

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery and Rotunda

**From:** Zackery P. Morazzini, General Counsel  
Hyla P. Wagner, Senior Commission Counsel

**Subject:** Repeal of Regulation 18247.5; Readoption of Regulation 18247.5 – Primarily Formed Committees; and Adoption of Regulation 18227.5 – General Purpose Committees – State, County or City.

**Date:** November 28, 2011

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**Proposed Commission Action:** The Commission will consider adoption of new Regulation 18227.5 for general purpose committees and repeal and readoption of current 18247.5 for primarily formed committees. The proposed general purpose committee regulation contains options about major donor reporting for the Commission’s decision.

**Background:** The Political Reform Act (“Act”)<sup>1</sup> was drafted well before the digital age and calls for campaign reports to be filed with city, county or state filing offices throughout California, some of which have electronic filing systems and some of which do not. (Sections 84215 and 82027.5.) The Act’s categorization of committees as city, county, or state committees can give rise to confusion as to where a committee with some activity in various jurisdictions should file reports. A broader solution to this problem is having a single, statewide electronic filing system for state and local campaign disclosures that consolidates all state-required campaign data into one searchable database. The Commission, FPPC staff, the Secretary of State’s Office, many local ethics commissions, public interest groups and the regulated community have all expressed support for these goals, as demonstrated by recent efforts in the Huffman-Fletcher bill. The FPPC will continue to work toward having all local and state campaign reports available online, but also needs to interpret the current statutes about where to file and types of committees.

Regulation 18247.5 was adopted in January 2009 to clarify the statutory definitions of “primarily formed committee” and “state, county, or city general purpose committee” contained in Sections 82047.5 and 82027.5 of the Act. The reason this regulation was passed was to give committees basic guidance on where to file.

FPPC staff sees the need for the regulation because callers frequently ask the FPPC’s Technical Assistance Division whether a committee is required to file reports at the state, county or city level under Section 84215, or whether a committee must disclose as primarily formed and

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<sup>1</sup> Government Code Sections 81000 – 91014. Commission regulations appear at Title 2, Sections 18109 – 18997, of the California Code of Regulations. References to “Section” are to the Government Code, and references to “Regulation” are to Title 2 of the California Code of Regulations, unless otherwise indicated.

follow the advertisement disclosure rules regarding the name of the committee. In 2005, the Commission thought the question was important enough to sponsor legislation clarifying the filing obligations of state, county, and city general purpose committees (AB 1391) which passed both houses of the Legislature but was ultimately amended by its author for an unrelated purpose. Before Regulation 18247.5 was adopted, practitioners and FPPC staff alike would agree there was *minimal guidance* on these questions contained in the FPPC campaign manuals and several advice letters.

The Commission's Enforcement Division believes a regulation is needed to provide guidance in this area. Lawsuits and complaints are filed and Enforcement advisory letters are sent concerning whether a committee should disclose as a primarily formed committee or not.<sup>2</sup> In addition, the head of the City of San Diego's Ethics Commission has stated that having a rule is very helpful for them, because committees can figure out whether they are supposed to file with the City of San Diego. She said before the rule, many committees active in the city would file as county committees to avoid the city's electronic disclosure and campaign finance laws.<sup>3</sup>

On the other hand, some commentators have asked why we need a regulation in this area, and would prefer to go back to the situation before the rule when treasurers checked the box as to whether a committee was primarily formed or whether a committee should file at the state, county or city level, based on a general assessment of the committee's activities or what they thought its intended activities would be. However, FPPC Technical Assistance, Legal and Enforcement division staff believe a bright line rule for filing based on a committee's spending facilitates advice and compliance better than a rule based on a committee's intent or a list of factors that are more subjective to assess such as the committee's name, the geographical area where it intends to be active, planned activities, and past spending.

In proposing revisions to Regulation 18247.5, FPPC staff has taken direction from Commissioners' comments at the June 10, 2010 Commission hearing when changes to Regulation 18247.5 were considered but not adopted. At that hearing, several Commissioners stated that they would like to see more or all major donors filing at the state level to take advantage of the state electronic disclosure. Therefore, the proposed general purpose committee regulation contains options about major donor filing for the Commission.

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<sup>2</sup> E.g., *Californians for Fair Representation – No on 77 v. Superior Court*, 138 Cal. App. 4<sup>th</sup> 15, 41 Cal. Rptr. 3d 148 (Cal. App. 3d Dist. 2006); and Fair Political Practices Commission Advisory Letter dated March 24, 2010, regarding FPPC Case No. 100083; Level the Playing Field 2010 and Charles Shumaker, Treasurer.

<sup>3</sup> A similar situation was addressed in two FPPC staff advice letters which concluded that the Berkeley Chamber of Commerce PAC was a city PAC that should be filing with the city of Berkeley, rather than filing with the county of Alameda, because virtually all its \$124,500 in expenditures (except for a \$500 contribution to a state candidate) were made to campaigns for city-only candidates or measures. (*Mikesell* Advice Letter, No. A-07-183 available at: <http://www.fppc.ca.gov/adv/Advice%20Letters/2007/07183.doc> and *Van Herick* Advice Letter, No. I-07-097.) The city of Berkeley's campaign filing laws are more stringent than the county, requiring public disclosure of contributions at \$50 rather than \$100, and providing disclosure on the Internet of the names of all contributors of \$50 or more.

