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PRESIDENT
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ALLIANCE^{FOR}JUSTICE

October 21, 2011

Commission Chair Ann Ravel and Commissioners
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814
Via U.S. Mail and Fax (916-322-6440)

Re: Agenda Item 2 of October 26 Interested Persons Meeting – “A More Clear Rule for Reporting Contributions to Multi-Purpose Groups”

Commission Chair Ann Ravel and Commissioners,

Alliance for Justice thanks the Commission for this opportunity to comment on the development of a rule for reporting contributions to multi-purpose groups.

Alliance for Justice (AFJ) is a national association of over 100 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society. AFJ is the leading expert on the legal framework for nonprofit advocacy efforts, providing definitive information, resources, and technical assistance that encourages organizations and their funding partners to fully exercise their right to be active participants in the democratic process.

We would like to thank the Commission for considering the unique situation of nonprofit advocacy organizations as members of the regulated community. As it moves forward with this important issue, we encourage the Commission to devise a regulation requiring multi-purpose organizations that qualify as recipient committees to report those donors who *most likely* contributed money to support the organization’s political activities.¹ In particular, we encourage the Commission to explore a regulation that:

- Focuses on requiring multi-purpose organizations to report only those donors who most likely contributed money to support the organization’s political activities. The reporting required under current regulation 18215(b)(1), and Commission guidance, provides the public with inflated and inaccurate information about who is supporting political activities. For example, under the

¹ Although our comments apply generally to all political activities of multi-purpose organizations, since we primarily work with nonprofit organizations on ballot measure advocacy, we will focus our comments on those activities.

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current rules, a multi-purpose organization may be required to disclose the next check that comes through the door – even if that donor does not actually support the goals of the organization's ballot measure work and even if the donation was solicited and promised long before the organization started/planned engaging in ballot measure activity. This may result in the organization reporting donors who clearly did not intend to support its ballot measure work – including bequests, foundation grants for specific projects that do not involve ballot measure activity, foundation grants that have been restricted from being used on lobbying, or donations from individuals who oppose the organization's view on a ballot measure (e.g., an individual that is opposed to gay marriage but donates to a nonprofit that is opposing Proposition 8);

- Develops criteria or factors for rebutting the "knows or has reason to know" presumption in 18215(b)(1) – as was suggested in *California Pro-Life Council, Inc. v Randolph* (2007) 507 F.3d 1172, 1185. Specifically, we suggest the Commission develop a way to exclude those donations made by individuals who clearly did not intend to support the organization's ballot measure advocacy, including those scenarios discussed above;
- Addresses the fact that the current regulations unwittingly turn donors to multi-purpose organizations into Major Donors. For example, an individual, foundation, or business may become a Major Donor under California law by donating money to a project of a multi-purpose nonprofit organization that is entirely distinct from the organization's ballot measure work – even if the donor did not know the organization was involved in any ballot measure effort at all;
- Recognizes the fact that many (if not most) multi-purpose nonprofit organizations rely upon existing funds in the organization's bank account when making decisions about what ballot measure activities the organization will engage in during the election season – rather than relying on donations made immediately prior to or during the organization's involvement in ballot measure activities;
- Addresses the fact that many multi-purpose organizations become recipient committees by donating staff time or resources to a ballot measure campaign. In particular, we encourage the Commission to consider the complications of determining when an organization has taken a "second bite at the apple" and the recordkeeping burdens associated with reporting expenses under these circumstances;
- Acknowledges that a multi-purpose nonprofit organization might not receive any new funding during an election-cycle or a reporting period – and might not have any new donations to report on campaign reports. Most small and mid-sized

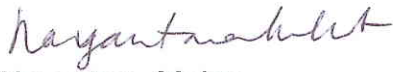
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- nonprofit organizations raise money on particular cycles, with the majority of funding coming toward the end of the year or in connection with an annual luncheon or major event – so the organization may go weeks or months without receiving a single new donation; and
- Offers consistency with Regulation 18413.

Thank you again for offering this opportunity to address the Commission regarding its development of this regulation. We look forward to continuing to work with the Commission and its new Chair on this and other issues in the coming year.

Sincerely,



Nayantara Mehta
Senior Counsel
Alliance for Justice, West Coast Office

