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August 12, 2010

VIA FACSIMILE
Chair and Commissioners
California Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Agenda Item No. 29, Review of Regulation 18225(b)(2) - Definition of "Express Advocacy"

Dear Chairman Schnur and Commissioners:

I am writing on behalf of Alliance for Justice, a national association of more than 100 environmental, civil rights, mental health, women's, children's, and consumer advocacy organizations. Alliance for Justice works to promote the advocacy activities of hundreds of nonprofit organizations in California that lobby for policy change, support and oppose ballot measures, and engage in election-related activities. In addition, Alliance for Justice advocates for governmental policies that reduce the barriers for nonprofit organizations to engage in public policy debates. We are writing today to comment on the proposed changes to the definition of express advocacy.

The Commission may not be aware of the fact that before participating in any lobbying, ballot measure or other election-related activity, nonprofit organizations must work through a complicated maze of federal tax law rules – not to mention state and local lobbying, ballot measure, and campaign laws. And, unfortunately, there is often a disconnect between the California Political Reform Act and the federal tax law rules regulating nonprofit advocacy. We encourage the Commission to consider this complicated regulatory scheme as it deliberates on the proposed changes to the definition of "express advocacy" – and in particular in its consideration of how the proposed changes will impact the important advocacy work carried out by nonprofit organizations in California.

First, the changes in the law will, as a practical matter, make it impossible for community-based organizations that want to communicate with the general public to judge whether their communications are subject to California's burdensome disclosure laws. Currently, California nonprofits engaging in ballot measure advocacy or issue advocacy operate under the clearly laid-out "magic words" definition of express advocacy, and have done so ever since

Davis v. American Taxpayer Alliance was decided in 2002. The nonprofit organizations we work with often want to reference ballot measures or candidates without intending to influence the election – and they rely on the magic words standard to help them understand whether they need to file disclosure reports. If it chooses to move away from this bright-line test, the Commission will create further barriers for nonprofit organizations with limited resources to be involved in these important policy debates.

Additionally, changing the current definition of express advocacy would be particularly burdensome for nonprofits engaged in issue advocacy that may be subject to disclosure under Government Code Section 85310. Elected public officials often vote on bills, make public statements and executive decisions, or take other official actions as part of their official duties. These actions may be consistent with or conflict with a nonprofit's position on the issue. As part of a lobbying or advocacy campaign, a nonprofit may want to publicize its views by criticizing or praising an elected public official for her actions – regardless of whether the official is also a candidate in an upcoming election. By expanding the definition of express advocacy, the Commission would blur the line on whether grassroots lobbying, criticizing incumbents, or other issue advocacy is considered an independent expenditure, or if it qualifies as an electioneering communication under 85310 – each of which would require a different type of disclosure. Nonprofits often distribute public communications involving legislative campaigns or other activities connected to public officials and we strongly believe these communications should not be considered campaign activity and that the Commission should have a bright line standard to help encourage citizen involvement in the policy debate.

Lastly, we believe changing the definition of express advocacy prior to the 2010 election season will cause confusion for California nonprofits. While expanding the definition of express advocacy would create confusion for nonprofits at all points in time, doing so immediately prior to an election period would further compound this confusion. Many nonprofits are already in the advanced stages of planning their advocacy efforts for the coming election, and an expansion of the definition of express advocacy at this point in time could prove inordinately burdensome to their efforts.

By maintaining the current definition of express advocacy – one that was definitively established by the controlling authority of *Davis v. American Taxpayers Alliance* – the Commission would continue to enable nonprofit organizations to follow a clear and useful definition in order to fully comply with their myriad legal obligations. For these considerations, Alliance for Justice urges the Commission to oppose an expansion of the definition of express advocacy.

Sincerely,

Melissa Mikesell

Melissa Mikesell, West Coast Director

Lindsay Ryder, Legal Intern