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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

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11 CALIFORNIA PRO-LIFE COUNCIL,
12 INC.,

NO. CIV. S-00-1698 FCD/GGH

13 Plaintiff,

14 v.

MEMORANDUM AND ORDER

15 KAREN GETMAN, et al.,

16 Defendants.

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18 Pending before the court are cross-motions for summary
19 judgment brought by plaintiff, California Pro-Life Council
20 ("CPLC"), and defendants, Bill Lockyer, Attorney General of the
21 State of California; Karen Getman, Chairman of the California
22 Fair Political Practices Commission ("FPPC"); and William Deaver,
23 Kathleen Makel, Carol Scott, and Gordona Swanson, members of the
24 FPPC (collectively "defendants").¹ CPLC asserts that certain

25 _____
26 ¹ The original complaint named Jan Scully, District
27 Attorney of Sacramento in her official capacity and as a
28 representative of a class of district attorneys in the State of
California, and Samuel L. Jackson in his official capacity as
(continued...)

1 reporting and disclosure provisions in California's Political
2 Reform Act ("PRA"), Cal. Gov't Code §§ 81000, et seq., violate
3 the First and Fourteenth Amendment rights of CPLC and similar
4 groups who, among other activities, expressly advocate for and
5 against the passage of ballot measure initiatives.² Defendants
6 assert that California has a compelling interest in requiring
7 such disclosures, and that the challenged PRA provisions are
8 narrowly tailored to advance the state's compelling interest.
9 For the reasons set forth below, CPLC's motion is denied and
10 defendants' motion is granted.

11 **FACTUAL BACKGROUND**

12 CPLC is a non-profit 501(c)(4) corporation "dedicated to
13 fostering respect for life." (Amended Verified Complaint ("AVC")
14 ¶ 11; Defs.' Reply Stmt. of Undisp. Facts ("UF") ¶ 3.) CPLC is
15 affiliated with the National Right to Life Committee, Inc.
16 ("NRLC") (UF ¶ 1.)

17 To further its organizational purposes, CPLC raises and
18 expends funds for various types of communications to its members
19 and the general public. Among these communications are mailings
20 and periodic newsletters, which range in size from 15,000 pieces
21 to over 100,000 pieces for "voter guide" editions. (UF ¶ 3.) The
22 money for these communications comes from CPLC's general
23 treasury, which accepts funds from a variety of sources,
24

25 ¹(...continued)
26 City Attorney of Sacramento and as a representative of a class of
27 city attorneys in the State of California. These defendants
since were dismissed.

28 ² The First Amendment is made applicable to the states by
the Fourteenth Amendment.

1 including corporate donations. (UF ¶¶ 6,7.)

2 In addition to the above-described activities, CPLC
3 historically has maintained between three and four "internal"
4 Political Action Committees ("PACs"), which make direct political
5 expenditures. (UF ¶ 9.) CPLC's PACs include "CPLC PAC",
6 "Federal PAC", the Citizens for Judicial Integrity PAC ("Citizens
7 PAC"), and an independent expenditure PAC ("IE PAC").³ (UF ¶ 9.)
8 In recent elections, CPLC's PACs have made sizeable expenditures
9 to advocate for the passage or defeat of ballot measures,
10 including Proposition 161 (1992 - physician assisted suicide),
11 Proposition 226 (1998 - restrictions on union collection of PAC
12 contributions), Proposition 25 (1998 - public financing of
13 candidate and ballot measure campaigns), Proposition 3 (1998 -
14 amendment to open primary law passed in 1996), and Proposition 52
15 (2002 - election day voter registration). In total, CPLC's PACs
16 expended \$126,921.00 in 1998, \$44,862.00 in 2000, and \$111,450.00
17 in 2002, on candidate and ballot measure advocacy. (UF ¶¶ 10,

