



## FAIR POLITICAL PRACTICES COMMISSION

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October 21, 2004

James V. Lacy  
Wewer & Lacy, LLP  
Civic Center Plaza  
30011 Ivy Glenn Drive, Suite 223  
Laguna Niguel, CA 92677

**Re: Your Request for Advice  
Our File No. A-04-195**

Dear Mr. Lacy:

This letter is in response to your request on behalf of "No New Taxes, a Project of the Small Business Action Committee and the Howard Jarvis Taxpayers Association" ("NNT") for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Does NNT, a ballot measure committee, need to disclose contributors to the "No on Proposition 72" committee when paying for communications that in whole or in part oppose Proposition 72?

### CONCLUSION

No. Regardless of whether a given political advertisement is a contribution to "No on Proposition 72" or an independent expenditure, NNT is required to disclose only the appropriate contributors to NNT since NNT is paying for the political communication.

### FACTS

No New Taxes, a Project of the Small Business Action Committee and the Howard Jarvis Taxpayers Association intends to address ballot measures in more than a single election. For the November 2004 election, it intends to oppose four statewide ballot initiatives, namely Propositions 63, 65, 67 and 72. NNT has complied with 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.

requirements of the Act, namely it previously filed a Form 410 Statement of Organization. When it qualifies it will file an amended Form 410, and periodic Form 460 disclosures consistent with law.

NNT intends to engage in its activity in the November 2004 election independent of any other ballot measure committee. As such, Small Business Action Committee ("SBAC") has intended to engage in independent expenditure activity in opposition to such statewide ballot initiatives, and to prepare and file the proper additional disclosures. The creation of the project committee is entirely the decision and action of the sponsoring organizations and neither the sponsoring organizations, nor any of their staff, directors, officers and agents, or consultants have acted in concert with any other person, including any other ballot measure committee, to create NNT.

However, one of NNT's sponsoring organizations, namely, the Small Business Action Committee (of which you are also general counsel) has recently made a decision to hire a consulting firm based in Sacramento for organization management purposes that is owned and operated by Jeffrey Flint. Mr. Flint, you have learned, has a number of different clients, and is also a consultant to the "No on Prop. 72" ballot measure committee, where he assists that organization in coalition building. As a manager of SBAC, Mr. Flint would have substantial influence over the activities of NNT. Members of SBAC's Board of Directors, named Joel Fox and Chris George, also wish to join a voluntary advisory committee to the "No on Prop. 72" committee where campaign strategy will be discussed.

Under regulation 18225.7(c)(3)(A), you note that coordination with a ballot measure committee is presumed where SBAC's project committee "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 that same election."

NNT intends to engage in advertising expenditures where its position on all four measures will jointly appear. For Propositions 63, 65 and 67, this activity will be by independent expenditure. For Proposition 72, you believe the support would likely be viewed by the FPPC as coordinated.

Reading Government Code section 84505 and regulation 18225.7, subdivision(c)(3)(A), together, you are concerned about the application of section 84503 to the project committee's advertising and seek advice on what the proper disclosure on advertising for the project committee should be under the facts stated herein. Specifically, you ask whether you are required to disclose the top two contributors to the "No on Proposition 72" committee in addition to disclosing pertinent contributors to NNT.

## ANALYSIS

Sections 84501-84511 are generally described as the advertising disclosure statutes, which, as the name implies, regulates the content of disclosures to be made by those who pay for political advertisements. As you correctly assume, these statutes govern the types of communications about which you inquire – specifically, NNT’s political advertisements urging voters to vote “no” on certain ballot measures in the upcoming November election.

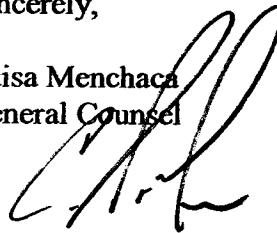
Regulation 18225.7, on the other hand, defines the term “made at the behest,” which may determine whether a given expenditure (not only for advertising) shall be considered a contribution or an independent expenditure. (*See* § 82015, subd. (b)(2), stating that “[a] payment made at the behest of a candidate is a contribution to the candidate unless [certain]... criteria...are satisfied).) Thus, in determining whether political advertisements paid for by NNT are contributions to “No on Proposition 72” or independent expenditures for reporting purposes, we look to regulation 18225.7 to assist in answering that question.

The question you ask, however, does not implicate regulation 18225.7. Instead, the question of which donors are disclosed in an advertisement is governed by sections 84503 and 84506 (if the expenditure is an independent expenditure). Under either scenario, the critical question to be answered is which committee, NNT or “No on Proposition 72,” paid for the communication. In your facts, you indicate the communications will be paid for by NNT, not any other committee. Therefore, in the political advertisements you describe, NNT need disclose only the top two (if applicable) donors of \$50,000 or more (cumulatively) to NNT.<sup>2</sup>

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

Sincerely,

Luisa Menchaca  
General Counsel



By: C. Scott Tocher  
Senior Counsel, Legal Division

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<sup>2</sup> Please note that this letter does not address whether NNT is a general purpose or primarily formed committee. (Sections 82027.5 and 82047.5.)