Center for Governmental Studies

10951 West Pico Blvd., Suite 120
Los Angeles, CA 90064
tel: 310.470.6590 ■ fax: 310.475.3752
e-mail: center@cgs.org ■ website: http://www.cgs.org

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California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: April 8, 2004 Meeting Agenda Item 16 (Cal. Gov't Code §§ 85301, 85302 and Draft Regulation § 18530.9)

Dear Commissioners:

Unlimited contributions to candidate-controlled ballot measure committees pose a serious threat of real or apparent political corruption which undermines democratic governance in the State of California. For this reason, the Center for Governmental Studies urges you to seriously consider draft regulation § 18530.9 to enforce the contribution limits of Cal. Gov't Code §§ 85301 and 85302 "to any candidate controlled committee established by a candidate for elective state office for the purpose of supporting or opposing state or local ballot measures."

Application of the contribution limits established by Cal. Gov't Code §§ 85301 and 85302 to all candidate controlled committees is consistent with the statutory language and existing case law. The statutory language limits contributions to candidates for elective state office and makes no distinction based on a candidate's intended or eventual use of such contributions.

Likewise, the U.S. Supreme Court has consistently upheld reasonable limits on contributions to candidates as advancing the government's compelling interest in avoiding real or apparent corruption. The threat of real or apparent corruption depends entirely on a candidate's *receipt* of unlimited contributions, not on a candidate's *use* of such contributions. To be certain, the Supreme Court has invalidated several limitations on ballot measure campaign financing. However, the limitations invalidated by the Supreme Court involved no threat of candidate corruption.

Limitations on Contributions to Candidates

In *Buckley v. Valeo*, 424 U.S. 1, 23-38 (1976), the U.S. Supreme Court upheld limits on contributions from individuals ($1,000) and political action committees ($5,000) to federal office candidates on the ground that such limits were a valid means of avoiding real or apparent political corruption. The Court has consistently reaffirmed this decision regarding the constitutionality of limits on contributions to candidates. Most recently, in *McConnell v. FEC*, 124 S.Ct. 619 (2003), the Court upheld the federal law limits on contributions to federal candidates and officeholders found in Bipartisan Campaign Reform Act (BCRA) § 323(e) (2 U.S.C. 441i(e)(1)(B)).

Several months before the *McConnell* decision, the Federal Election Commission (FEC) opined that where a federal candidate/officeholder controls a state ballot measure committee, both the committee and the federal candidate are subject to the federal contribution limits. *See* FEC AO # 2003-12 (Re: U.S. Representative Flake and the *Stop Taxpayer Money for Politicians Committee*). The FEC implied, while noting that the question had not been presented to the Commission for opinion, that where a federal candidate/officeholder fundraises for a state ballot measure committee but does not control the committee, the committee would not be subject to the limits of BCRA, but fundraising activities by the candidate/officeholder on behalf of the committee would be subject to the BCRA limits.

Despite the FEC's interpretation of the BCRA § 323(e) to limit fundraising by federal candidates for candidate controlled state ballot measure committees, the *McConnell* Court made no mention of this issue in its opinion. Eight of the nine *McConnell* Justices, however, upheld the BCRA contribution limits against constitutional challenge.

Limitations on Contributions to Ballot Measure Committees

The Supreme Court has issued two decisions analyzing the constitutionality of limits on contributions to ballot measure committees. In *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 795 (1978), the Court invalidated a Massachusetts law prohibiting contributions and expenditures by business corporations "for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation." The Court reasoned, "[r]eferenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Bellotti*, 435 U.S. at 790.

Three years later, in *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 298-300 (1981), the Court invalidated a $250 limit on contributions to committees formed to support or oppose ballot measures, quoting the *Bellotti* language above.

The contribution limits invalidated in *Bellotti* and *Citizens Against Rent Control* had no relationship to candidate fundraising and thus were not narrowly tailored to the government's compelling interest in avoiding the real or apparent corruption of candidates for public office. This simple fact distinguishes the contribution limits invalidated in *Bellotti* and *Citizens Against Rent Control* from FPPC draft regulation § 18530.9, which would apply only to *candidate controlled* ballot measure committees.

Conclusion—FPPC Draft Regulation § 18530.9 is Constitutional Under *Buckley, Bellotti, Citizens Against Rent Control* and *McConnell*

The Supreme Court's decisions in *Bellotti* and *Citizens Against Rent Control* depended entirely on its assumption that the "risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." Although this assumption was valid at the time the Court decided *Bellotti* and *Citizens Against Rent Control*, the assumption is not valid in California today. Instead, the risk of corruption

perceived in cases involving candidate elections is equally present in cases involving candidate controlled ballot measure committees.

Buckley and its progeny clearly establish that reasonable limits on contributions to candidates are a constitutional means of reducing the threat of real or apparent corruption. The threat of real or apparent corruption associated with large contributions to candidates is entirely dependent on a candidate's receipt of the contribution—not on a candidate's use of the contribution.

For these reasons, the Supreme Court would likely uphold against constitutional challenge the application of candidate contribution limits to candidate controlled ballot measure committees. Such a decision would be wholly consistent with the Court's decisions in *Buckley, Bellotti, Citizens Against Rent Control, McConnell* and other contribution limit cases. The Center for Governmental Studies urges you to consider proposed draft regulation § 18530.9.

Sincerely,

Paul S. Ryan, Political Reform Project Director
pryan@cgs.org, (310) 470-6590 ext. 115

Robert M. Stern, President
stern@cgs.org, (310) 470-6590 ext. 117