18
19 ³ CPLC admits that it maintains three PACs: CPLC PAC,
20 Federal PAC, and IE PAC. CPLC disputes that Citizens PAC is a
21 CPLC PAC, though it acknowledges CPLC "may have done bookkeeping
22 for [Citizens PAC]." (UF ¶ 9.) However, CPLC offers insufficient
23 evidence to create a triable issue on this point. The ambiguous
24 statement by Michael Spence that "I don't think the CPLC was
25 involved with the Citizens for Judicial Integrity" is directly
26 contradicted by CPLC's interrogatory responses, in which it
27 identified Citizens for Judicial Integrity PAC as a PAC
28 "organized or operated by plaintiff or its agents." (UF ¶ 9.)
Moreover, CPLC reported "Judicial Integrity PAC" expenditures on
its 1998, 1999 and 2000 federal tax returns. (UF ¶ 9; CPLC's
Resp. to Def. Downey's Third Set of Interrogs., Ex. 16 to Leidigh
Reply Aff.) See Addisu v. Fred Meyer, Inc., 198 F.3d 1130, 1134
(9th Cir. 2000) ("A scintilla of evidence or evidence that is
merely colorable or not significantly probative does not present
a genuine issue of material fact.").

1 14, 16.)

2 Generally, CPLC's PACs receive funds directly from
3 contributors. However, on occasion, CPLC has transferred funds
4 from its general treasury to one or more of its PACs. For
5 example, in 1998, CPLC transferred \$35,000 from its general
6 treasury to CPLC PAC, which in turn expended \$45,000 in support
7 of Dan Lungren for Governor and tens of thousands of dollars in
8 support of and opposition to other candidates. (UF ¶ 17.)

9 Because CPLC's PACs receive contributions and make
10 expenditures for political purposes, they must comply with the
11 PRA's reporting requirements. If CPLC, itself, were to receive
12 contributions or makes expenditures for political purposes above
13 certain monetary thresholds, it too would fall within the ambit
14 of the PRA. CPLC challenges the application of the PRA to groups
15 like it, which engage in many activities, only one of which is
16 political advocacy. Such groups are referred to generally as
17 multi-purpose organizations and are distinguishable from "primary
18 purpose committees" which are formed primarily for the purpose of
19 influencing the action of voters for or against the nomination or
20 election of a candidate or qualification or passage of a ballot
21 measure. (McKnew Advice Letter No. A-76-025, Ex. A to Aff. of
22 Carla Wardlow in Supp. of Defs.' Mot. for Summ. J. ("Wardlow
23 Aff."))

24 Under the PRA, if CPLC or a similar multi-purpose
25 organization receives "contributions" of \$1,000.00 or more in a
26 calendar year for political purposes, it qualifies as a
27 "committee" under Cal. Gov't Code § 82013(a). (Wardlow Aff. ¶
28

1 7.)⁴ "Contribution" is defined to include payments that are not
2 specifically earmarked for political purposes, such as donations
3 and membership dues, if the donor or member "knew or had reason
4 to know" that some or all of the funds would be used to make
5 contributions or expenditures. Cal. Code. Regs. tit. 2 §
6 18215(b)(1).

7 PRA regulations provide what is known as the "one bite of
8 the apple rule," a presumption that donors or members do not know
9 that their payments will be used for political purposes when the
10 organization has no recent history of expenditures for political
11 activity. (Wardlow Aff. ¶ 10.) The "one bite of the apple rule"
12 is designed to assist organizations like CPLC in determining
13 whether their members "had reason to know" that some or all of
14 their funds would be used for political purposes. (Id.)
15 However, once an organization has established a "history of
16 making contributions from its general fund, its members are
17 deemed to be on notice in subsequent years that a portion of
18 their payments may be used for political purposes. Thus, in any
19 subsequent calendar year in which the [organization] makes
20 contributions out of its general fund totaling \$ 1,000.00 or
21 more, it will qualify as a recipient committee." (Olson Advice
22 Letter dated Sept. 12, 1990, at 3, Ex. B-1 to Def. Lockyer's
23 Expert Witnesses' Affs. with Exs.)

24 Once an organization reaches the \$1,000.00 contribution
25 threshold, it becomes a "recipient committee," and certain

26
27 ⁴ Plaintiff submitted no admissible evidence in support
28 of its motion for summary judgment or in opposition to
defendants' motion for summary judgment. Consequently,
defendants' submitted evidence remains largely undisputed.

