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PRACTICES COMMISSION

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February 17, 2015

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

RE: Proposed Amendments to Regulation 18215 (Contributions)

Dear Chair Remke:

This firm represents the Institute of Governmental Advocates, a trade association representing the interests of registered lobbyists under the Political Reform Act. This letter is submitted in response to the proposed amendments to Regulation 18215 as it pertains to recent amendments to the statutory definition of "contribution" by SB 1441 (Lara) – Chapter 930, Statutes of 2014, effective January 1, 2015, and AB 1673 (Garcia) – Chapter 882, Statutes of 2014, effective January 1, 2015. The amendments relate to the applicability of the "home hospitality" exception from the definition of "contribution" as applied to lobbyists and lobbying firms.

For the reasons stated below, we urge the Commission to table adoption of the proposed regulation to allow time for further consideration of a more comprehensive regulatory package that addresses areas requiring clarity or definition, and to more closely limit the scope of the proposed regulation.

As stated in your staff's notice, the purpose of this regulatory amendment is to "implement, interpret, and make specific" amendments to Government Code, section 82015, which now states:

> (f)(1) Except as provided in paragraph (2) or (3), "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars ($500) or less.
>
> (2) "Contribution" includes a payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home as a fundraising event venue. A payment described in this paragraph shall be attributable to the lobbyist for purposes of Section 85702.
>
> (3) "Contribution" includes a payment made by a lobbying firm for costs related to a fundraising event held at the office of the lobbying firm, including the value of the use of the office as a fundraising event venue. (Gov. Code § 82015.)

We appreciate the Commission's desire to bring clarity to the recent statutory amendment, but we believe the regulation as currently proposed does not focus on the areas that need clarification. Rather, we believe the proposed regulation is focused on an area that needs no clarification and in fact, inappropriately expands the scope of the statutory amendment beyond its intended application.

NECESSARY CLARIFYING REGULATION/DEFINITION

We believe that two specific issues addressed by the amendment could use clarification and/or definition by the Commission. First, the amended statute now utilizes the word "cohabitant," which is new to the Political Reform Act, and is not defined by current FPPC regulations. We do not believe that there is a standard "dictionary" definition of the term that persons can rely on, and therefor recommend that the Commission provide clarity by regulation.[1]

It is our view that the Legislature likely intended the definition of this word to mean something similar as provided in Civil Code:

> "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code. (Civ. Code § 51.11(b)(6).)[2]

Any other interpretation of this word could expand the scope of the new prohibition to others not directly related to a lobbyist, like a roommate or house guest. Such an interpretation could cause unintended constitutional issues, as the amendment to the statute acts as a "ban" on previously permissible activity.

Second, the amendment is directed at "fundraisers" held at a home, while the statutory exemption has always included both "meetings" and "fundraisers." Moreover, "fundraisers" can be held for the benefit of candidates, other committees (like a ballot measure committee), charitable and other nonprofit groups, etc. Here again, the term "fundraiser" and/or "meeting" is not currently defined by the Act or Commission regulation. Thus, we believe that the Commission should clarify what constitutes a "fundraiser" and which fundraisers are now prohibited.

In this regard, we believe that any restriction related to the rights of individuals to make campaign contributions must be narrowly tailored to avoid unnecessary abridgement of the associational freedoms guaranteed by the First Amendment. (See *Fair Political Practices Com.*

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[1] Webster's defines cohabitants as those who live together as spouses or who live together as lovers when not married. ("Cohabit." Def. 1 and 2. *Webster's II New Riverside University Dictionary.* 1984. Print.) However, it can also mean those who live together or in company. ("cohabitant." Def. 2. *Merriam-Webster.com.* 2015. http://www.merriam-webster.com (5 Feb. 2015).)

[2] Other definitions of "cohabitant" in California law include "two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship" (used in Penal Code § 13700, Probate Code § 21364, and Welfare and Institutions Code § 18291), and "a person who regularly resides in the household" (used in Family Code § 6209).

v. Superior Court (1979) 25 Cal.3d 33, 45 [California Supreme Court struck down former ban on lobbyist contributions on the grounds that it was not a "closely drawn" restriction and thus, violated plaintiffs' First Amendment rights of freedom of speech and association].)

Thus, an amendment to Regulation 18215 should make it clear that the prohibition in Section 82015 must be read in conjunction with Section 85702, and only applies for candidates whom the lobbyist may have occasion to lobby, as specifically outlined in Section 85702. This clarification will ensure that the prohibition is narrowly directed to the aspects of political association where potential corruption might be identified. (*Fair Political Practices Com. v. Superior Court* (1979) 25 Cal.3d 33, 45.) In other words, the regulatory amendment should clarify that a lobbyist or cohabitant of a lobbyist may still host a fundraiser in his or her home for a charity, ballot measure committee, or for a local candidate whom the lobbyist has no occasion to "lobby."

We believe that this clarification is supported by the legislative history of this bill, as the goal of this subsection was to "make these payments attributable to the lobbyist for purposes of the prohibition against a lobbyist making a contribution to specified candidates and elected officers" and to "ensure that lobbyists are not providing illegal contributions to state elected officials." (SB 1441 Analysis from Senate Committee on Elections and Constitutional Amendments.)

Thus, we would suggest that a prohibited "fundraiser" is an event where the principal purpose of the event is the solicitation and receipt of contributions by a candidate to whom the lobbyist or lobbying firm is registered to lobby or for the benefit of such candidate.

EXPANSION OF THE SCOPE OF THE STATUTE

Lastly, we object to the current draft of the proposed regulation as it unnecessarily enlarges the scope of the statute. On page 2, lines 8-9, the proposed regulation states: "This payment cannot be reimbursed." Nowhere in the statute does it state that a benefitting candidate cannot pay or reimburse a lobbyist to use the home or office of the lobbyist as a venue to host a fundraiser. The addition of this language enlarges the scope of the statute, which is not within the regulatory authority of the FPPC. (See *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1.) Further, the addition of this language directly conflicts with the definition of a contribution in the very statute you are attempting to interpret: "'Contribution' means a payment...*except to the extent that full and adequate consideration is received.*" (Gov. Code, § 82015.) (Emphasis added.) If the Legislature intended the statute to prohibit reimbursement, or to prohibit a candidate from paying fair market value for the use of the venue, then they need to amend the statute. It is not within the FPPC's regulatory authority to enlarge the scope of the statute in this matter.

Again, we respectfully request that you table this regulatory amendment until such time that FPPC staff can meet with the regulated community in order to more carefully and thoughtfully draft a comprehensive regulation.

Very truly yours,

Thomas W. Hiltachk

Ashlee N. Titus

Sarah Lang

/cfd