeled continuation sheets.*

DATE	DESCRIPTION OF EXPENDITURE	AMOUNT

Reason for Amendment: _____

Late Independent Expenditure Report

LATE INDEPENDENT EXPENDITURE REPORT

CALIFORNIA FORM 496

NAME OF FILER

I.D. NUMBER *(If applicable)*

3. Contributions of $100 or More Received *

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE **	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED	INTEREST RATES
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC			If loan, enter interest rate, if any _____%
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC			If loan, enter interest rate, if any _____%
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC			If loan, enter interest rate, if any _____%
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC			If loan, enter interest rate, if any _____%
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC			If loan, enter interest rate, if any _____%
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC			If loan, enter interest rate, if any _____%

*Major donor and independent expenditure committees that do not receive contributions are not required to complete Part 3.

**Contributor Codes
IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other
PTY – Political Party
SCC – Small Contributor Committee

Late Contribution Report

CALIFORNIA FORM 497

This form **may** be used to report a late contribution. It must be filed by fax, telegram, guaranteed overnight delivery service or personal delivery. **Regular mail may not be used.**

In addition to the paper copy, certain state committees may be required to file this form electronically.

Definition

A late contribution is a monetary or nonmonetary contribution, including a loan, or a combination of monetary and nonmonetary contributions and loans, that:

- Totals $1,000 or more from a single source that is made to or received by a candidate, a controlled committee, or a committee primarily formed to support or oppose a candidate(s) or measure(s); and
- Is made or received during the 16 days immediately preceding the election in which the recipient candidate or measure is to be voted on. (Gov. Code Section 82036.)

A late contribution includes contributions or loans from a candidate's personal funds to his/her campaign committee during the late contribution period.

Where to File

File the Late Contribution Report at the same locations you regularly file campaign statements.

When to File

Late Monetary Contributions:
File the Late Contribution Report **within 24 hours** of receiving or making a late contribution.

Late Nonmonetary ("In-Kind") Contributions:

- If you make a late nonmonetary contribution:
  - File a Late Contribution Report within 24 hours of making the late nonmonetary contribution; and
  - The recipient must receive a notice of the value of contribution within 24 hours of the date the contribution was made.

The notice of value sent to the recipient of the late nonmonetary contribution is not required to be filed with a filing officer and there is no standardized form. You should send the notice by personal delivery, fax or guaranteed overnight mail and keep a copy for your records.

- If you receive a late nonmonetary contribution:
  - File a Late Contribution Report within 48 hours of the date the contribution was received.

For more information on filing a Late Contribution Report, consult the FPPC Information Manual on Campaign Disclosure.

How to Complete

Report Number. Assign a unique identifying number to each late contribution report you file. You may use any number (such as 1, 2, 3, PR-1, PR-2, PR-3, etc.); the report numbers do not have to be sequential.

Amendments. To amend a late contribution report, assign a new unique identifying number as the Report Number, check the Amendment box, and enter the identifying number of the report you are amending. (Committees filing electronically with the Secretary of State: Use the filing number assigned by Cal-ACCESS.) Describe the amendment in the space provided at the bottom of the form.

Provide the full name, address, and telephone number of the candidate or committee filing the report. If the filer is a recipient committee, enter the committee's identification number.

Late Contribution Received

Complete this section if you have **received** a late contribution. Provide the contributor's full name and street address. If the contributor is an individual, enter the contributor's occupation and employer or, if self-employed, enter the name of the contributor's business. Provide the date the late contribution was received and the amount.

Late Contribution Made

Complete this section if you have **made** a late contribution. Provide the recipient's full name and street address. If the late contribution was made to a candidate, enter the office sought or held (i.e. Assembly District 45), or for a ballot measure, enter the ballot number or letter and jurisdiction in which the measure is being voted upon. Indicate the date the contribution was made and the amount.

The date of election must be entered by a filer making a late contribution if the filer's filing officer is the Secretary of State and a late contribution is made to a city or county committee.

NOTE:
Also report late contributions on the next regular campaign statement (Form 450, 460, or 461) you file.

Late Contribution Report

Type or print in ink.
Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

NAME OF FILER		Date of This Filing _____	Date Stamp	CALIFORNIA FORM 497
AREA CODE/PHONE NUMBER	I.D. NUMBER *(if applicable)*	Report No. _____		For Official Use Only
STREET ADDRESS		☐ Amendment to Report No. _____ (explain below)		
CITY	STATE ZIP CODE	No. of Pages _____		

Late Contribution(s) Received

DATE RECEIVED	FULL NAME, MAILING ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC		
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC		
		☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC		

*Contributor Codes

IND – Individual
COM – Recipient Committee (other than PTY or SCC)
OTH – Other
PTY – Political Party
SCC – Small Contributor Committee

Reason for Amendment: _____

Late Contribution Report

Type or print in ink.
Amounts may be rounded to whole dollars.

LATE CONTRIBUTION REPORT

NAME OF FILER		Date of This Filing _____	Date Stamp	CALIFORNIA FORM 497
AREA CODE/PHONE NUMBER	I.D. NUMBER *(if applicable)*	Report No. _____		For Official Use Only
STREET ADDRESS		☐ Amendment to Report No. _____ (explain below)		
CITY	STATE ZIP CODE	No. of Pages _____		

Late Contribution(s) Made

DATE MADE	FULL NAME, MAILING ADDRESS AND ZIP CODE OF RECIPIENT (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CANDIDATE AND OFFICE OR MEASURE AND JURISDICTION	AMOUNT OF CONTRIBUTION	DATE OF ELECTION (IF APPLICABLE)

Reason for Amendment: _____