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To: Chair Miadich, Commissioners, Cardenas, Hatch, Hayward, and Wilson

From: Dave Bainbridge General Counsel, Zachary W. Norton, Senior Counsel

Subject: Amendment of Regulation of 18419 - Sponsored Committees

Date: February 5, 2020

Introduction

Sponsored committees are primarily funded or controlled by a person, or small group of persons, and typically pursue a narrow or singular interest. As a result, the Political Reform Act¹ requires that the name of the sponsored committee identify the committee's sponsor(s) to inform the public of who is responsible for the committee's activity. Recently, the Enforcement Division has seen instances where sponsored committees with multiple sponsors fail to adequately identify sponsors in the committee name.

The underlying issue with the current regulation is that in instances where a committee has multiple sponsors, the various means to determine qualification are too broad, which can result in sponsorship disclosure that is overinclusive by capturing persons that were never intended to be committee sponsors. Such over inclusiveness results in sponsor identification that is too generalized to provide meaningful information to voters concerning the identity of sponsors. By tailoring the regulation to provide greater specificity on the requirements for sponsor qualification, sponsor identification in committee names will more accurately reflect the identity of committee sponsors.

The following proposed amendments to Regulation 18419 address this issue in two ways by: (1) clarifying when a person qualifies as a committee sponsor so as to reduce instances where a persons is improperly or unnecessarily identified as a committee sponsor and (2) provide greater specificity regarding how sponsors must be identified in a committee name when a committee has multiple sponsors.

The proposed amendments also address ambiguity in the rule for determining when a person qualifies as a sponsor based on the amount contributions made by the person, and make other minor changes to the existing regulation as discussed below.

¹ The Political Reform Act (Act) is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission's regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

Background

A recipient committee receives contributions to use for political purposes such as making contributions or independent expenditures to support or oppose candidates and ballot measures. All recipient committees are required to file semi-annual statements for each half of the year, whether or not they have received any contributions or made any expenditures during the six-month period covered by the statement.

In 1977, the regulated community requested that the FPPC address the problem of redundant reporting. An organization, such as a labor union or trade association, that had established a separate bank account from which to receive and make political contributions was required to report the same contributions and expenditures that its connected committee was required to report. The Commission decided to solve this problem by introducing the concept of a “sponsored” committee through regulation. If a sponsored committee engaged in political activity, then only the committee would have to report contributions and expenditures. The sponsoring organization would merely be identified in the committee’s name, but would not have reporting obligations beyond the committee’s reporting requirements. The Legislature subsequently codified the concept of a sponsored committee through legislation in 1985. The Act’s definition of “sponsored committee” is found in Section 82048.7.

Existing Law

The Act defines a “sponsored committee” as a committee, other than a candidate controlled committee, that has one or more sponsors. Any person, except a candidate or other individual, may sponsor a committee. (Section 82048.7.)

Qualification as a “Sponsor”

A person, including an entity or organization, qualifies as a committee sponsor if it:

- Provides 80 percent or more of the contributions received by the committee, either directly or from the entity or organization’s members, officers, employees, or shareholders;
- Collects contributions for the committee through payroll deductions or dues;
- Provides all or nearly all the administrative services for the committee; or
- Sets the policies for soliciting contributions or making expenditures of committee funds.

(Section 82048.7 and Regulation 18419.)

Naming Requirements

A committee’s name is one of the first pieces of information about a political committee that the public sees or hears. A committee’s name appears on all the committee’s mass mailings, and most advertisements including television, radio, telephone, print, and email advertisements,

informing the public who sent or paid for a communication as required by the Act's sender identification and advertisement disclosure provisions. Additionally, other electronic advertisements must also include a hyperlink to an Internet Web site containing the committee's name. (Sections 84305, 84501-84510.)

Section 84102 sets forth basic information that committee names must contain. It requires that a sponsored committee name include the name of the sponsor. One purpose of these provisions is to provide the public with clear indication of who is responsible for a committee and prevent special interest groups, which sponsor political committees, from obscuring their identity behind the committee name.²

When more than one organization meets the definition of "sponsor," Section 84102(a) provides that:

Whenever a committee has more than one sponsor, and the sponsors are members of an industry or other identifiable group, a term identifying that industry or group shall be included in the name of the committee.

Current Regulation 18419(b)(1) restates the naming requirements for sponsored committees contained in the statute. The FPPC has interpreted the statute's multiple sponsor provision as an exception to the general rule that the specific name of a sponsor must be included. The Act does not provide guidance regarding the appropriate "terms" which should be used to describe the industry or group affiliation of multiple sponsors.

Proposed Changes

The proposed revisions to Regulation 18419 seek to clarify when a person qualifies as a committee sponsor under the Act, and how a sponsored committee may include the identities of multiple sponsors in the committee name. These changes are intended to address the issue of sponsored committee names not adequately identifying committee sponsors in the committee name.

Determining Sponsor Qualification - Calculating the 80 percent Threshold

Under Section 82048.7(b)(1), a person who provides 80 percent or more of the contributions received by a committee is a sponsor of the committee. However, neither the statute nor existing regulation specify what time period to use to calculate the 80% threshold. This can lead to committees, especially those who have existed for a long period of time, not accurately reflecting a present committee sponsor.

