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**VIA EMAIL**

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

**RE: Proposed SB 27 Regulations**

Dear Chair Remke and Commissioners:

We appreciate the Commission's timely consideration of regulations implementing SB 27 and the opportunity to comment on these proposed regulations.

Our firm participated in the interested persons meeting regarding these regulations and submitted a prior comment letter in connection with the first draft of these regulations. We appreciate the staff's consideration of several issues raised during the interested persons meeting, including in particular removing language that would have required multipurpose organizations (MPOs) to monitor any campaign filings made by other MPOs to which they previously donated funds and requiring MPOs to verify that notices they sent were received by the intended recipients.

However, there are policy and drafting issues raised by the draft regulations which we hope can be resolved before final language is adopted. In particular, we are concerned with the reasonableness of the time periods for notices and compliance by MPOs with the new statutory requirements. We have also identified some reporting issues, and we are suggesting language to address them.

We have attached to this letter copies of draft Regulations 18422 and 18422.5 which show our proposed changes in strikeout/underline format.

**Regulation 18422**

In subdivision (a), the last two sentences are duplicative (see pg.1, lines 5 to 10). Both sentences convey that MPOs are required to register and disclose their donors as provided in Section 84222. We suggest the final sentence be removed.

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Committee Name

Subdivision (b)(1) (see pg.1, lines 12 to 23 and pg. 2, lines 1 to 3) requires an MPO that registers as a committee to use the same name the MPO uses where it is otherwise registered and to include either its tax exempt status, out-of-state identification number or the term MPO in the registered name. We previously objected to this requirement in part because the requirement would have the unintended consequence of increasing the length of committee names for disclaimer purposes. While the revised regulatory language addresses that concern by excluding the full name from the disclaimer requirement, it does not address the other concerns we raised.

First, the statute itself only requires the MPO to disclose its tax-exempt status (along with the organization's activities or where the 990 can be accessed) on the Statement of Organization. The statutory language does not require the MPO's status to be in its committee name. (*See* Cal. Gov. Code § 84222(e)(1)(A).) It is also potentially confusing to the public because the name on the MPO's registration will not be the same as the MPO's name that appears on the MPO's own communications (both those required to include disclaimers by the Act and other public communications not related to California electoral activity) and in other places where the MPO is registered or filing disclosures (e.g., with the FEC, another state or the IRS).

However, we understand the goal stated in the staff memo to have a method for tracking which and how many MPOs are reporting political expenditures, and we also understand that there is no other currently available method to do this. We would propose that, rather than including this information in the name itself for the reasons stated above, that the information be provided as a parenthetical to the organization's name. While this may be a small change, it conveys that the status of the organization is not part of its name and will therefore be less confusing. Perhaps if and when the electronic filing system is overhauled in the future, and the disclosure forms are similarly changed, an easier method may be derived for the purpose of tracking these types of filers.

We also note that the statutory requirement to include information on an MPO's Statement of Organization expressly applies only to MPOs that trigger registration pursuant to paragraphs (2) through (5) of Section 84222(c) (i.e. organizations that solicit or receive earmarked money or MPOs that reach the $50,000/$100,000 expenditure threshold). (*See* Cal. Gov. Code § 84222(d) and (e)(1).) The requirements do not apply to federal or out-of-state committees which trigger registration under paragraph (1) of Section 84222(c). While we understand that the Commission may have the authority to adopt additional requirements in this area, we would suggest that there is nothing added to know that a committee registered in California is also registered with the Federal Election Commission or with another state since the committee is required to comply with all California reporting requirements in any event. While we have not suggested a particular change to the draft regulation on this point, we do suggest that it is an unnecessary requirement and the Commission should consider deleting it from the regulation.

Committee Filing Requirements

The proposed regulation does not address the basic filing requirements for MPOs who qualify pursuant to section 84222(c)(5). We propose language which provides that these MPOs would file as general purpose committees. While an organization's electoral activity in California may relate to only one measure or only candidate, the organization will not be soliciting contributions or receiving contributions earmarked for the electoral activity. So it would be unreasonable under these circumstances to impose the additional burdens of "primarily formed" committee status.