1 organizational requirements are triggered.⁵ Specifically, the
2 organization must file a registration statement, designate a
3 treasurer, establish a campaign record-keeping system, and
4 satisfy certain requirements before terminating the committee.
5 (Wardlow Aff. ¶ 12.) In addition, as a registered committee, the
6 organization must file periodic campaign reports disclosing
7 contributions received and expenditures made. However, only that
8 portion of the organization's funds used for political purposes
9 must be disclosed. For example, if an organization expends
10 \$10,000.00 of its \$100,000.00 in total funds (or 10%) on
11 political advocacy, it is required to disclose only the
12 \$10,000.00 expended for political purposes.

13 Similarly, the organization's disclosure of contributions is
14 limited. Only contributions of \$100.00 or more are reportable,
15 and those are first "prorated" based on the percentage of the
16 organization's receipts expended for political purposes. Cal.
17 Gov't Code § 84211(f); Aff. of Richard Eichman, Ex. to Def.
18 Lockyer's Expert Witnesses Affs. with Exs. ("Eichman Aff.") ¶ 9.
19 Using the same hypothetical numbers as above, if the organization
20 expended 10% of its total receipts for political purposes, the
21 organization could designate 10% of each individual payment for
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26 ⁵ "Recipient committee" is defined as, "any person or
27 combination of persons who directly or indirectly . . . (a)
28 Receives contributions totaling one thousand dollars (\$1,000) or
more in a calendar year [or] (b) Makes independent expenditures
totaling one thousand dollars (\$1,000) or more in a calendar
year." Cal. Gov't Code § 82013(a), (b).

1 political purposes.⁶ Under this formula, only \$10.00 of a \$100.00
2 payment would be designated as a "contribution." As the
3 organization is only required to report "contributions" of
4 \$100.00 or more, only payments of \$1,000.00, once prorated, would
5 be reportable. (See Eichman Aff. ¶ 13.)

6 An organization can avoid recipient committee status and its
7 attendant disclosure obligations by formally establishing a PAC,
8 a form of recipient committee used for the purpose of making
9 contributions and expenditures in connection with California
10 elections. (Wardlow Aff. ¶ 13.) The organization can solicit
11 political contributions separately from other donations which are
12 received directly by the PAC. (Id.) As recipient committees,
13 PACs must comply with PRA disclosure and other requirements.
14 (Id.) However, forming a PAC can simplify an organization's
15 reporting obligations. (Id.) CPLC, which maintains between
16 three and four PACs, appears to use this method to satisfy its
17 PRA disclosure obligations.

18 PROCEDURAL HISTORY

19 A. The Complaint

20 On August 8, 2000, CPLC filed its initial complaint with
21 this court, which was supplanted by an amended verified complaint
22 filed September 27, 2000. The essence of CPLC's ten-count
23 Amended Verified Complaint ("complaint" or "AVC") is that Cal.
24 Gov't Code §§ 82031 and 82013(a) and (b) Cal. Code Regs. tit. 2,
25 §§ 18225(b) and 18215(b), violate CPLC's First and Fourteenth

26
27 ⁶ The organization can use any reasonable method to
28 determine the amount of each donor or member's payment used to
make political expenditures. 2 Cal. Code Reg. § 18215(b)(1).
(See also Wardlow Aff. ¶ 12.)

1 Amendment rights by subjecting them to onerous reporting
2 requirements for engaging in express advocacy of ballot measures.

3 Specifically, the complaint alleges as follows:

4 In Counts 1 and 3 of the complaint, CPLC alleges that Cal.
5 Gov't Code § 82031 and Cal. Code Regs. tit. 2, § 18225(b) are
6 facially unconstitutional because the definition of "independent
7 expenditure" extends beyond express advocacy of candidates and
8 includes "communications that simply discuss candidates," thereby
9 subjecting organizations such as CPLC to "onerous reporting
10 requirements," for engaging in mere "issue advocacy" in violation
11 of its First Amendment rights. (AVC ¶¶ 66-69, 95-98)

12 In Counts 2 and 4, CPLC alleges that Cal. Gov't Code § 82031
13 and Cal. Code Regs. tit. 2, § 18225(b) are facially
14 unconstitutional because the definition of "independent
15 expenditure" includes ballot measure advocacy. CPLC alleges that
16 ballot measure advocacy of any kind, including express ballot
17 measure advocacy, constitutes "pure issue advocacy" and cannot be
18 regulated. CPLC alternatively maintains that, even if certain
19 ballot measure initiative advocacy can be regulated, Cal. Gov't
20 Code § 82031 and Cal. Code Regs. tit. 2, § 18225(b) are
21 unconstitutional because they extends beyond express ballot
22 measure advocacy and include the mere discussion of ballot
23 measure initiatives. (Id. ¶¶ 80-86, 109-115.)

