



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329  
(916) 322-5660 • Fax (916) 322-0886

This letter SUPERSEDES *Stephens* Advice Letter No. A-10-002

May 4, 2010

Mr. Mark Numainville, Deputy City Clerk and  
Mr. Zach Cowan, City Attorney  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: Your Request for Informal Assistance  
**Our File No. I-10-049**

Dear Mr. Numainville and Mr. Cowan:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Please be aware that the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions provided apply only to prospective actions. Under Regulation 18329(c)(1), informal assistance may be requested by any person with a duty to advise other persons relating to their duties or actions under the Act. As the City Clerk, you have a duty to advise candidates and committees in the City of Berkeley as to their campaign report filing obligations.

### QUESTION

When is a local referendum considered a "measure" under the Act, such that contributions or expenditures to qualify the referendum for the ballot or to support or oppose the referendum are reportable under the Act?

### CONCLUSION

A local referendum becomes a "measure" under the Act, when the first petitions are circulated for signature to voters concerning the referendum.

---

<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

You are requesting reconsideration of the conclusion in the *Stephens* Advice Letter, No. A-10-002 issued February 9, 2010, to the treasurer for the Alliance for a Green and Livable Downtown. Your question involves a referendum on the Downtown Plan ordinance in the City of Berkeley. The City of Berkeley passed an ordinance enacting a new Downtown Plan, which has proved controversial. The Alliance for a Green and Livable Downtown is an organization that was established to raise and spend money to gather signatures to stop the enacting of a new Downtown Plan by the Berkeley City Council. Under the local referendum procedures, this group seeks to stop enactment of the Downtown Plan ordinance.

Under the referendum clause in the Berkeley City Charter, any ordinance or other legislative action taken by the Berkeley City Council can be halted if the requisite number of signatures is gathered within 30 days of the action's effective date.<sup>2</sup>

## ANALYSIS

The Act requires candidates and committees to file periodic reports disclosing contributions received and expenditures made in connection with state and local elections. "Committee" includes any person or group of persons that receives contributions totaling \$1,000 or more in a calendar year for the purpose of supporting or opposing candidates or for the qualification, passage, or defeat of a ballot measure. (Sections 82013(a) and 82015; Regulation 18215.)

---

<sup>2</sup> Article XIV, Section 93 of the Berkeley City Charter entitled the "mode of protesting against ordinances" states:

"No ordinance passed by the Council shall go into effect before thirty days from the time of its final passage except when otherwise required by the general laws of the State or by the provisions of this Charter respecting street improvements, and except the ordinance making the annual tax levy, and except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency, and is passed by a seven-ninths (7/9) vote of the Council, provided that no grant of any franchise shall be construed to be an urgency measure, but all franchises shall be subject to the referendum vote herein provided. If during said thirty days a petition signed by qualified electors of the City equal in number to at least ten percent of the entire vote cast for all candidates for Mayor at the last preceding general municipal election at which a Mayor was elected, protesting against the passage of such ordinance, be presented to the Council, the same shall thereupon be suspended from going into operation and it shall be the duty of the Council to reconsider such ordinance, and if the same be not entirely repealed, the council shall submit the ordinance, as is provided in Article XIII of the Charter, to the vote of the electors of the city, at the next occurring regular statewide or general or special municipal election providing no posting, publication or other legal deadline as set forth in the California Elections Code and Government Code, has expired at the time the City Clerk reports verification of the petition to the City Council, and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. . . ."

The term "measure" is defined in Section 82043 as follows:

"'Measure' means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedures whether or not it qualifies for the ballot."

An initiative, referendum,<sup>3</sup> or recall procedure becomes a "measure" under the Act when the proponents begin to circulate signature petitions to qualify the measure for the ballot. The Commission's *Fontana* Opinion (1976) 2 FPPC Ops. 25, states as follows:

"Under the Political Reform Act, a proposal can become a measure in two different ways. First, 'measure' includes any proposition 'which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.' Section 82043. This definition includes not only each initiative, referendum or recall that is actually submitted to the voters but also applies to each such proposal that is intended to be submitted to a popular vote whether or not it qualifies for the ballot. *Accordingly, an initiative, referendum or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the measure for the ballot.* . . . 'Measure' also means 'any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body.' (Emphasis added.)

In addition, Campaign Manual 3 for ballot measure committees states that "[a]n initiative, referendum, or recall becomes a measure when the proponents begin to circulate signature petitions to qualify the proposal for the ballot." (FPPC Campaign Manual 3, p. 1-1; *Bagatelos* Advice Letter, No. I-00-075.)

In this case, you are inquiring about a local referendum. The local referendum becomes a measure under the Act when proponents first circulate petitions to qualify the referendum for the ballot.

In its request for advice, the Alliance for a Livable Downtown argued that the referendum procedure used in the City of Berkeley differed from the referendum procedures in other localities in California, leaving more deference to the legislative body's determination whether to put a measure on the ballot or not. The request stressed that the Berkeley City Council had

---

<sup>3</sup> As noted in the *Fontana* Opinion, *supra*. "The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." Cal. Const. Art. 2, Sec. 8. "The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, statutes calling elections, and statutes providing for tax levies or appropriations for usual current expenses of the State." Cal. Const. Art. 2, Sec. 9. "The initiative and referendum powers may be exercised by the electors of each city and county under procedures that the Legislature provides." Cal. Const. Art. 2, Sec. 11.

numerous options for action when a local ordinance was challenged, including rescinding the ordinance, doing nothing, or putting the ordinance on the ballot for a referendum. The Alliance thus argued that the challenge to the local ordinance did not become a "measure" under the Act until the Berkeley City Council voted to place the ordinance on the ballot. The advice letter reached this conclusion.

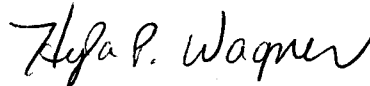
However, as the City Clerk of Berkeley, you have provided additional information on Berkeley's referendum procedure for our consideration. You note that the referendum procedure in the City of Berkeley is substantially the same as the referendum procedure available to citizens in most California localities under the Elections Code. We have reviewed the provisions in California Elections Code Sections 9140 et seq. and 9235 et seq. for county and municipal referendums, and concur that this is the case. Based on the additional facts and law you presented, we conclude that a referendum on a local ordinance passed by the Berkeley City Council becomes a "measure" under the Act when the first petitions are circulated for signature. This letter supersedes the *Stephens* Advice Letter No. A-10-002.

Once a proposal becomes a measure, all contributions received and expenditures made must be reported, including those received and made before the campaign reporting requirements were triggered. (*Angus* Advice Letter, No. A-97-173.) The terms "contribution" and "expenditure" are defined as payments made for "political purposes." (Sections 82015 and 82025.) "Political purpose" means that the payment was made 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. (Regulations 18215(a)(1) and 18225(a)(1).)

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

Sincerely,

Scott Hallabrin  
General Counsel



By: Hyla P. Wagner  
Senior Counsel, Legal Division

HPW:jgl

cc: Lisa Stephens, Alliance for a Green and Livable Downtown