Committee Termination

With respect to the automatic termination of MPOs as committees as provided in the new statute, the draft regulation imposes an affirmative burden on the organization to indicate on its initial Statement of Organization that it will terminate at the end of the year. Since the statute already provides for an automatic termination, this requirement should not be imposed. The presumption should be as set out in the statute that the MPOs terminate at the end of the calendar year unless the organization makes an affirmative election to remain registered for the following year. We are also suggest language which provides that an MPO who terminates at the end of one year and who qualifies as a committee in a future year may utilize the same committee identification number previously assigned by the Secretary of State. This will certainly expedite the filing of any required reports.

Disclosure of Donors

Subdivision (c)(1) of the draft regulation provides that donor disclosure is only triggered when an MPO makes an expenditure. However, this should apply only to MPOs who are required to disclose donors on a LIFO basis pursuant to the Section 84222(c)(5). If an organization has solicited or received donations which are earmarked for contributions or expenditures in California or which become contributions based on a subsequent condition or agreement with the donor that they will be used for contributions or expenditures in California, then the date of receipt for reporting purposes should be the date of receipt by the MPO and not the later date of the expenditure. We think this is clearly provided for by the statutory language in Section 84222(e)(1)(C). Otherwise an organization could solicit and receive funds over an extended period of time and only trigger disclosure at the time the organization makes an expenditure.

We have proposed language in the draft regulation which would make this distinction for purposes of reporting the receipt of donations between an organization which has solicited funds for California electoral activity or received funds earmarked by the donor for that purpose, and an organization which has not engaged in these activities and triggers donor disclosure under section 84222(c)(5) based on upon its expenditures in California elections.

Identification of Donors

Proposed subdivision (c)(2) requires an MPO that meets the $50,000/$100,000 expenditure thresholds to identify donors within three business days of making the qualifying expenditure. This requirement for expeditious action seems unnecessary unless the expenditures are made close to an election. We have therefore proposed limiting the three-business day requirements to the 90 days prior to the elections, and within 30 days, at all other times.

Major Donor and Nonprofit Filer Notices

Subdivision (e)(2) contains language for MPOs to include in their nonprofit filer notices. We recommend updating this language to reference Section 84222 and this regulation to give the recipient more guidance about qualifying as a committee under SB 27. We have proposed revised language below that also incorporates our comments regarding paragraph (3) of subdivision (e) as well.

Timelines Compliance by MPO Donors

Subdivision (e)(3) requires an organization that receives notice that its donation was used for contributions or expenditures in California by another MPO to determine whether it also qualifies as a committee and to file both a registration and a first campaign statement, presumably disclosing donors using LIFO, within 24 hours of receiving this notice during the 16 days before an election. The time period is extended to 10 business days at all other times. *We have major concerns with the proposed timelines.*

First, SB 27 expressly requires the Commission to adopt *reasonable* filing deadlines for organizations identified by another MPO using LIFO. (*See* Cal. Gov. Code § 84222(e)(5).) The proposed 24 hour deadline within 16 days of an election is unreasonable because it does not give an organization that receives a major donor or nonprofit filer notice adequate time to identify and understand the relevant law, determine whether the organization has triggered registration and reporting and then fully understand and comply with the registration and reporting requirements. It has taken attorneys who practice advising clients on compliance with the Act longer than 24 hours to fully digest and understand the nuances contained in SB 27 and then apply them to a client's circumstances.

Even if the organization receiving the notice was able to understand the law within 24 hours, it is clearly an insufficient amount of time to comply with the registration and filing requirements. The organization must first determine whether the organization has made sufficient expenditures within the prior 12 months or the prior four calendar years to require registration and, if it has, then it is required to determine which donors to disclose. It may be impossible for an organization to gather the necessary records to determine whether registration is required within a 24 hour period, particularly for organizations run by volunteers or organizations that store records with an offsite vendor that may take 24 hours to retrieve the

records. In our experience advising MPOs on the four year look back period under the first bite rule, gathering and fully vetting this information within 24 hours is nearly always impracticable and is made more so by the requirement to also register and file within this time period.

We understand that a large consideration driving these time periods is an attempt to secure disclosure before an election, which is of course an important consideration. However, SB 27 will automatically require disclosure before the election for any MPO that earmarks its donation to another MPO for the purpose of influencing an election in California (as discussed above regarding reporting of contributions). It is only the MPOs that had no such intent that may end up disclosing their donors after the election, a result that was contemplated and understood at the time SB 27 was drafted. The burden imposed on MPOs that receive notice their funds were used for contributions or expenditures in California to comply within 24 hours is unreasonable and nearly all MPOs who receive this notice will not be able to comply.

