



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 26, 2021

James C. Harrison  
Olsen Remcho  
1901 Harrison Street, Suite 1550  
Oakland, CA 94612

Re: Your Request for Advice  
**Our File No. A-21-018**

Dear Mr. Harrison:

This letter responds to your request for advice regarding the lobbying disclosure provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

What lobbying-related disclosure documents should be filed, given that regional American Civil Liberties Union (“ACLU”) affiliate organizations will pay membership dues to a new organization, ACLU CA Action, which will provide a unified governance structure for the affiliates’ coordinated activities and engage in lobbying, education, legal projects, and other coordinated activities?

### CONCLUSION

Based on the facts provided, under the Act, only ACLU CA Action will qualify as a “lobbyist employer” that must file registration and disclosure reports. The regional ACLU affiliates qualify as dues-paying members of the lobbyist employer organization, not lobbyist employers themselves, and therefore do not have separate lobbyist employer disclosure requirements, unless and until the regional ACLU affiliates make separate payments to influence legislative or administrative action.

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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.

## FACTS AS PRESENTED BY REQUESTER

Since 1986, the ACLU affiliates in California (initially, the ACLU of Northern California and the ACLU of Southern California, and now including the ACLU of San Diego and Imperial Counties, together with their sister section 501(c)(3) foundations [the “affiliates”]) have been filing consolidated lobbyist employer reports to disclose their shared expenses for lobbying activities, including both in-house and contract lobbyists, along with any lobbying-related expenses incurred directly by the affiliates. Under this arrangement, the ACLU of Northern California has paid the costs of the ACLU’s Capitol Office, including the salaries of in-house lobbyists and payments to contract lobbyists, and has been reimbursed by the other affiliates for their share of the costs.

In order to provide a unified governance structure for the affiliates’ coordinated activities, the affiliates have created a new entity, ACLU CA Action, a public benefit corporation that is tax-exempt pursuant to Internal Revenue Code section 501(c)(4). The affiliates will pay annual dues to ACLU CA Action, which will engage in lobbying, education, legal projects, and other coordinated activities. The affiliates’ in-house lobbyists, who are currently employees of the ACLU of Northern California, will become employees of ACLU CA Action effective April 1, 2021, and the ACLU CA Action will enter into contracts with lobbying firms previously retained by the ACLU of Northern California, also effective April 1, 2021. Beginning with the quarter commencing April 1, 2021, ACLU CA Action will begin filing lobbyist employer reports to disclose the expenditures it makes for lobbying-related activities. To the extent that the affiliates make individual expenditures for lobbying-related activities beyond their dues payments, such as voluntary contributions to ACLU CA Action that are earmarked for lobbying or other payments that would count towards qualification as a lobbyist employer (e.g., if one of the affiliate’s employees were to qualify as an in-house lobbyist) or as a \$5,000 filer, the affiliates will each file their own individual reports on behalf of the 501(c)(3) and 501(c)(4) organizations in that region.

## ANALYSIS


Under the Act, a “lobbyist employer” generally means any person, other than a lobbying firm, who employs one or more lobbyists, or contracts for the services of a lobbying firm, for economic consideration for the purpose of influencing legislative or administrative action. (Section 82039.5.) Lobbyist employers must file periodic reports, as provided in Section 86116. (Section 86115(a).) Such periodic reports must also be filed by “[a]ny person who directly or indirectly makes payments to influence legislative or administrative action of five thousand dollars (\$5,000) or more in value in any calendar quarter, unless all of the payments are of the type described in subdivision (c) of Section 82045.” (Section 86115(b).) The types of payments that must be disclosed as lobbying services is further clarified to include those payments made by an affiliated entity of the lobbyist employer. (Regulation 18614.) However, “[w]hen a lobbyist or lobbying firm is employed by a bona fide association, including any bona fide federation, confederation or trade, labor or membership organization, that association is a lobbyist employer. The members of the association are not lobbyist employers under Government Code Section 82039.5 merely because of such membership.” (Regulation 18239.5.) Moreover, for nongovernmental entities, “dues or similar payments made by any person for membership in a bona fide association, including any federation, confederation, or trade, labor, or membership organization, some portion of which is used to influence legislative or administrative action, are not payments to influence legislative or administrative action.” (Regulation 18616(g)(4).)

ACLU CA Action's plan to register as a lobbyist employer and begin filing reports disclosing its lobbying-related expenditures is correct. Although the lobbying activities done by ACLU CA Action's in-house and contracted lobbyists will benefit the regional ACLU affiliates, the annual dues that the affiliates will pay to ACLU CA Action will not qualify as payments to influence legislative or administrative action and the affiliates do not qualify as lobbyist employers merely by being dues-paying members of a larger association that does qualify as a lobbyist employer. (Regulations 18239.5 and 18616(g)(4).)<sup>2</sup> Unless and until the regional ACLU affiliates make separate payments to influence legislative or administrative action, such that they meet the definition of "lobbyist employer," ACLU CA Action is the only organization that must register and file disclosure reports as a lobbyist employer.

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

Sincerely,

Dave Bainbridge  
General Counsel

  
By: Kevin Cornwall  
Counsel, Legal Division

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<sup>2</sup> Nor do ACLU CA Action and the regional ACLU affiliates qualify as a "lobbying coalition," given the number of members of the group, its ongoing nature, and the fact that member services are not limited to influencing legislative or administrative action. (See Section 82038.3.)