



April 13, 2015

The Honorable Sebastian Ridley-Thomas  
P.O. Box 942849  
Room 2176  
Sacramento, CA 94249-0054

The Honorable Shannon L. Grove  
P.O. Box 942849  
Room 4208  
Sacramento, CA 94249-0034

Re: Amendment Recommendations for Assembly Bill 594

Dear Chair Ridley-Thomas, Vice Chair Grove, and members of the Assembly Elections and Redistricting Committee:

On behalf of the Center for Competitive Politics (CCP),<sup>1</sup> I write to inform the Committee's consideration of Assembly Bill 594. As introduced, the bill offered a much needed, commonsense change to California's outdated campaign finance system, and represented a modest step towards fostering an environment in which individuals are encouraged to freely express their political beliefs free of burdensome government regulation. Indeed, the changes proposed in the introduced version of A.B. 594 had earned the endorsement of the California Fair Political Practices Commission's (FPPC) staff.<sup>2</sup>

Regrettably, however, A.B. 594 was amended on April 7, 2015 to remove the provisions in the bill that would have increased existing reporting thresholds, both for committee registration requirements and for "major donor" reporting. While CCP takes no position on the largely technical changes in the current iteration of the bill, the recent amendments stripping the bill of these important provisions are a backwards step that fails to take into account the regulatory burdens of government reporting requirements imposed by the State of California. As originally drafted, A.B. 594's changes to the existing reporting thresholds recognized the real world effects of inflation and would have helped to alleviate the regulatory burdens imposed on Californians and small citizen groups by current law. At the same time, those changes would have made disclosure information more relevant by capturing only significant contributors while simultaneously protecting the privacy of small speakers.

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<sup>1</sup> The Center for Competitive Politics is a nonpartisan, nonprofit 501(c)(3) organization that promotes and protects the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. In addition to scholarly and educational work, the Center is actively involved in targeted litigation against unconstitutional laws at both the state and federal levels. For instance, we presently represent nonprofit, incorporated educational associations in challenges to state campaign finance laws in Colorado and Delaware. We are also involved in litigation against the state of California.

<sup>2</sup> Erin V. Peth and Sukhi K. Brar, "Legislative Update," California Fair Political Practices Commission. Retrieved on April 13, 2015. Available at: <http://www.fppc.ca.gov/agendas/2015/3-15/17.1%20Legislative%20Report%20March%202015.pdf> (March 6, 2015), p. 1-3.

Accordingly, CCP recommends that A.B. 594 be amended again to re-incorporate the increased reporting thresholds present in the introduced version of the bill. Additionally, CCP recommends further amending this measure to allow these disclosure thresholds to automatically be adjusted for inflation, as is done with the state's contribution limits. This minor change would save lawmakers time and energy in the future when the immutable power of inflation forces these limits to be raised again. Such a change would also assure that small political participants in California would not face greater regulatory barriers to their participation simply because of the passage of time.

### **I. Raising existing reporting thresholds would protect small donors and groups and promote greater transparency among significant players in campaigns.**

The intent of disclosure is to provide transparency to the campaign finance system, but, unfortunately, the thresholds for when this disclosure begins are currently set so low as to create significant and unnecessary burdens for low-level political participants, while failing to provide any benefit with regard to transparency. As introduced, A.B. 594 took steps towards rectifying this problem.

The current level at which independent and candidate committees must report the personal information of individual donors is set at just \$1,000. This level was established in 1987 and has not been updated to reflect the current political landscape.<sup>3</sup> Also, unlike contribution limits in California, these thresholds have not been indexed to inflation.

Such remarkably low thresholds have four deleterious effects. First, small groups who engage in the political process at levels that could not reasonably be seen as influential (just \$1,000) must reveal the personal information – the name, home address, occupation, and employer – of their supporters in a permanently available government database where anyone with Internet access can view this private information. This loss of privacy has the potential to dissuade many individuals from contributing even small amounts to these groups, while providing little benefit to the public or to the government in terms of reporting on truly influential political speakers.

Second, small groups and so-called “major donors” who participate in the democratic process are faced with significant compliance costs and burdens when wanting to engage in the most minimal political exercises. This dissuades smaller citizen groups from voicing their opinions for fear of inadvertently violating a regulation that registered groups must abide by or because the cost of hiring attorneys to comply with the complexities of state campaign finance rules is prohibitive for such a small organization. As the FPPC’s Executive Director Erin Peth and Senior Commission Counsel and Legislative Coordinator Sukhi Brar note in a staff report, “[t]he Act’s committee qualification thresholds were put in place so that those who do not have large amounts of money or seek to raise or spend large amounts of money may participate in the political process without having to hire expensive campaign lawyers or campaign treasurers to help them navigate the complex world of campaign finance reporting.”<sup>4</sup> All the while, these low

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<sup>3</sup> *Ibid.*, p. 3.

<sup>4</sup> *Ibid.*, p. 2.

reporting thresholds provide no benefit to the public, which overwhelmingly seeks information on only the much larger political players.

Third, with regard to the misguided “major donor” provision, the reporting requirement places an unnecessary burden on individuals instead of on the political committees that have the time, energy, and resources to comply with complex government regulations. This provision *only* burdens – since committees that receive a donation from a “major donor” necessarily must report that information to the state already. There is no increase in transparency or in public knowledge from forcing a donor to report their personal information to the state directly. This requirement is purely duplicative and a textbook example of regulatory red tape. While CCP does not believe that any threshold is appropriate for burdening an individual contributor in this manner, raising the reporting threshold, at the very least, would reduce this burden.