As stated in our prior letter and confirmed by subsequent letters filed by other attorneys who have extensive experience advising MPOs on compliance with the Act, at least 10 business days in close proximity to an election and 30 calendar days at all other times seems more reasonable to allow MPOs sufficient time to understand and comply with the law. Our draft language includes these timelines.

Second, the draft language contains the language "knows or has reason to know" in defining when the time periods discussed above start for an MPO that receives notice. We recommend deleting the words "or has reason to know" so that it is clear only organizations which actually receive notice that their funds were used for contributions or expenditures in California are required to file expedited reports if they otherwise meet the expenditure threshold. This is because MPOs that do not actually receive notice in one of the ways identified in the regulation may never know that they have a filing obligation and will not be able to comply. The regulation already provides that notice is received by receipt of a nonprofit filer notice or major donor notice, or by otherwise being put on notice.

**Regulation 18422.5 – Disclosure of Top Contributors**

We are proposing two changes to the regulation. First, in subdivision (a)(2) (pg. 1, lines 12 to 15), we propose to delete the requirement that the information provided on the contributors include the date of the contributor's most recent contribution. This information is easily accessible from reports filed with the Secretary of State, and there is no explanation of what this information adds to the report. On a related note, we also propose to delete the reference to a major donor's identification number. The Act does not require major donors to be assigned identification numbers. Even though the Secretary of State assigns these numbers for tracking purposes, the numbers are used for no other purposes and are not required to appear on any reports. Moreover, a number may not be available for a new major donor, and a major donor may change from year to year. It also does not appear to add anything meaningful to the disclosure.

The second change we propose is to the timelines for the updating of the top 10 list of contributors when a change is required to the list. Currently the regulation proposes that the amended list be submitted to the FPPC within 24 hours (or the next business day) of the change during the 90-day period prior to the election, and within 10 business days of the change at all other times.

With respect to the 24-hour requirement, the statute only requires the Commission to post this information on its website within 48 hours of the change to a top 10 list during the 16 days before an election. (*See* Cal. Gov. Code § 84223(c)(4).) So the expedited filing requirement should only apply during that same period of 16 days. At other times, the Commission has only five business days after a contributor has qualified for the list or a change to the list to post or update the list so the 10 business days in the regulation does not provide for compliance with this requirement. We have suggested three business days for the notification to the Commission giving the Commission two additional business days to post the change.

**Fact Sheet**

We have not made significant substantive comments on the fact sheet since this information is subject to change based on the Commission's decisions with regard to the regulatory language. However, we did want to make two comments.

First, in several places the fact sheet refers to the expenditure threshold as "more than $50,000 in a calendar year," however the threshold in the statute is "more than $50,000 in a period of 12 months." (*See* Cal. Gov. Code § 84222(c)(5).)

Second, the first example in the fact sheet suggests that a payment to a political law firm is always a reportable expenditure. While there are certainly payments to political law firms that may otherwise qualify as reportable contributions or expenditures, there are many that do not (e.g., payments for legal advice related to complying with the lobby provisions of the Act). Since whether these types of payments are reportable and subject to the expenditure thresholds or reporting are factual questions, we think that the example should be revised to contain a different type of payment or to include more facts demonstrating that the payment is reportable (e.g., payment of a committee's legal bill that results in an in-kind contribution).

Thank you for the opportunity to comment.

Very truly yours,

**OLSON HAGEL & FISHBURN LLP**

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Adopt 2 Cal. Code Regulations Section 18422 to read:

**§ 18422. Multipurpose Organization Political Activity Transparency.**

(a) Any person or group that receives contributions from others of $1,000 or more to make expenditures in California must register as a committee and file campaign reports under Section 82013 and the Act. In addition, a multipurpose organization making political expenditures in California that qualifies as a committee pursuant to Section 84222 shall file a statement of organization and campaign reports disclosing donors as required by Section 84222 and the Act. ~~Such a multipurpose organization is required under Section 84222 to provide disclosure with respect to the organization's funds that were used for political expenditures and the sources of those funds~~.

(b) Statement of Organization.

