



**SUPERSEDED**  
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(see attached memo)

## FAIR POLITICAL PRACTICES COMMISSION

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November 12, 1999

Robert E. Leidigh  
Olson, Hagel, Leidigh, Waters & Fishburn  
555 Capitol Mall, Suite 1425  
Sacramento, California 95814-4602

**Re: Your Request for Advice**  
**Our File No. A-99-272**

Dear Mr. Leidigh:

This letter responds to your request on behalf of Jennifer Lin, Frederic Lin, Kevin Lin, Ted Fairfield, Martin Inderbitzen, and/or James Tong ("clients") for advice about the Political Reform Act (the "Act").<sup>1</sup>

### I. QUESTION

Does Government Code section 85320 prohibit your clients from making payments or providing services in connection with a post-election lawsuit challenging either the Pleasanton initiative or the Livermore initiative, in the event that either of those initiatives is adopted at the November 2, 1999, election in those respective communities?

### II. CONCLUSION

Assuming that the anticipated litigation over the initiatives occurs after the election, raises only the constitutionality of the initiative or the conflict of the initiative with other laws, and does not involve a candidate or candidate-controlled, or other campaign committee, your clients' expected participation would not give rise to a contribution or expenditure under the Act. Since Section 85320 regulates only contributions, expenditures and independent expenditures by foreign principals, it would have no applicability to such a situation.

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<sup>1</sup> Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

### III. FACTS

We have previously advised your clients on matters closely related to the present request for advice in the *Leidigh* Advice Letters, Nos. A-99-200 and A-99-200a. The facts provided in your earlier request for advice, dated July 1, 1999 (our file number A-99-200) are incorporated herein by reference.

You have provided additional facts specifically relevant to this request. The contemplated litigation would not involve any challenges to the initiatives on the grounds of the Elections Code or any other matters relating to the sufficiency of the petitions, the circulation thereof, etc. The grounds for the challenge would instead address the initiatives' conflicts with state laws and with the U.S. and California Constitutions.

Moreover, there will be no candidate, candidate-controlled committee, or on-going campaign committee involved in the litigation. The litigation will be prosecuted by the Home Builders Association of Northern California along with other home builders' groups, using their general revenues. To the extent that any participating group also has an on-going PAC, no PAC funds will be utilized in support of the litigation, and the PAC will play no role in the litigation effort.

Each of your clients would like to participate in the contemplated post-election litigation, either through personal participation, strategizing, representation, or monetary support.

### IV. ANALYSIS

Section 85320 provides, in pertinent part:

“(a) No foreign government or foreign principal shall make any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local initiative, recall, or referendum measure.

\* \* \*

“(c) For purposes of this section, a foreign principal is a person defined in 22 U.S.C. 611(b).”

Section 85320 defines a “foreign principal” according to United States Code, Title 22, Section 611(b). The relevant portion of Section 611(b) defines a “foreign principal” as “a person outside of the United States, *unless* it is established that such person is an individual and a citizen of and domiciled within the United States.” A “person” includes an individual. (22 U.S.C. § 611(a).) Thus, United States citizens domiciled outside of the United States are considered to

be “foreign principals.” Consequently, such persons may not make contributions, expenditures or independent expenditures in connection with state or local ballot measures. (*Leidigh Advice Letters, supra.*)

The question is thus whether the participation of your clients, or any of them, in the contemplated post-election litigation, whether in the form of personal participation, strategizing, representation, or monetary support would constitute a “contribution” (Section 82015, Regulation 18215), an “expenditure” (Section 82025, Regulation 18225) or an “independent expenditure” (Section 82031) under the Act.

A payment<sup>2</sup> in support of litigation over an initiative is not a reportable contribution or expenditure if three conditions are met. First, the challenge must be to the constitutionality of the initiative or its conflict with other laws, as opposed to whether the initiative should be on the ballot or is otherwise proper under the Elections Code. (*In re Buchanan* (1979) 5 F.P.P.C. Ops 14, fn. 3; *Herzig Advice Letter*, No. A-87-272; *Kreamer Advice Letter*, No. I-92-643; *Bakhaus Advice Letter*, No. I-93-438.) Second, the litigation must occur *after* the election. (*Doyle Advice Letter*, No. I-88-202 (even though the challenge to the measure in-question was constitutional, it was mounted *before* the election, and therefore deemed to be for purpose of keeping measure off the ballot).) Third, neither a candidate, nor a candidate-controlled committee nor indeed any campaign committee may be involved in the litigation. (*Roberti Advice Letter*, No. I-91-292.)

On behalf of your clients, you have explained that the anticipated lawsuits over the initiatives in which your clients expect to participate would be *after* the election; that the lawsuits, in your words, “would not involve any challenges to the initiative on grounds of the Elections Code or any other matters relating to the sufficiency of the petitions, the circulation thereof, etc.”; and, again in your words, “there will be no candidate, candidate’s committee, or on-going campaign committee involved in the post-election litigation herein.” Assuming affairs indeed unfold as you have explained, your clients’ participation in the post-election litigation over the initiative would not result in reportable contributions or expenditures. (*Buchanan, Kreamer, Bakhaus, supra.*) Since Section 85320 prohibits only contributions, expenditures, and independent expenditures by foreign principals, it would have no applicability in that situation.

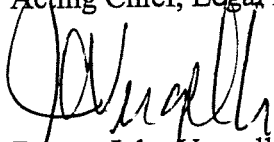
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<sup>2</sup> “Payment,” for purposes of the Act, is defined in Section 82044.

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

Sincerely,

Luisa M. Menchaca  
Acting Chief, Legal Division



By: John Vergelli  
Staff Counsel, Legal Division

SGC:JV:klw