FPPC staff has issued several advice letters interpreting this regulation, and the revised regulations codify some points addressed in those letters.<sup>4</sup> In addition, we have received other valuable comments on this regulation at interested persons meetings held on April 13, 2010 and October 26, 2011, and in a number of letters.<sup>5</sup> Staff has attempted to incorporate these comments into the revised regulation, where possible.

The proposed modifications to the primarily formed and general purpose committee regulation seek to make the determination of where to file and type of committee easier, while retaining a clear rule. Responding to comments from interested persons, we propose splitting the existing regulation into two separate regulations, one addressing general purpose committees and one addressing primarily formed committees.

**1. Proposed Regulation 18227.5 – General Purpose Committees – State, County or City.** Broadly speaking, general purpose committees are ongoing committees that support multiple candidates and measures in successive elections. Associations, political action committees, political party committees, as well as major donors under Section 82013(c) and entities and individuals making independent expenditures under Section 82013(b) are all considered general purpose committees.

Section 82027.5 divides general purpose committees up into state, county, and city committees, but does not have a specific standard for when committees qualify as state, county or city. Whether a committee is state, county or city, determines who their filing officer is (i.e., *where* the committee files its campaign reports), and bears on whether a city or county's contribution limits and other additional rules apply to the committee.

Section 82027.5 provides:

“(a) ‘General purpose committee’ means all committees pursuant to subdivision (b) or (c) of Section 82013, and any committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose more than one candidate or ballot measure, except as provided in Section 82047.5 [defining primarily formed committee].

“(b) A ‘state general purpose committee’ is a political party committee, as defined in Section 85205, or a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.

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<sup>4</sup> Advice letters on Regulation 18247.5 include the *Gould* Advice Letter, No. I-09-136, the *Boling* Advice Letter, No. I-09-018, the *Miller* Advice Letter, No. I-10-016, and the *Sutton* Advice Letter, No. I-10-018, available on the FPPC website.

<sup>5</sup> In addition to comments from the interested persons meeting, other comments received on Regulation 18247.5 are contained in a letter from Laurence S. Zakson dated April 12, 2010, a letter from David Gould of the California Political Treasurers Association dated May 15, 2009, and pages 7-8 of a letter from Charles H. Bell to the Commission dated December 1, 2009, available at <http://www.fppc.ca.gov/agendas/12-09/cl.bell.pdf>. Letters with comments on the regulation sent for the January 15, 2009 Commission meeting from John St. Croix and Lee Ann Pelham available on the FPPC website under the agenda section for that meeting here: <http://www.fppc.ca.gov/agenda.php?id=421>, and for the June 2010 Commission meeting from Laurence Zackson, James Sutton and Betty Ann Downing are available here: <http://www.fppc.ca.gov/agenda.php?id=442>.

“(c) A ‘county general purpose committee’ is a committee to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county.

“(d) A ‘city general purpose committee’ is a committee to support or oppose candidates or measures voted on in only one city.”

As to general purpose committees, some attorneys and treasurers commented that the existing regulation requires committees to check their status too frequently, requires committees to change jurisdiction too often, and is administratively burdensome, especially for small committees, some city and county committees, and committees with low activity. In addition, many at the interested persons meeting expressed the view that the existing regulation shifts too much reporting of general purpose committee activity from the state level where it is electronically disclosed, to the city and county level where it may not be electronically disclosed.

The proposed regulations address these concerns. First, the structure of the new general purpose committee regulation defaults more to state committees than the existing regulation. Under the proposed regulation, a general purpose committee will file at the *state* level unless its activity is principally at the *local* level. A general purpose committee is considered to be a state committee unless it is making *more than 70 percent* of its contributions and expenditures at the *county or city* level. In contrast, the existing regulation requires a committee to file with the city or county if *more than 50 percent* of its contributions and expenditures are in that jurisdiction. Raising the threshold to *more than 70 percent* will mean that more general purpose committees are state filers and that they change jurisdiction less often.

*Major Donors and Independent Expenditure Committees.* The proposed regulation contains options for the Commission to consider about when a major donor or independent expenditure committee under Section 82013(c) or (b) should be considered a state committee and file with the Secretary of State.

*Option 1:* A major donor or independent expenditure committee that has made *any amount* of contributions or expenditures on state candidates or measures during the calendar year files with the state.

*Option 2:* A major donor or independent expenditure committee that has made *\$25,000* in contributions or expenditures on state candidates or measures during the calendar year files with the state.

*Option 3:* No special rule for major donors. They follow the rule for all general purpose committees, which is they file at the state level unless they have made more than 70 percent of their contributions during the calendar year in one city or county.

All of these options will result in more electronic disclosure for major donors at the state level compared to the existing regulation.