(1) Multipurpose Organization Committee Name. A multipurpose organization committee's name shall be the full legal ~~include the~~ name of the organization ~~as used where it is otherwise registered, such as with the Federal Election Commission or the Internal Revenue Service.~~ Pursuant to Section 84222(e)(1)(A), a multipurpose organization filing a statement of organization shall indicate in its committee name that it is filing under Section 84222 by including one of the following descriptions in parens after its name: (i) For a nonprofit tax-exempt organization, include "nonprofit 501(c)(_)" specifying the type of nonprofit tax-exempt organization from Internal Revenue Code Section 501(c)(3)-(10); (ii) For a federal or out-of-state political committee, include "Fed PAC ID #" or the two letter state abbreviation such as "TX PAC ID #"; or (iii) For any other type of multipurpose organization, include "multipurpose organization" or "MPO." This description shall appear ~~in~~ at the end of the committee's name in parens on the committee's statement of organization and campaign statements. Notwithstanding any other

provision of the Act or Commission regulations, this additional information ~~portion of the committee's name~~ is not required to be included in the committee's name on advertisements, communications, sender identification or disclaimers.

(2) Calendar Year Filers. A multipurpose organization that becomes a committee subject to Section 84222(c)(5) shall file reports as a general purpose committee. Its reporting obligations ~~whose reporting obligations~~ shall terminate automatically each year as specified in Section 84222(e)(1)(B)~~, shall indicate this status to the filing officer when it files its statement of organization, in the manner provided on the instructions to Form 410. If such a multipurpose organization~~ unless it elects to remain registered as a committee~~. beyond the calendar year, i~~It may ~~do so~~ make the election by stating its election to remain registered on the initial statement of organization~~Form 410~~ or on a~~n subsequent~~ amendment to the statement of organization filed before the end of the calendar year. If a multipurpose organization whose registration terminated automatically in one year, qualifies as a committee again in a subsequent year, the organization may ~~shall indicate on its Form 410 that it is reopening the same committee and it may receive~~ utilize the same committee identification number previously assigned by~~from~~ the Secretary of State.

(c) Reporting. For contributions reported under Section 84222:

(1) Contributions Received. ~~Because donations to the multipurpose organization become contributions under the Act when the multipurpose organization makes an expenditure, the date the organization must list for contributions received is the date of its expenditure.~~

(A) Donations that require the multipurpose organization to register as a committee under section 84222(c)(2), (3) or (4) and any subsequent donations which meet the requirements of section 84222(c)(2), (3) or (4) shall be disclosed based on the date the statutory requirement is met. For example, a contribution received on July 1 in response to a solicitation

for the purpose of making contributions or expenditures is reported as a contribution received on July 1.

(B) All other donations to multipurpose organizations which are reported on a last in, first out (LIFO) basis shall be disclosed based on the date of the expenditure made by the multipurpose organization.

(2) Identifying Contributors by LIFO. An organization that ~~makes an expenditure qualifying it as a committee~~ is required to report donors under Section 84222(c)(5), shall identify contributors of $1,000 or more using the last in, first out (LIFO) accounting method no later than three business days following ~~the~~ each expenditure for expenditures made during the 90 days prior to an election, and within 30 days, or no later than the end of the reporting period, at other times. .

(3) Employer Information. If the employer and occupation information cannot be obtained, the report shall provide an explanation of the organization's attempts to obtain the information.

(3) Remaining Balance. If a multipurpose organization that makes a contribution or an expenditure from its general treasury is required to identify additional donors because those described in Section 84222(e)(1)(C) did not provide the full amount of the contribution or expenditure, the organization shall ~~allocate~~ attribute the remaining balance of the contribution or expenditure to itself.

(d) Major Donor Notices. If a multipurpose organization identifies contributors by the last in, first out (LIFO) accounting method who meet the major donor notice thresholds of Section 84105 and Regulation 18427.1, the organization shall send the contributors a major donor notice informing them that they may be required to file campaign statements. The

organization shall send major donor notices to contributors within the one or two week time frames specified in Section 84105 following the date the organization receives the contributions under paragraph (c)(1) and identifies the contributors by the last in, first out accounting method under paragraph (c)(2).

(e) Multi-Layer Reporting.

(1) Funds Moving from One Multipurpose Organization to Another. To obtain disclosure of the original sources of funds used by a multipurpose organization for political expenditures, under Section 84222(e)(5), if a multipurpose organization identifies another multipurpose organization as a source of funds, and the contributing organization qualifies as a committee, the contributing organization may be required to file expedited campaign statements disclosing its donors, if applicable.