24 In Counts 5 and 10, CPLC alleges that Cal. Gov't Code §
25 82031 and Cal. Code Regs. tit. 2, § 18225(b), and Cal. Gov't Code
26 §§ 82013(a) and (b) and Cal. Code Regs. tit. 2, § 18215(b),
27 respectively, are void for vagueness because ordinary people
28 cannot understand what constitutes an "independent expenditure."

1 (Id. ¶¶ 117-18, 163-64.)

2 In Count 6, CPLC alleges that Cal. Gov't Code §§ 82013(a)
3 and (b) are unconstitutional on their face and as applied to CPLC
4 because their respective definitions of "independent expenditure
5 committee" and "recipient committee" require individuals and
6 organizations which engage in pure issue advocacy to suffer
7 "burdensome record keeping, reporting and notice requirements."

8 (Id. ¶¶ 128-129.)

9 In Counts 7, 8, and 9, CPLC alleges that Cal. Gov't Code §§
10 82013(a) and (b) and Cal. Code Regs. tit. 2 § 18215(b)
11 unconstitutionally treat organizations as "committees" without
12 regard to whether the organization's "major purpose" is political
13 advocacy. (Id. ¶¶ 130-160.) According to the complaint, such
14 treatment is inconsistent with Buckley v. Valeo, 424 U.S. 1
15 (1976).

16 **B. Disposition of Plaintiffs' Claims**

17 By order filed October 24, 2000, this court dismissed Counts
18 1 and 3 for lack of standing to challenge the PRA's regulation of
19 candidate advocacy. The court dismissed Counts 2, 4, and 6 for
20 failure to state a claim pursuant to Rule 12(b)(6).

21 The court dismissed Counts 5 and 10 (vagueness challenges)
22 only to the extent they were directed to regulation of
23 communications involving candidates and mere discussion of ballot
24 measure initiatives. Counts 5 and 10 survived the motion to
25 dismiss to the extent they were directed at express ballot
26 measure advocacy. However, by subsequent order dated January 22,
27 2002, the court granted defendants' motion for summary judgment
28 as to the remainder of Counts 5 and 10, holding that plaintiffs

1 had not demonstrated a credible threat of prosecution and thus
2 the matter was not ripe for review.

3 Counts 7, 8, and 9 were dismissed by stipulation of the
4 parties.

5 **C. Ninth Circuit Decision and Remand Instructions**

6 CPLC appealed both the Court's October 24, 2000 Order
7 granting defendants' motion to dismiss Counts 1, 2, 3, 4, and 6
8 and parts of Counts 5 and 10, and the January 22, 2002 order
9 granting summary judgment in favor of defendants on Counts 5 and
10 10.

11 The Ninth Circuit affirmed this court's dismissal of Counts
12 1 and 3, holding that CPLC "does not have standing to argue that
13 the definition of 'independent expenditure' is unconstitutionally
14 vague as applied to its candidate advocacy" because CPLC "faces
15 no credible threat of prosecution for its candidate advocacy."
16 Id. at 1096.

17 However, the court reversed this court's grant of summary
18 judgement of Counts 5 and 10 on ripeness grounds. The court held
19 that CPLC could challenge the allegedly vague definition of
20 "independent expenditure" as it related to CPLC's express ballot
21 measure advocacy because CPLC suffered a "constitutionally
22 sufficient injury of self-censorship rendering its vagueness
23 challenge . . . justiciable." Id. at 1093.

