



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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January 15, 2015

Steven S. Lucas  
Nielsen Merksamer  
Parrinello Gross & Leoni LLP  
2350 Kerner Blvd., Suite 250  
San Rafael, CA 94901

Re: Your Request for Advice  
Our File No. A-15-210

Dear Mr. Lucas:

This letter responds to your request for advice on behalf of Govern for California (“GFC”) and its related California political committee, the Govern for California Action Committee (“GFCAC”) regarding the campaign reporting provisions of the Political Reform Act (the “Act”).<sup>1</sup>

#### FACTS

You represent GFC and its related California political committee, GFCAC (FPPC ID No. 1346242) and you seek advice regarding reporting issues. GFC is a nonprofit membership organization exempt from taxation under IRC Section 501(c)(4). It is comprised of individuals who believe in non-partisan support of state legislators who put the interests of their fellow citizens ahead of personal, party, or special interests. GFC raises funds through personal solicitation of donations, including by email.

GFCAC engages in independent expenditures in support of or opposition to various state candidates. GFC members have the right to vote on changes to GFC’s bylaws. GFC is launching a program to educate its members about candidates for state office. As part of this effort, GFC will inform its members of the candidates endorsed by GFC, and will educate its members regarding these endorsed candidates. GFC will ask its members to consider contributing to GFC-endorsed candidates. Solicitations for contributions to GFC-endorsed candidates would be by personal solicitation, including by email. GFC will treat these communications as “membership communications” under Section 85312.

As a convenience to its members, GFC will accept a single check from each member-donor made payable to GFC. The member-donors will provide written instructions directing GFC to pass on the funds to specific candidates in specific amounts. For example, a member-donor would write

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

a check for \$12,600 payable to GFC, accompanied by instructions by the member-donor to disburse \$4,200 each to Smith for Assembly 2016, Jones for Assembly 2016, and Lee for Senate 2016.

GFC will collect these checks from the member-donors, deposit the checks into the GFC bank account, and then issue checks to the recipient candidates in the amounts as instructed by the member donors. GFC will provide written notification to each recipient candidate of the name and address of each donor, and the amount of each contribution.

GFC, as a convenience to and at the direction of its member-donors, will prepare and file the necessary campaign disclosure reports triggered by the donors, including the 24-hour reports and Major Donor Reports. GFC, as an agent of the member-donor, will also file required 24-hour reports within 24 hours of the delivery of the contributions to the recipient candidates on behalf of the member-donors. The contributions will be fully disclosed by the member-donors as made through GFC as an intermediary and will be reported by the candidate-recipients as received through GFC as an intermediary.

In order to preserve the ability of GFCAC to engage in independent expenditures on behalf of some of the same candidates supported financially by GFC's members, GFC's communications with GFC-supported candidates will be limited to the confirmation of delivery of member contributions and will *not* include any discussion of campaign strategies or other campaign activities of either GFCAC or the benefiting candidates.

The benefiting candidates will *not* participate in any fundraising on behalf of GFCAC. It is the intent of GFC and GFCAC *not* to coordinate any expenditure with benefiting candidates pursuant to FPPC Regulation 18225.7.

You seek advice on campaign reporting issues where GFC is soliciting and accepting checks from the member-donors, accompanied by written instructions from the donor to pass the funds on to specific candidates in specific amounts, and disbursing the funds to GFC-endorsed candidates. You also wish to know whether GFCAC may engage in independent expenditures on behalf of the same candidates supported financially by GFC's members.

## QUESTIONS AND CONCLUSIONS

*1. Will GFC be considered a "recipient committee" as defined in Section 82013(a) and be required to file periodic reports as required by committees under the Act?*

Yes. If GFC, a membership organization, is receiving contributions of \$2,000 or more from its members for political purposes in California, it would qualify as a political committee under Section 82013(a) and be required to file periodic reports.

Under Section 82013, a "committee" means "any person or combination of persons who directly or indirectly does any of the following: (a) Receives contributions totaling two thousand dollars (\$2,000) or more in a calendar year; (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or (c) Makes contributions totaling ten

thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.”<sup>2</sup>

The term “contribution” is defined by Section 82015 and Regulation 18215 to include “any payment made for political purposes.” (Regulation 18215(a).)