In addition, the proposed regulation contains options for when a general purpose committee shall verify its filing, either (1) quarterly as in the existing regulation, or (2) at the end of June and December before filing its semi-annual reports and as necessary at the close of the preelection reporting periods. Language is added to the regulation stating that an existing general purpose committee that does not spend any or up to \$5,000 in a relevant period does not need to review or change its status.

Following guidance received at the last Commission hearing on this subject, the proposed regulation will have the effect of stabilizing more major donor committees as state level filers, resulting in continuing electronic disclosure of their activity. In addition, a committee will be considered a city or county committee if more than 70 percent of their activity is at the city or county level. Other committees will default to state committees.

*Local Committee Contributing to State Candidates from its Area.* An issue concerning the existing regulation raised by a practitioner in San Francisco and the City Clerk of the City of Berkeley, is that sometimes a longstanding city committee will contribute to the state legislators from the city. Because the limits on contributions to city candidates are low, and the state limits are higher, those few contributions may comprise a large percentage of the city committee's activity, and inadvertently turn the committee into a state committee. If the Commission so chooses, the proposed regulation can address this concern, permitting a city committee that makes a number of contributions (four per calendar year) to state candidates from its area to remain a city committee. (Proposed Regulation 18227.5(e)(2).)

**2. Proposed Regulation 18247.5 – Primarily Formed Committees.** Broadly speaking, a primarily formed committee is a committee formed or existing to support a single candidate or measure in a specific election. (The statutory definition was broadened to include two or more measures on the same ballot or a specific group of local candidates on the same ballot.) A committee running a ballot measure, or a committee formed to support or oppose a particular candidate in a particular election is “primarily formed.” The statute in Section 82047.5 defines a “primarily formed” committee, but again does not have an objective standard for when a committee qualifies as primarily formed.

Section 82047.5 provides as follows:

“‘Primarily formed committee’ means a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

- (a) A single candidate.
- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.”

Having a clear rule for when a committee qualifies as primarily formed is important because special requirements apply to primarily formed committees. A primarily formed committee files in the jurisdiction where the candidate or measure that it is primarily formed to support normally files. In addition, primarily formed committees have heightened disclosure requirements preceding an election, compared to general purpose committees. They must automatically file two pre-election statements and primarily formed state ballot measure committees must file 24-hour reports for contributions received. (Sections 84200.5 and 85309.) Primarily formed committees must also include the candidate name or measure number in their name, and disclose the top two \$50,000 donors on ads for ballot measures. (Sections 84107, 84503, and 84504; Regulations 18402 and 18450.1.) And they are subject to mandatory audit if they are a state committee.

*When is a committee primarily formed?* The proposed regulation provides that a committee will be considered primarily formed if the committee is created for the purpose of or is involved in running the principal campaign for or against specific candidate(s) or measure(s). A committee also will be considered primarily formed if more than 70 percent of the committee's total contributions and expenditures are on specific candidate(s) or measure(s) during the preceding 24 months. The regulation retains the same standard as existing regulation 18247.5 of more than 70 percent of a committee's activity equating to primarily formed. This is a reasonable threshold and most who commented have not taken issue with it.

The proposed regulation on primarily formed committees incorporates several improvements addressed in advice letters or suggested by the regulated community:

- The regulation requires a new committee formed within six months of an election in connection with which it makes contributions or expenditures to determine whether it is primarily formed at the end of each month. In addition, the regulation establishes a rebuttable presumption that certain newly formed state committees are primarily formed.
- Interested persons commented that an existing general purpose committee should not change to a primarily formed committee just because it is making modest contributions to only one candidate or measure and that is all its activity. The revised regulation provides that an existing general purpose committee *will not* be required to change status to "primarily formed" for a candidate or measure unless it has met the more than 70 percent activity standard, *and* met a substantial dollar amount of activity threshold -- \$100,000 of contributions and/or expenditures if supporting or opposing specific state candidate(s) or measure(s), or \$10,000 of contributions and/or expenditures if supporting or opposing specific local candidate(s) or measure(s). (Proposed 18247.5(g)(1).)
- Another comment suggested that an existing general purpose committee that creates a separate primarily formed committee to run a measure or support a candidate, should not itself become primarily formed because it is contributing to that measure or candidate committee. A provision stating this is added at proposed Regulation 18247.5(g)(2).

- In response to another comment from the regulated community, proposed Regulation 18247.5(g)(3) specifies that a committee that was primarily formed to support a ballot measure, but after the election goes on to support other future measures, may take the old ballot measure and top donor information out of its name after the election.
- Last, to stabilize a committee's status, a provision is added stating that a committee that is or becomes primarily formed within 90 days prior to an election shall keep that filing status throughout the election.

**Conclusion:** In sum, the proposed regulations simplify and improve on the existing general purpose and primarily formed committee regulation while still providing a clear rule about where to file and type of committee.

Attachments:

1 - Proposed Regulation 18227.5

2 - Proposed Regulation 18247.5

3 – Existing Regulation 18247.5