



## FAIR POLITICAL PRACTICES COMMISSION

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October 16, 2002

Ms. Marcie Burgess, Administrative Assistant  
Anaheim Police Officers PAC  
508 No. Anaheim Boulevard  
Anaheim, CA 92805-2647

**Re: Your Request for Advice  
Our File No. A-02-250**

Dear Ms. Burgess:

This letter is in response to your request for advice on behalf of the Anaheim Police Officers Political Action Committee regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Given that the Anaheim Police Officers Political Action Committee ("APO PAC") plans to make independent expenditures in the form of mailings for the candidates that the PAC has endorsed, may board members of the Anaheim Police Officers Political Action Committee, or regular members, walk precincts for candidates that the committee has endorsed using the candidate's materials and walk lists?

### CONCLUSION

Volunteer precinct walking by either the board members or regular members of APO PAC does not, by itself, constitute "coordination" with a candidate which would render independent expenditures made by APO PAC on behalf of endorsed candidates contributions. However, you should caution APO PAC members who wish to walk precincts for an endorsed candidate not to have any discussions about the PAC's plans for independent expenditures with the candidate or his or her campaign staff.

### FACTS

APO PAC is gearing up for Anaheim's local mayoral and city council elections. APO PAC plans to make independent expenditures in the form of mailings for the

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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.

candidates that the PAC has endorsed. You have received conflicting advice from an independent source about whether APO PAC's board members and/or its regular members can walk precincts for candidates endorsed by the PAC using walk lists and hand-out materials provided by the candidates. You were advised that the board members could not do such precinct walking, but that the regular members could.

In addition, sometimes the firefighters in Anaheim undertake their own precinct walking efforts on behalf of candidates. Since the Anaheim Police Officers PAC has endorsed most of the same candidates as the firefighters, you also ask whether APO PAC members may walk precincts with the firefighters for endorsed candidates, using walk pieces provided by the firefighters.

### ANALYSIS

The Act defines an "independent expenditure" in section 82031 as follows:

" 'Independent expenditure' means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee."<sup>2</sup>

Section 85500(b), added by Proposition 34, provides additional clarification as to when expenditures will or will not be considered independent under the Act:

"(b) An expenditure may not be considered independent, and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit, the expenditure is made under any of the following circumstances:

(1) The expenditure is made with the cooperation of, or in consultation with, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.

(2) The expenditure is made in concert with, or at the request or suggestion of, the candidate on whose behalf, or for whose benefit, the expenditure is made, or any controlled committee or any agent of the candidate.

(3) The expenditure is made under any arrangement, coordination, or direction with respect to the candidate or the candidate's agent and the person making the expenditure."

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<sup>2</sup> The case *Governor Gray Davis Com. v. American Taxpayers Alliance*, \_\_ Cal.Rptr.2d \_\_, 2002 WL 31116829, 2 Cal. Daily Op. Serv. 9916 (Cal.App. 1 Dist., Sep 25, 2002) (No. A096658) was recently decided which interprets express advocacy. Your question, however, does not raise express advocacy issues.

As you were advised by the FPPC's Technical Assistance Division by phone, the regulation concerning independent expenditures is being revised and will be considered at the Commission's December meeting. The rulemaking proposes to extensively revise current regulation 18225.7, to more clearly and specifically define conduct that constitutes coordination with a candidate and thereby renders expenditures contributions to the candidate under the Act, rather than independent expenditures. You can find the draft regulation and information about the rulemaking on the Commission's website at [www.fppc.ca.gov](http://www.fppc.ca.gov) under the "Commission Agendas" section. When the regulation is adopted it will provide you with more specific guidance as to what conduct constitutes "coordination" with a candidate. Considering that the November 5, 2002, election is approaching, however, and the new regulation will not be adopted before the election, we can provide you with guidance concerning independent expenditures under the statute and the current regulation.

Precinct walking by either board members or regular members of APO PAC using walk pieces provided by the campaign does not, by itself, constitute "coordination" with a candidate which would render independent expenditures made by APO PAC on behalf of endorsed candidates contributions. For the PAC's expenditures to be independent and not count as a contribution to a candidate, the expenditures must be made by the PAC without any cooperation or consultation with the candidate who benefits from the expenditure, or that candidate's controlled committee or agent. (Section 85500(b).) The expenditure may not be made in concert with or at the request or suggestion of the candidate. (Section 85500(b).)

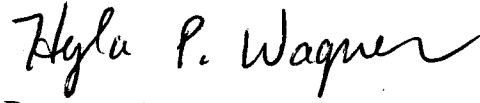
Therefore, you should caution APO PAC members who wish to walk precincts for an endorsed candidate not to have any discussions about the PAC's plans for independent expenditures with the candidate or the candidate's campaign staff. Certainly the risk that PAC expenditures for mailers on behalf of a candidate will be discussed with the candidate is heightened if board members of the PAC undertake volunteer activities in the candidate's campaign. And if a PAC board member held a formal policy making position with the candidate's campaign or provided advice regarding campaign strategy or fundraising, it would call into question the independence of the PAC's expenditures on behalf of the candidate. However, if a board member or a regular member undertakes ministerial volunteer activities on behalf of a campaign such as precinct walking or envelope stuffing, that activity, in and of itself, would not impair the independence of the PAC's expenditures.

With respect to your question about whether APO PAC members may walk precincts with the firefighters for endorsed candidates, a similar analysis applies. The independence of PAC expenditures will not be affected if APO PAC members walk precincts with firefighters for candidates endorsed by APO PAC. However, APO PAC members may not discuss APO PAC expenditures on behalf of a candidate with that candidate or with any campaign staff or agents of that candidate's campaign.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink that reads "Hyla P. Wagner". The signature is fluid and cursive, with a long, sweeping tail on the "W".

By: Hyla P. Wagner  
Senior Counsel, Legal Division

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