Under Regulation 18215(a), a payment is made for political purposes if it is:

“(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

“(2) Received by or made at the behest of the following or any agent thereof:

“(A) A candidate;

“(B) A controlled committee;

“(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or

“(D) An organization formed or existing primarily for political purposes, including, but not limited to a political action committee established by any membership organization, labor union or corporation.” (Emphasis added.)

Here, GFC, a 501(c)(4) nonprofit membership organization benefitting “state legislators who put the interests of their fellow citizens ahead of personal, party, or special interests with a political party” would presumably be receiving contributions of \$2,000 or more for political purposes in California, as stated in Regulation 18215(a)(2)(D).

An organization formed or existing primarily for political purposes, includes, but is not limited to, a political action committee established by any membership organization, labor union, or corporation. GFC exists primarily for a political purpose, which is to get certain candidates elected and provide them with financial support. The group’s stated purpose is to gather and direct contributions for the “support of courageous state legislators who put citizen interests ahead of personal, party and special interests.” As such, GFC will qualify as a political committee under Section 82013(a) and be required to file periodic reports.

Your facts indicate that GFC will be soliciting, receiving, and depositing in its bank account large aggregate contributions from its member-donors, which contributions will be distributed by GFC according to the donor’s instructions and distributed to GFC-supported candidates. GFC will expend funds for member communications to let its members know which candidates GFC supports. It will actively encourage its members to donate through fundraising solicitation activities

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<sup>2</sup> Please note the committee qualification threshold increased from \$1,000 to \$2,000 on January 1, 2016 due to statutory changes.

and as well as maintain records, prepare transmittal information for member-donors and prepare compliance reports (including the 24-hour reports and Major Donor Reports) for these member-donors and contributors. These are generally activities that a committee undertakes.

Concluding that GFC is a committee means GFC will be filing campaign reports, and that its fundraising and dispersal of funds will be fully transparent. If GFC is reporting, the public will be able to discern who is contributing large donations to GFC's fundraising effort, as well as see the smaller contributions reported on GFC-supported candidate's reports.

In addition, GFC will be acting as an "intermediary" in delivering contributions, as discussed below. Therefore, we find that GFC is a "committee" which is also acting as an "intermediary" under the Act, rather than as solely an intermediary.

*2. What reporting does GFC incur if it raises contributions for each candidate as designated by the donors, and distributes these contributions to each candidate as a contribution from the donor through GFC as an "intermediary"?*

The Act provides that one person might act as an intermediary by collecting a contribution for the benefit of another person. (Section 84302; Regulation 18432.5.) The source of the resulting contribution to the second person is the original contributor, not the intermediary. Under the Act, contributions by intermediaries must be fully disclosed as made from the original contributor through the intermediary. Section 84302 states:

"No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor."

Regulation 18432.5 further provides that a person is an intermediary for a contribution (1) if the recipient of the contribution would consider the person to be the contributor without the disclosure of the identity of the true source of the contribution or (2) if the person is an intermediary because under Regulation 18419 they are an intermediate unit of a sponsor that forwards contributions.

We have advised that a person will be considered an intermediary if, at the time of the contribution, the original contributor knowingly and unambiguously earmarked the contribution for deposit with the second person. (See, e.g., *Gray Advice Letter*, No. A-03-068.) Section 85704's prohibition on earmarking states that "[a] person may not make any contribution to a committee on the condition or with the agreement that it will be contributed to any particular candidate unless the contribution is fully disclosed pursuant to Section 84302."

The *Bostrom Advice Letter*, No. A-11-217 (copy enclosed), discussed similar reporting questions involving ActRight, an organization and website supporting conservative candidates that enables supporters to select candidates to whom they wish to direct donations. The letter advised

that ActRight qualified as a committee under Section 82013(a) and that ActRight could raise contributions on its website for particular candidates, as designated by the donors, and distribute these contributions to each candidate. The contributions had to be reported as made from the donor to the candidate through ActRight as an intermediary.

Similarly the *Mainardi* Advice Letter, No. A-10-191, advised that a candidate's committee is required to report payments received from the Democratic donor site ActBlue as contributions received through an intermediary, where ActBlue processes online credit card contributions made to campaign committees, compiles a list of Democratic candidates for whom it will accept contributions, has registered with the Internal Revenue Service as a political organization and has filed campaign statements identifying itself as a general purpose committee.

Here, GFC will solicit, receive, and deposit aggregate earmarked contributions into its account, and then will write checks out of its account to GFC-supported candidates. GFC will also prepare and file the necessary campaign disclosure reports and report the contributions as received through GFC as an intermediary.

