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BY EMAIL

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Re: Free Speech For People Comments on Advance Notice of Proposed Rulemaking on OCPF Regulations on the Applicability of the Campaign Finance Law to Groups that Do Not Engage in Political Fundraising, but do make Expenditures or Contributions

Free Speech For People submits the following comments regarding the Office of Campaign and Political Finance’s (“OCPF”) request for public comment on whether Interpretive Bulletin 88-01 should be codified or replaced with a different standard in light of the petition for rulemaking filed by Common Cause of Massachusetts pursuant to G.L. c. 30A, § 4 and G.L. c. 55, § 3, para. 6, and the Supreme Judicial Court’s decision in *1A Auto, Inc. v. Director of the Office of Campaign and Political Finance*, 480 Mass. 423 (2018).

As Free Speech For People explained in its joint amicus brief with Common Cause of Massachusetts, the Interpretive Bulletin is at odds with the plain language of G.L. c. 55, establishes an arbitrary benchmark that cannot be reconciled with other limits in G.L. c. 55, and contradicts the careful calibration of contribution limits established by the statute.¹ Therefore, the Interpretive Bulletin should be rescinded.

If the OCPF moves forward with new regulations, it should develop a detailed factual record and engage in a full consideration of how such regulations comport with the current limitations on contributions as well an assessment of the empirical data regarding contributions from these types of entities.

OCPF Interpretation is Inconsistent with Statute

The Interpretive Bulletin seeks to exempt certain groups from the broad definition of “political committee” set forth by G.L. c. 55, § 1. The Bulletin grounds its interpretation on a policy concern that “[a] strict application” of the definition would place “an extraordinary burden, not intended by the Legislature, on non-political organizations making only incidental expenditures for a political purpose.” However, there is no indication in the text

¹ See Brief of Amici Curiae Common Cause and Free speech For People, SJC Docket No. 12413.

of the statute itself that the Legislature intended to create an exemption for such organizations, nor does the OCPF point to any legislative history to support this claim. Instead, the only reference to such legislative intent appears to be a reference by the author of the 1974 Advisory Opinion of the Massachusetts of Secretary of State to “having checked with the authors” of the amendments to Chapter 55.² Where the statutory language is clear, “it is conclusive as to legislative intent,” and neither legislative history, nor such an informal consultation, may be relied upon to override it.³ If the legislature intended to exempt certain types of organizations such as nonprofit entities, groups, organizations, and unincorporated associations from the definition of “political committee” it could have done so explicitly, but it did not.

Rather than apply the language of the statute which defines “any committee, association, organization or other group of persons . . . which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate or candidates,” as a political committee, the Interpretive Bulletin creates a distinction between (1) entities that fundraise for a political purpose (which must register) and (2) entities that spend for political purposes (which need to register only if the spending threshold is met). The statute provides no basis for such a distinction. Therefore, the Interpretive Bulletin should be rescinded for being contrary to the plain language of the statute.

Threshold for “More than Incidental” Activity is Arbitrary

As noted above, the OCPF interpretation effectively creates a separate type of entity—outside the statutory framework—that is exempted from the contribution limits established by Chapter 55 unless its spending exceeds a threshold for spending that OCPF has concluded makes its political expenditures “more than incidental.” Again, there is simply no basis in the statute, nor in the bulletin itself for establishing such an exemption, and the \$15,000 threshold set by OCPF far exceeds other limits established in the statute. For example, Section 18A of the statute requires a filing with OCPF for any independent expenditure that exceeds \$250, but the Interpretive Bulletin exempts this non-statutory category of entity from any regulatory requirement for a direct contribution to a candidate of \$15,000 without providing any explanation for the difference in magnitude or the determination of the threshold.

The \$15,000/10 Percent Threshold Contradicts Carefully Calibrated Contribution Limits

As the section above implies, the OCPF’s decision to establish a threshold of \$15,000 or 10 percent of the organization’s gross revenues for the current calendar year as the are completely at odds with the levels set for contribution limits in the statute. If the OCPF intends to move forward with regulations regarding a subset of entities regulated by Chapter 55, then it must ensure that any limits are consistent with the levels established in the statute itself.

² Advisory Opinion from John J. McGlynn, Office of the Secretary of the Commonwealth of Massachusetts to Joseph C. Tanksi, et al., 1 (June 14, 1974), <http://files.ocpf.us/pdf/guides/1974%202.pdf>.

³ See, e.g., *Aids Support Group of Cape Cod, Inc. v. Town of Barnstable*, 477 Mass. 296, 300 (2017); *Worcester v. College Hill Props., LLC*, 465 Mass. 134, 138 (2013).

The statutory limits on contributions were calibrated to the specific entities defined within the statute. Section 6 set an annual limit of \$1,000 on contributions from individuals, and Section 7A placed an annual limit of \$500 on contributions from political action committees. Even the aggregate limit on contributions from PACs to candidates for state representative is half the amount (\$7,500) that the OCPF's non-statutory entity may spend before being subject to regulation. G.L. c. 55, § 6A(f). Thus, even assuming arguendo that the OCPF could exempt such entities from the definition of political committee, the high threshold it has established for subjecting such an entity to regulation is completely out of line with the levels that the Legislature concluded were necessary to protect the integrity of elections in the Commonwealth.

Conclusion

Free Speech For People recommends that the OCPF rescind Interpretive Bulletin 88-01 and rely solely upon the definition of "political committee" established in G.L. c. 55, § 1 in implementing the law. If the OCPF does promulgate regulations allowing for certain non-profit entities to contribute directly from their general treasuries, then it must do so in a manner that is consistent with the statutory language and comprehensive scheme for regulating contributions that has been established by G.L. c. 55. We look forward to participating in the rulemaking process and working with OCPF to express a clear, fair, and statutorily supported standard in formal regulations.

Respectfully submitted,



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