

July 18, 2016

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Fair Political Practices Commission
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RE: The Fair Political Practices Commission's Proposal to Amend Regulation 18239 (Definition of Lobbyist)

Alliance for Justice submits these comments in response to the Fair Political Practices Commission (FPPC) proposal to amend 2 Cal. Code Regs. § 18239, which clarifies the definition of a lobbyist under the Political Reform Act. The FPPC's proposed regulatory amendments seek to address "ongoing issues with individuals who are not registered lobbyists, but who appear to meet the basic statutory and regulatory thresholds for lobbyist registration and reporting."

Alliance for Justice is a national association of over 115 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. We believe that all Americans have the right to secure justice in the courts and to have their voices heard when government makes decisions that affect their lives. We promote active engagement in democratic processes and institutions by giving nonprofits, including foundations and public charities, the confidence to advocate effectively and by protecting their right to do so. Through our two California offices in Oakland and Los Angeles, we provide legal support to hundreds of California nonprofits every year who are engaged in advocacy efforts.

We understand that the FPPC is charged with promoting the integrity of state and local government in California through fair, impartial interpretation and enforcement of political campaign, lobbying disclosure, and conflict of interest laws. We also strongly believe that any lobbying disclosure rules should not unfairly burden employees, especially employees of nonprofit organizations, who may advocate before state government as part of their job duties, but do not meet thresholds to qualify as state lobbyists. Employees who only receive compensation from their employer for responsibilities that include lobbying are different from contractors, and FPPC Regulation 18239 recognizes this difference by creating two distinct thresholds for qualifying as a lobbyist.

We are concerned that as currently written, the proposed amendments do not make clear that this new presumption does not apply to employees. In other words, it is not clear that all compensation employees receive from their employers will not be presumed to be for direct communication if any compensation received from their employer is used for direct communication with qualifying officials for the purpose of influencing state legislative or administrative action. If this presumption were to be applied to employees, despite the intention of FPPC to the contrary, it would effectively change the threshold for when most, if not all, employees who lobby the State of California must register and report on their lobbying. We fear that this ambiguity will lead to unnecessary administrative work for nonprofit

organizations and their employees that are currently under-resourced and already stretched to address the needs of their communities.

During the FPPC's Interested Persons Meeting on June 21, 2016, other organizations in the state also raised concerns about the potential for confusion in the currently proposed language. In that meeting, the FPPC stated that the language is only intended to apply to contract lobbyists and not employees, and laudably agreed to amend the proposal to clarify that the proposed rebuttable presumption pertaining to compensation does not apply to employees.

Our proposed remedy is italicized below, and the underlined language is the FPPC's current proposal:

Amend 2 Cal. Code Regs. § 18239(d)(2) to read:

"Compensation" means any economic consideration, other than reimbursement for reasonable travel expenses, (i.e., expenses for transportation plus a reasonable sum for food and lodging). If an individual receives or becomes entitled to receive compensation of \$2,000 or more in a calendar month from a person for services that include direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action, it is presumed that all compensation from that person to the individual during that calendar month is for direct communication. This presumption can be rebutted by evidence that may include testimony, records, bills, and receipts establishing the allocation of the individual's compensation for all other goods and services provided. This presumption applies to compensation described in subdivision (b) of this regulation. This presumption does not apply to compensation received from an individual's employer, as described in subdivision (c) of this regulation.

Should you have any questions pertaining to our comments, please do not hesitate to contact us. Thank you for the opportunity to comment on this matter.

Sincerely,

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