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August 20, 2013

Chair Ravel and Commissioners Casher, Escovitz, Wynne, and Wasserman
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Agenda Item #46: Gift and Travel Regulations.

Chair Ravel and Commissioners,

On behalf of California Common Cause and our 400,000 national members, please accept our comments for this important discussion for Agenda Item #46 regarding Gift and Travel Regulations 18944, 18950 – 18950.4, and 18727.5.

I wish to start my comments by expressing our gratitude to Commission Counsel Bill Lenkeit who proactively reached out to Common Cause about these regulations and kept us updated on the newest amendments. Mr. Lenkeit was always accessible to respond to inquiries and concerns.

The following comments are for proposed regulations dated August 9, 2013.

Proposed Regulation 18944. Payments Made to an Agency For Use By Agency Official

Prevent Payment Earmarking.

Under the proposed regulation, the “Agency head” would be the official who ultimately controls the specific payments. However, we would request the Commission include an amendment to prevent earmarking or directing payments by the donor to specific officials. By including this amendment, the Commission can explicitly prevent any donor from earmarking such a payment to their choice public official and circumventing gift rules. The amendment should also require the payment to be a gift to the official if the payment is earmarked or explicitly directed.

This suggested amendment can be added to the regulation by simply restoring a provision stricken out on Page 2, starting on Line 5: *“The donor may identify a purpose for the payment, but the donor may not designate by name, title, class, or otherwise, an official who may use the payment.”*

Dramatic Shift in Public Disclosure.

We would also request the Commission lower the disclosure threshold on Page 3, Line 12 from \$2,500 to \$1,000 (amendment should also be made to Page 4, Line 9). The current disclosure threshold is \$500. We see a 500 percent increase as excessive. However, a 100 percent increase is reasonable, especially if adjusting for interest. The combination of a fivefold increase in addition to a new quarterly filing schedule causes us great concern. The proposed regulation is too drastic of a change at this time without any evidence from staff that such a reduction in disclosure would benefit the public's right to know. The resulting effect of the staff's proposal is a significant curtailment of public disclosure. We recommend the Commission adopt an acceptable compromise by lowering the monetary threshold as suggested above and approve a quarterly filing schedule.

Detailed Summary of Information

Common Cause recommends the Commission amend Page 4, Line 4 by inserting the word “detailed” before “summary of information”. We have discussed this change with Mr. Lenkeit and believe the term “summary” is too generalized to meet the goals of the staff proposal. It is our understanding that acceptable “detailed summaries” would be spreadsheets with relevant payments disclosed. A plain text reading of the proposed regulation would give the impression that a simple description of the payment would meet the “summary” requirement.

Proposed Regulation 18950. Travel Payments.

It is our understanding from conversations Mr. Lenkeit that a new draft of Proposed Regulation 18950 will be presented to the Commission at the commission meeting. We will withhold any comments on Proposed Regulation 18950 until such time we are able to review amended staff proposals.

Proposed Regulation 18950.1. Exception: Payments for Travel Made in Conjunction with Official Agency Business.

Reconcile Amendments.

On Page 6, Line 14: amend “\$2,500 or more” to read “\$1,000 or more”, and; insert “detailed” before “summary of the information” as requested in our amendments for Proposed Regulation 18944.

Proposed Regulation 18950.2. Exception: Payments for Travel in Connection with a Bona Fide Business.

Urge Adoption.

Common Cause urges the Commission to adopt Proposed Regulation 18950.2.

Proposed Regulation 18950.3. Payments in Connection with a Speech.

Sponsors versus Organizers.

On Page 1, Line 14, we recommend the Commission remove “sponsors” and replace it with the word “organizers”. We believe the word “organizer” is more in line with the intent of the staff proposal. The term “sponsors” can denote a variety of organizations and persons who provide financial resources or other resources to an event. “Organizer” is a narrower term which provides stronger accountability for payments in connection with a speech.

Inadvertent Removal of Strong Regulations.

We believe in the process of drafting this new section, Commission staff may have inadvertently stricken out regulations that we believe should remain in practice. We urge the Commission to reinstate regulations on Page 1, Lines 18-22, and Page 2, Lines 1-4, inclusive.

These regulations list the specific circumstances for when an official can receive payments in connection with a speech:

- 1) The speech is for official agency business and the official is representing his or her government agency in the course and scope of his or her official duties.

2) The payment is a lawful expenditure made only by a federal, state, or local government agency for purposes related to conducting that agency's official business. For purposes of this subdivision, a payment made to the agency by a nongovernmental source that is earmarked for use by or reimbursement of an official specified by the source is not a "payment by a federal, state, or local government agency."

3) The official making the speech is not a state or local elected officer, as defined in Section 82020, or an official specified in Section 87200.

California's laws against honoraria are very strict and for good reason. Abuse will occur if regulations and laws are overly permissive of this activity. In the case of this regulation, we believe these three qualifying factors are necessary to ensure strict adherence to our longstanding honorarium prohibition.

In the case of subdivision 3, we strongly believe the general prohibition on elected officials must remain regardless if the regulation no longer includes transportation and lodging.

Proposed Regulation 18950.4. Exception: Payments for Travel in Connection with Campaign Activities.

Must be in Direct Connection.

The proposed regulations strikes out the word "direct" on Page 1, Line 6. We recommend the Commission restore the word "direct" to ensure a narrow exception is adopted. Opening up this exception to too broad of a requirement could result in opportunities for abuse between candidates and special interest groups.

Please contact me if there are any questions regarding our comments at pung@commoncause.org or (916) 520-4070.

Sincerely,



Phillip Ung
Policy Advocate