Finally, efforts at regulating larger political groups are diluted as state resources must be used to establish and maintain regulatory frameworks that enforce such strict requirements. The low thresholds, therefore, have the perverse effect of actually limiting the government in its effort to promote transparency, by diverting precious resources to unnecessary, small-scale regulatory enforcement.

By raising the reporting thresholds, the Legislature would take an important step toward protecting privacy, allowing small groups to more easily participate in the regulatory process, lessening the effect of unnecessary regulations, and not burdening state enforcement agencies with tasks that do not promote transparency.

Raising these reporting thresholds, furthermore, is a non-controversial idea. The FPPC’s senior staff has recommended that these existing levels be raised. Executive Director Erin Peth and Senior Commission Counsel and Legislative Coordinator Sukhi Brar recently wrote that the current low thresholds “can be a barrier for those individuals who wish to participate, but who will not be raising or spending large amounts of money in connection with an election.”<sup>5</sup> Thus, because these thresholds have not been increased since 1987, the report notes that “the original intent behind these thresholds is now diluted in practice.”<sup>6</sup> And these adjustments are, in fact, the minimal increase necessary simply to keep up with inflation. If automatically adjusted for inflation (as CCP recommends in Section II), the \$10,000 “major donor” provision implemented in 1987 would be \$20,662 today<sup>7</sup> – more than the proposed \$20,000 threshold in A.B. 594.

Accordingly, CCP urges the Assembly to further amend A.B. 594 by, at the very least, restoring the increased reporting thresholds present in the introduced version of this bill.

## **II. Indexing all government reporting thresholds to inflation will prevent future diminishing returns on political participation and save legislators from legislating on this issue in the future.**

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<sup>5</sup> *Ibid.*, p. 3.

<sup>6</sup> *Ibid.*

<sup>7</sup> “CPI Inflation Calculator,” Bureau of Labor Statistics. Retrieved on April 13, 2015. Available at: [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (2015).

Inflation adjusting is a standard, noncontroversial practice that recognizes the reality that the buying power of a dollar decreases as prices rise. The need to adjust political contributions to inflation is an important aspect of California's campaign contribution limits. In December 2014, the FPPC, as required by statute, raised California's contribution limits for the 2015-2016 election cycle in recognition of inflation's impact upon the dollar.<sup>8</sup>

The same principles that led the Legislature to endorse the routine and automatic adjustment of contribution limits to mitigate the effects of inflation should guide the members of this Committee when considering the adjustment of all dollar-amount restrictions in state campaign finance law, including the government reporting thresholds for committees and the state's "major donor" reporting requirements.

The purpose of a threshold for committee activity is to exempt small organizations that want to participate in the political process from regulatory headaches that burden small citizen groups more significantly than large organizations. But by failing to adjust for inflation, more and more small groups are being captured by the state's regulatory regime. As introduced, A.B. 594 implicitly recognized this fact – this is why the measure originally sought to raise the reporting threshold. So too does the FPPC. As Executive Director Erin Peth and Senior Commission Counsel and Legislative Coordinator Sukhi Brar wrote of the introduced bill, "committee qualification thresholds have not been updated since at least 1987 and the proposed increases in the [introduced] bill are intended to adjust the thresholds with the rate of inflation."<sup>9</sup>

Providing for these thresholds to be automatically adjusted each election cycle (as is done with the state's contribution limits) applies a more permanent fix. Instead of legislators five, ten, or twenty years from now once again needing to raise these monetary cut-off points, the Legislature can be assured that the law it enacts today will continue to be good policy in the future.

More importantly, individuals and small groups will not find themselves unnecessarily burdened by regulatory reporting requirements that were never intended to target them, but now do so thanks solely to the passage of time. Such protections are essential to maintaining actual transparency, and preventing the public from being flooded with unnecessary and irrelevant information. Such an amendment would also protect the essential political activity and speech of small groups. When a small organization suddenly crosses an unreasonably low monetary threshold that has failed to adjust with the passage of time, it is faced with a forced choice of either spending time and money to comply with the state's regulatory requirements or reducing its political activity. Such a result is harmful to a healthy and free democracy.

Inflation adjustment mechanisms have received significant bipartisan support in the past, and are a non-controversial change that would simply make permanent the welcome increases that were originally included in A.B. 594.

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<sup>8</sup> "California State Contribution Limits," California Political Practices Commission. Retrieved on April 13, 2015. Available at: <http://www.fppc.ca.gov/bulletin/007-Dec-2014StateContributionLimitsChart.pdf> (December 2014).

<sup>9</sup> *Ibid.* 2, p. 3.

Thus, we urge members of this Committee to amend the bill to add automatic inflation adjustments for committee and “major donor” reporting thresholds. Such an amendment is a logical and simple change that would remedy a previous legislative oversight.

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It is our sincere hope that you take into account these problems and potential solutions when considering amendments to A.B. 594. We applaud the Committee’s attention to this area and hope that these suggestions will further the shared goal of clear, modern, and commonsense campaign finance laws. Should you have any questions regarding these recommendations or any other campaign finance proposals, please do not hesitate to contact me at (703) 894-6835 or by e-mail at [mnese@campaignfreedom.org](mailto:mnese@campaignfreedom.org).

Respectfully yours,

A handwritten signature in blue ink that reads "Matt Nese". The signature is written in a cursive, flowing style.

Matt Nese  
Director of External Relations  
Center for Competitive Politics