(2) Expedited Notice. If a multipurpose organization identifies a contributor of more than $50,000 by the last in, first out (LIFO) accounting method that is itself a multipurpose organization, the recipient organization shall send a "nonprofit filer notice" to the contributing organization stating that it may be required to register and file expedited campaign statements disclosing its donors, if applicable. The "nonprofit filer" notice shall be provided within 24 hours of when the recipient organization identifies the contributor, during the 90-day period before an election and within five business days outside that period. 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. The nonprofit filer notice shall contain the language of the major donor notice specified in Regulation 18427.1 paragraph (a)(2), and in addition, at the beginning, shall contain the following language or substantially similar language:

The Political Reform Act requires disclosure of the source of donor funds used for political expenditures and tracks back to the original donors when funds are contributed by one

multipurpose organization to another. Your organization was identified as a contributor of more than $50,000 in funds that our organization used for political expenditures. Therefore, your organization may qualify as a committee under Government Code section 84222 and Fair Political Practices Commission (FPPC) Regulation 18422 that is required to register with the Secretary of State on FPPC Form 410 and file expedited reports on FPPC Form 460 disclosing donors for such funds within ~~two days~~ 10 business days during the 90 days before an election or within 30 calendar days at other times.

(3) Expedited Filing. A multipurpose organization identified as a contributor by last in, first out (LIFO) accounting that qualifies as a recipient committee under Section 84222(c) (the contributing organization) must register and file campaign statements of its own, disclosing its donors, if applicable. The multipurpose organization qualifies as a committee on the date it knows ~~or has reason to know~~ that it met the qualification thresholds of Section 84222(c) by receiving the "nonprofit filer notice" referred to in paragraph (2) above, receiving a major donor notice pursuant to Section 84105 and Regulation 18427.1, or being otherwise put on actual notice of the filing requirements. The contributing multipurpose organization shall file a statement of organization and an initial campaign statement on Form 460 within ~~24 hours (or the next business day)~~ within 10 business days during the 90 days before an election and within 30 days ~~following its committee qualification during the 16-day period before an election, and within 10 business days~~ at other times.

(f) Recordkeeping. A multipurpose organization shall maintain all records necessary to establish its compliance with Section 84222.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82015 and 84022, Government Code.

Adopt 2 Cal. Code Regulations Section 18422.5 to read:

**§ 18422.5. Top Contributor Disclosure by Committees Primarily Formed for State Ballot Measures or Candidates.**

(a) Submitting Contributor List to Commission.

(1) When a committee meets the requirements of Section 84223(a), it shall maintain and submit a list of its top 10 contributors to the Commission. A committee shall submit its list to the Commission by electronic mail, including its committee identification number in the subject line of the message.

(2) The list of a committee's top 10 contributors shall disclose the information required by Section 84223(b) on a form prescribed by the Commission, or in a substantially similar format or spreadsheet approved by the Executive Director. The list shall identify the ~~what~~ state candidate(s) and/or ballot measure(s) the committee is primarily formed to support or oppose. In addition, the list shall identify whether a contributor is a recipient committee or major donor, and the recipient committee ~~or major donor's committee~~ identification number, if applicable~~., and the date of the contributor's most recent contribution.~~

(3) A committee shall submit an updated list of its top 10 contributors to the Commission if a new contributor qualifies, an existing top contributor makes additional contributions, or a change occurs in the relative ranking of the contributors, as specified in Section 84223(c)(2), and when a reporting committee changes its name to add or delete a ballot measure or candidate.

(4) During the ~~90~~-16-day period before the election ~~in which late reports are required to be filed under Section 84203,~~ a committee shall submit the list within 24 hours (or the next business day) of meeting the requirements in Section 84223(a) or a change in top contributor information or committee name as specified in paragraph (a)(3). Outside this time period, a committee shall submit the

list within ~~10~~ 3 business days of meeting the requirements in Section 84223(a) or a change in the top contributor information or committee name as specified in paragraph (a)(3).

(5) The first lists to be submitted after the effective date of this legislation shall be due by September 5, 2014, and any lists that would have been due prior to this date are not required to be filed.

(b) Commission Posting Lists.

(1) With respect to the top contributor lists provided by a committee to the Commission under Section 84223(a)-(d), the Commission shall post or update the top ten contributor list within the time frames specified in Section 84223(c)(4).

(2) With respect to the list of top contributors supporting or opposing a state ballot measure under Section 84223(e), the Commission shall make the list of top contributors supporting or opposing a state ballot measure using the top contributor lists provided by committees pursuant to subdivision 84223(a)-(d). The Commission shall state on its website the methodology used in compiling the state ballot measure top contributor lists, and post and update the lists as timely as practicable.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84223, Government Code.