24 Rather than remand CPLC's vagueness challenge to the
25 "independent expenditure" definition, the Ninth Circuit addressed
26 the merits, noting that the issue had been fully briefed by the
27 parties and strenuously advocated at oral argument. Id. at 1096
28 n. 5. CPLC contended that the definition of "independent

1 expenditure" violated the bright-line rule from Buckley v. Valeo,
2 424 U.S. 1, 43-44 (1976), under which only communications
3 containing explicit words of advocacy may be regulated.⁷ The
4 court concluded that the definition, as narrowly defined by the
5 California appellate court in Governor Gray Davis Committee v.
6 American Taxpayer Alliance, 102 Cal. App. 4th 449 (2002), was not
7 unconstitutionally vague.

8 Lastly, the Ninth Circuit addressed Counts 2, 4, and 6,
9 "CPLC's more general challenge to the PRA's regulation of ballot
10 measure advocacy." Id. at 1100. CPLC argued that under Buckley,
11 supra, a state may not regulate express ballot measure advocacy.
12 The court noted that the issue was one of first impression among
13 the federal courts of appeal. Starting its analysis with the
14 appropriate level of scrutiny, the court concluded that the PRA's
15 disclosure provisions burden protected First Amendment speech and
16 therefore must satisfy strict scrutiny. Noting that the Supreme
17 Court had "repeated[ly] acknowledge[d] the constitutionality of
18 state laws requiring disclosure of funds spent to pass or defeat
19 ballot measures," the court affirmed "the district court's
20 conclusion that express ballot measure advocacy is not immune
21 from regulation." Id. However, the court explained that there
22 are limits: while "the First Amendment tolerates some regulation
23 of express ballot measure advocacy, it does not necessarily
24 follow that the PRA regulations are constitutional." Id. The

25
26 ⁷ Specifically, CPLC objected to the following language
27 defining independent expenditure as, inter alia, "an expenditure
28 made . . . which . . . taken as a whole and in context,
unambiguously urges a particular result in an election . . ."
Cal. Gov't Code § 82031.

1 court remanded, stating that it was for this court to determine
2 in the first instance whether the PRA's disclosure regime
3 satisfied strict scrutiny.

4 Before remanding, however, the court addressed CPLC's
5 argument that, as a matter of law, California had no compelling
6 interest in regulating express ballot measure advocacy.
7 Referring to "California's high stakes form of direct democracy,"
8 in which millions of dollars are spent to pass or defeat ballot
9 measures during a given election year, the court concluded that
10 "being able to evaluate who is doing the talking is of great
11 importance." Id. The court then remanded and instructed this
12 court to decide, based on a fully developed record if necessary,
13 whether the state's interest was in fact compelling, and whether
14 the challenged PRA provisions were narrowly tailored to advance
15 that interest. Id. at 1107.

16 STANDARD

17 The Federal Rules of Civil Procedure provide for summary
18 judgment when "the pleadings, depositions, answers to
19 interrogatories, and admissions on file, together with
20 affidavits, if any, show that there is no genuine issue as to any
21 material fact and that the moving party is entitled to a judgment
22 as a matter of law." Fed. R. Civ. P. 56(c).

23 In considering a motion for summary judgment, the court must
24 examine all the evidence in the light most favorable to the
25 non-moving party. United States v. Diebold, Inc., 369 U.S. 654,
26 655 (1962). If the moving party does not bear the burden of
27 proof at trial, he or she may discharge his burden of showing
28 that no genuine issue of material fact remains by demonstrating

1 that "there is an absence of evidence to support the non-moving
2 party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325
3 (1986). Once the moving party meets the requirements of Rule 56
4 by showing there is an absence of evidence to support the
5 non-moving party's case, the burden shifts to the party resisting
6 the motion, who "must set forth specific facts showing that there
7 is a genuine issue for trial." Anderson v. Liberty Lobby, Inc.,
8 477 U.S. 242, 256 (1986).

9 Genuine factual issues must exist that "can be resolved only
10 by a finder of fact, because they may reasonably be resolved in
11 favor of either party." Id. at 250. In judging evidence at the
12 summary judgment stage, the court does not make credibility
13 determinations or weigh conflicting evidence. See T.W. Elec. v.
14 Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir.
15 1987) (citing Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio
16 Corp., 475 U.S. 574, 587 (1986)). The evidence presented by the
17 parties must be admissible. Fed. R. Civ. P. 56(e). Conclusory,
18 speculative testimony in affidavits and moving papers is
19 insufficient to raise genuine issues of fact and defeat summary
20 judgment. See Falls Riverway Realty, Inc. v. City of Niagara
21 Falls, 754 F.2d 49, 57 (2d Cir. 1985); Thornhill Publ'g Co., Inc.
22 v. GTE Corp., 594 F.2d 730, 738 (9th Cir. 1979).