Amended subdivision (a)(2)(A) provides that, for purpose of determining when a committee reached the 80 percent threshold for qualification as a sponsored committee, that threshold is determined based on all contributions received by a committee in the preceding 24

² Scully Advice Letter, No. A-88-054.

months. The 24-month timeframe corresponds to the election cycle, and captures the most recent activity relevant in determining who qualifies as a committee's sponsor.

Further, under existing law, anytime a committee reaches the 80% threshold, it has ten days to amend its statement of organization to identify a sponsor. (Section 84103(a).) Rather than requiring that a committee calculate whether its contributions from a person have reached the 80 percent threshold on a rolling basis, staff recommends either of the following options:

- **Option 1** a committee must determine at the time of filing each campaign statement whether it has met the 80 percent threshold. This includes semi-annual, pre-election, and quarterly campaign statements.
- **Option 2** a committee must determine at the end of each calendar quarter, and during the 90-day period preceding an election for which the committee is required to file a pre-election campaign statement per Section 84200.5 whether it has met the 80 percent threshold.

Determining Sponsor Qualification - Administrative Services and Decision-Making Authority

Through public meetings on the proposed changes to the sponsored committee regulation, a central concern expressed by members of the regulated community was the length of committee names for sponsored committees with multiple sponsors. According to members of the regulated community, it is common practice to identify as sponsors all persons who participate in setting policy for the committee due to concerns that a person who participates in discussions or decisions “sets the policies for soliciting contributions or making expenditures of committee funds” pursuant to Section 82048.7(b)(4). This has been problematic in situations where there are many individuals who play a limited role in decision making yet are still included as sponsors.

Similarly, Section 82048.7(b)(3) provides that a person sponsors a committee if “the person, alone or in combination with other organizations, provides all or nearly all of the administrative services for the committee.” In interpreting the language of the statute and considering the intent behind the sponsored committee law, staff believes this section is intended to apply to a single person that provides “all or nearly all nearly all of the administrative services” rather than multiple persons. However, current regulation does not specify any limitation on the number of persons who could qualify as sponsors by virtue of providing administrative services. Proposed amended subdivision (a)(2)(C) states that, for purposes of determining who qualifies as a sponsor, only one person will be deemed to provide all or nearly all of the administrative services for a committee.

With regard to sponsor qualification under Section 82048.7(b)(4), current Regulation 18419(a)(2)(D) does not include any limitation on the number of persons who could qualify as sponsors by virtue of involvement in policy setting or decision making. This has led to over-inclusion on the part of some committees of various persons as sponsors based on limited involvement in decision making activity. The amendment to this section will clarify the

qualifications for sponsorship as the result of decision-making authority and provide more meaningful sponsor disclosure.

Proposed amended subdivision (a)(2)(D) states that, for purposes of determining who qualifies as a sponsor, only the person who has ultimate decision-making authority over the committee's contributions and expenditures will be deemed to be the person who sets the policies for soliciting contributions or making expenditures. If no single person has such ultimate decision-making authority, all persons with decision-making authority over setting the policies for soliciting contributions or making expenditures of committee funds will be sponsors and must be identified by name in the committee name, consistent with the exception in subdivision (b)(1).

These two proposed amendments clarify which persons qualify as committee sponsors. Staff believes this clarification of the FPPC's interpretation of Section 82048.7, will result in sponsored committee names that more accurately identify persons responsible for sponsored committee activity.

Names Identifying Multiple Sponsors

Where a committee has multiple sponsors that are members of an "industry or other identifiable group," existing law requires the committee name include the use of "a term identifying that industry or group." The Enforcement Division has noticed a relatively small but significant number of committees utilizing vague terms, such as "*Sponsored by California taxpayers*" or "*Sponsored by coalition of large and small businesses*" where the names used to identify sponsors do not actually convey useful information to the public concerning the identity of the sponsors.

Current regulation does not include any guidance on identifying groups of sponsors when committees have multiple sponsors belonging to the same industry or identifiable group. As noted above, this has led to instances of sponsor identification that has been much too general to identify the committee sponsors. The amendment to this section will clarify the naming requirements where committees have multiple sponsors.

Proposed amended subdivision (b)(1) provides additional guidance regarding the appropriate terms which should be used to describe the industry or group affiliation of multiple sponsors. As proposed, the amendment would require the term to identify the industry or group with sufficient specificity so as to accurately and fully disclose the identity, interest, or purpose of committee sponsors, to make it clear that any name used to describe multiple sponsors must accurately characterize the common business, charitable, or non-profit purpose of the sponsors. Additionally, non-exhaustive examples have been provided of insufficient identification of multiple sponsors.

Other Subdivisions

This includes minor and technical changes.

- In proposed amended subdivisions (a) (3) and (5), some now obsolete language has been omitted.
- Various references have been shortened from “Government Code section” to “Section” and from “2 Cal. Code Regs. Section” to “Regulation.”

Summary

The various proposed amendments seek to ensure sponsored committee names accurately and specifically identify committee sponsors consistent with the requirements of the Act. Staff recommends the Commission adopt the amendments to Regulation 18419.

Attachment:

Proposed Regulation 18419