If GFC follows proper procedures regarding the recordkeeping and reporting of contributions directed by donors for specific candidates, these earmarked contributions will count towards the original contributor's contribution limit, not toward GFC's contribution limit. GFC itself may also contribute \$4,200 (the 2015-2016 limit for legislative candidates) to each GFC-supported candidate. However, if GFC determines whom the contributions will go to, then they will be considered the source of the contribution.

*3. Under the Act, may GFCAC engage in independent expenditures on behalf of candidates financially supported by GFC's members?*

Yes, GFCAC may make independent expenditures on behalf of candidates financially supported by GFC members, provided there is no coordination between a candidate and GFCAC with respect to an expenditure benefitting that candidate, as defined in Regulation 18225.7 and discussed below.

Under the Act, an "expenditure" is a payment made for a political purpose. (Section 82025; Regulation 18225.) A "contribution" is a payment "made at the behest of" a candidate. (Section 82015; Regulation 18215.) An "independent expenditure," by contrast, is an expenditure that is *not* made "at the behest of," or coordinated with a candidate. (Section 82031.)

Regulation 18225.7 describes specific situations where an expenditure will be presumed to have been coordinated with a candidate or committee. Regulation 18225.7 was amended in October of 2015 to add three new presumptions where an expenditure will be considered to have been coordinated with a candidate or committee. The objective is to keep up with the ongoing evolution of spending by outside groups, and to ensure that such expenditures are truly independent of candidates and committees.

- *Fundraising.* The first new rule presumes that an expenditure was coordinated with a candidate where the candidate who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for the person making the expenditure in the course of

the current campaign. (Regulation 18225.7(d)(5).) The rationale for the rule is if candidates raise unlimited funds for outside groups who, in turn, promote the candidate with the money raised, there are issues with the appearance of corruption and evasion of the limits on direct contributions.

- *Former Staff.* The second new presumption concerns the former staff of a candidate. Under the regulation “coordination” with the candidate would be presumed where the committee or other “person making the expenditure is established, run, or staffed in a leadership role, by an individual who previously worked in a senior position or advisory capacity on the candidate’s or officeholder’s staff within 12 months prior to the date of the election in which the expenditure is made.” (Regulation 18225.7(d)(6).)
- *Candidate’s Family.* The third new rule presumes coordination with a candidate where the committee or other person making the expenditure is established, run, staffed in a leadership role or principally funded by an individual who is an immediate family member of the candidate. (Regulation 18225.7(d)(7).)
- *Campaign Needs.* Coordination is presumed if the expenditure is based on information about the candidate’s or committee’s campaign needs or plans that the candidate or committee provided to the expending person directly or indirectly, such as information concerning campaign messaging, planned expenditures or polling data.
- *Common Consultants.* Under Regulation 18225.7(d)(3) the use of common consultants can trigger the presumption that there is coordination between a candidate and committee. Coordination is presumed if the person making the expenditure for a communication relating to a clearly identified candidate or ballot measure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the current campaign.
- *Republication.* Coordination is presumed where an outside group republishes the same or substantially the same communication sent by the candidate. Regulation 18225.7(d)(4) states that the presumption applies if “[t]he communication relating to a clearly identified candidate or ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication, including video footage, designed, produced, paid for or distributed by the candidate or committee.”

The rules in amended Regulation 18225.7 describe situations where an expenditure is presumed to have been coordinated with a candidate or committee.

You do not describe facts where these presumptions will be triggered. You state “GFC’s communications with [supported] candidates will be limited to the confirmation of delivery of member contributions and will not include any discussion of campaign strategies or other campaign activities of either GFCAC or benefitting candidates.” You further state that the benefitting candidates will not participate in any fundraising on behalf of GFCAC, and that it is the intent of

GFC and GFCAC *not* to coordinate any expenditures with benefiting candidates pursuant to Regulation 18225.7.

Therefore, based on the information provided, GFCAC may engage in independent expenditures on behalf of candidates financially supported by GFC members so long as GFC and GFCAC do not coordinate with a candidate or committee. However, if GFC's communications with the candidates are not limited as described above, it may limit GFCAC's ability to make independent expenditures.

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

Sincerely,

Hyla P. Wagner  
General Counsel

*Hyla P. Wagner*  
*Emelyn Rodriguez*

By: Emelyn Rodriguez  
Senior Counsel, Legal Division

ER:jgl

Enclosure