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BY EMAIL

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Comments on Draft Regulation Regarding Applicability of the Campaign Finance Law to Organizations that make Political Contributions

Free Speech For People submits the following comments regarding the Office of Campaign and Political Finance’s proposed draft revisions to 970 CMR 1.22. These comments follow our November 30, 2018 comment on OCPF’s advance notice of proposed rulemaking 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 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).¹ As we explained in our November 2018 comment and in our 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.² Therefore, we support efforts to rescind the Interpretive Bulletin and to replace it with regulations more consistent with the statute. We generally agree with the proposed new regulation, but urge the following changes.

1. OCPF Should Reduce the Contribution Limit to Candidates for Organizations Below the Incidental Threshold

Under the Interpretive Bulletin, an organization may contribute up to \$15,000 to a candidate’s committee or PAC. The proposed Section 1.22(2) would reduce this to: \$1,000 to a candidate’s committee; \$500 to a PAC (other than an independent expenditure PAC); and \$5,000 in the aggregate during a calendar year to all political party committees of any one political party.

This is a significant improvement. However, the proposal is still not consistent with the statute, which defines political committee as “any committee, association, organization or

¹ <http://files.ocpf.us/pdf/guides/freespeechforpeople.pdf>

² See Brief of Amici Curiae Common Cause and Free speech For People, SJC Docket No. 12413.

other group of persons. . . which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate. . . or other question submitted to the voters.”³ Such committees are then limited to contributing \$500 (rather than \$1,000) to a particular candidate.⁴

The statute does not provide that OCPF can exempt an “organization . . . which makes expenditures for the purpose of influencing the nomination or election of a candidate” from this \$500 limit and allow it to contribute twice as much. Indeed, the proposed regulation would create an incentive for an entity wishing to contribute \$15,000 to candidates to remain unregistered *precisely* so that it can contribute \$1,000 rather than \$500. It is important to remember the concern that ultimately gave rise to the Interpretive Bulletin’s exemption: the compliance burden associated with maintaining the political committee. As characterized by the office of the Secretary of the Commonwealth in 1974:

To require that all organizations which make contribution to a candidate or a political committee become a non-elected political committee might also mean that the Women’s Bowling Club of North Somerville—which might purchase a \$15.00 ticket to a candidate's fund-raising event once in ten years—would be forced to become a non-elected political committee, thus under Chapter 55 . . . such organizations would be mandated to fill-out all of the reports necessary to be filed by a non-elected political committee and would also be mandated to disclose the complete financial situation of their organization. It is our opinion, the legislature did not intend this act to have such an effect as to make it unreasonable and cumbersome.⁵

OCPF can fulfill the *procedural burden minimization* goal without also creating an unnecessarily high contribution limit. OCPF should revise Section 1.22(2) to set a **\$250** limit on contributions to candidate’s committees from organizations that have not yet reached the incidental threshold. This \$250 limit is the threshold for any “individual, group, association, corporation, labor union, political committee or other entity” to report independent expenditures under Section 18A, and thus it represents a level at which the legislature has determined that the compliance burden is justified.⁶ It would enable

³ G.L. ch. 55, § 1.

⁴ G.L. ch. 55, § 6.

⁵ 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>

⁶ G.L. ch. 55, § 18A.

occasional “incidental” political contributions, such as the occasional tickets to a fundraiser envisioned by the Secretary in 1974, without the necessity of registering and reporting as a political committee. But this lower limit (50% of what a political committee could contribute) would encourage entities that plan to be involved in elections more than “once in ten years” to create political committees so that they can contribute the full \$500.

In the alternative, OCPF should at least set the contribution limit to \$500, so that an unregistered organization can contribute no *more* than a PAC.

2. OCPF Should Reduce the Incidental Threshold

OCPF’s decision in the proposed Section 1.22(3)(b) to retain the Interpretive Bulletin’s arbitrary thresholds of \$15,000 or 10% of gross revenues is unjustified. Annual contributions to candidates or PACs of \$15,000 (or 10% of an organization’s gross revenues) can hardly be considered “incidental.” Indeed, Massachusetts elections regularly see organizations (often the same organizations election after election, or even year after year) contribute the full \$15,000 to candidates.⁷ This defies the meaning of “incidental.”

OCPF should reduce the incidental threshold to \$5,000 per year—the same as the maximum annual aggregate contribution that may be made by an individual or political committee to all committees of any one party.⁸ Alternatively, an incidental threshold of \$10,000 would be equivalent to the maximum amount that any political committee could contribute to all committees of *two* political parties. Surely an amount exceeding the legal maximum that a political committee could contribute to all political committees combined of both the Democratic and Republican parties is not just an “incidental” expense.

Conclusion

We agree with OCPF’s plan to rescind Interpretive Bulletin 88-01 and enact regulations that are more consistent with the statute. We endorse most aspects of the proposed regulation, including emphasizing that the proposed rule does not allow contributions by business entities prohibited from contributing by G.L. c. 55, § 8. We look forward to OCPF revising the draft regulation further to comport more closely with the statute.

Respectfully submitted,

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⁷ See, e.g., Matt Stout, Boston Globe, *Mass. may reduce how much money unions can donate to back political candidates*, Feb. 5, 2019, <http://bit.ly/2UyKeNL>.

⁸ G.L. ch. 55, § 6.