



California Political Attorneys Association

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August 16, 2022

VIA EMAIL

Chair Miadich and Commissioners Baker, Gómez, Wilson, and Wood
California Fair Political Practices Commission
1102 Q St #3000
Sacramento, CA 95811

Re: Comment Letter on Proposed Amendment to Regulation 18410

Dear Chair Miadich and Commissioners Baker, Gómez, Wilson and Wood,

The California Political Attorneys Association (CPAA) writes to offer comments on the proposed amendment to FPPC Regulation 18410 being pre-noticed for discussion at the August 18, 2022 Commission meeting.

The proposed amendment to existing FPPC Regulation 18410 will require committees to disclose on their Form 410 Statement of Organization the names of all persons authorized to obtain the committee's financial records from the financial institution where the campaign bank account is located. Committees are already required to disclose the name and address of the institution where the campaign bank account is maintained, and the bank account number on Form 410.

CPAA strongly opposes the proposed regulation as drafted because the regulation creates significant risk for fraud without appropriate fiscal control safeguards, and we believe there are better methods for the FPPC to achieve its stated objective of obtaining necessary financial records for campaign audits and investigations.

Our concern regarding the risk of financial fraud is not theoretical, but actual. In surveying only the Board Members of our organization, we identified numerous instances in which a political committee's checks were counterfeited and fraudulently signed with the name of the committee's account signer. This peril will only increase with the contemplated requirement that all names of authorized account signers be publicly disclosed.

If this regulatory change is implemented, the Form 410 that is submitted to the Secretary of State will contain the bank account name, bank account number, and bank account signer information for thousands of campaign bank accounts throughout California. If maintained incorrectly, keeping this information in one location for all of the campaign bank accounts in the state creates a significant risk for potential fraud. While we assume that the Secretary of State will

redact the signer information when providing a copy of the Form 410 (as it does now with the bank account numbers), redaction of this information allows for the possibility of human error and inadvertent disclosure of this information. Further, the existing version of the regulation does not mandate this type of redaction. While CPAA is confident that the Secretary of State will make best efforts to protect this sensitive financial data, we have no information on the fiscal controls or safeguards that the agency has put in place.

In addition, the Secretary of State is not the only entity to receive Form 410 Statements of Organization. Local filers are required to file their original Form 410 with the Secretary of State but are also required to file a copy of the Statement of Organization with the local filing officer. This means that in addition to placing an increased burden on the Secretary of State to protect sensitive financial information, the proposed regulation would place this data in the hands of numerous local filing officers across the state. Again, while CPAA is confident that most local filing officers will make best efforts to protect this information, without strict, standardized fiscal controls to protect this data, CPAA believes that there is significant risk for fraud.

We emphasize that the risk for fraud is real and information currently provided to filing officers is not always appropriately safeguarded. Again, in surveying only our organization's own Board Members, we are aware of at least one instance in which a political committee treasurer's signature on Form 460 is not being regularly redacted by a local government's filing officer. Given this, it is easy to imagine a world where a nefarious actor could use the combination of this individual's signature and signer and account information provided on the Form 410 to pose as an account signer and fraudulently gain access to a committee's bank account.

We understand the need for the FPPC and Franchise Tax Board (FTB) to obtain necessary financial records when completing audits and conducting investigations. However, we think that there are other methods to achieve this goal without creating an increased risk for fraud. First, the FPPC can amend its existing recordkeeping requirements to provide a requirement that committees keep specific, updated records regarding the names of individuals authorized to obtain financial records. In the event of an audit or investigation, that means that this information should be readily available to the FPPC or FTB for cooperating committees. Second, in the event a committee is uncooperative or the FPPC cannot otherwise obtain bank records as a result of requiring committees to maintain records regarding individuals authorized to request financial records, the FPPC has the existing ability to subpoena those records. We understand from the FPPC that obtaining these records via a subpoena can sometimes be challenging when out-of-state financial institutions are involved but believe that working with the legislature to enact a long-arm statute would help to resolve this concern.

Fraud-risk is at an all-time high and those of us responsible for client bank accounts are implementing every protection to try and decrease the risk of fraud. The Federal Trade Commission reported that in 2021 overall "fraud" losses increased more than 70 percent over 2020 to more than \$5.8 billion.¹ Given this environment, we ask the Commission to pay close attention to the potential risks associated with the proposed regulatory change and consider alternative approaches to achieve its objectives.

¹ <https://www.ftc.gov/news-events/news/press-releases/2022/02/new-data-shows-ftc-received-28-million-fraud-reports-consumers-2021-0>

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We appreciate the Commission's consideration of our feedback on this important issue.

Respectfully submitted,



Emily Andrews

CPAA Regulatory Committee Chair,
on behalf of the CPAA Board