23 ANALYSIS

24 I. Level of Scrutiny

25 The Ninth Circuit held that this court should apply strict
26 scrutiny because the PRA's disclosure regime, which requires the
27 preparation and submission to the state of "detailed reports"
28 regarding the source and amount of political expenditures and

1 contributions, "unquestionably infringes upon the exercise of
2 First Amendment rights." California Pro Life Council, Inc. v.
3 Getman, 328 F.3d 1088, 1101 (9th Cir. 2003). Thus, this court
4 must determine if California has a compelling state interest in
5 its disclosure regime and whether that regime is narrowly drawn.

6 **II. Compelling Interest**

7 Defendants assert an interest in informing the electorate
8 regarding the source of funds used to support and oppose ballot
9 measures, as well as an interest in maintaining the integrity of
10 its electoral and legislative processes. CPLC does not raise any
11 argument or submit any evidence to dispute defendants' asserted
12 interests.⁸ However, as defendants bear the burden to establish
13 a compelling state interest, the court will evaluate defendants'
14 undisputed evidence and determine if a compelling interest has
15 been shown.

16 The stated purposes of the PRA include:

- 17 (a) Receipts and expenditures in election campaigns

18
19 ⁸ CPLC asserts that California's only interest is
20 informational because the Ninth Circuit defined it as such in its
21 opinion. The Ninth Circuit specifically held that the three
22 potential governmental interests are (1) informing the electorate
23 about the sources and uses of funds expended, (2) deterring
24 corruption, and the appearance of corruption, and (3) gathering
25 data to detect violations. Getman, 328 F.3d at 1105 n. 23 (citing
26 Buckley, 424 U.S. at 66-68. The court found that "only the
27 informational interest applies in the ballot measure context,"
28 because the risk of corruption is not present with a vote on a
public issue, and "the interest in collecting data to detect
violations also does not apply, since there is no cap on ballot-
measure contributions or expenditures in California." Id.
Defendants assert an informational interest in informing voters
as well as an interest in protecting the integrity of election
and legislative processes which is achieved by informing the
electorate regarding the identity of veiled political actors.
This interest can be defined as informational and therefore
consistent with the Ninth Circuit's description of the interests
at stake.

1 should be fully and truthfully disclosed in order that
2 the voters may be fully informed and improper practices
3 inhibited. . . .
4 Cal. Gov't Code § 81002.

5 As noted by the Ninth Circuit in Getman and by this court in
6 its October 24, 2000 Order, the Supreme Court repeatedly has
7 recognized the importance of expenditure and contribution
8 disclosure in the ballot measure context. First National Bank of
9 Boston v. Bellotti, 435 U.S. 765 (1978) (noting that voters may
10 consider the source and credibility of a message's proponent and
11 requiring disclosure of the source of communications has a
12 prophylactic effect); Citizens Against Rent Control v. City of
13 Berkeley, 454 U.S. 290 (1981) (concluding that the integrity of
14 the political system is adequately protected if contributions are
15 identified in public filings revealing the amounts contributed);
16 Buckley v. American Constitutional Law Foundation, 525 U.S. 182
17 (1999) (upholding regulation requiring initiative sponsors to
18 disclose funding for petition circulators and noting with
19 approval that such requirement informed voters of the source and
20 amount of money spent qualifying measure for the ballot).

21 The need for information regarding the source and amount of
22 political expenditures is paramount in California, where, each
23 election cycle, voters confront myriad ballot measure initiatives
24 and referenda at the state and local levels.⁹ In the last
25 election, for example, California led the nation with sixteen
26 measures on the statewide ballot.

27 Californians have used ballot measure initiatives to enact

28 ⁹ See Information on the Initiative and Referendum
 Process at the Local Level, <http://lawweb.usc.edu/iri/local-ir.htm>.

1 laws on complex policy issues and with profound ramifications.
2 (See UF 55.) One of the most dramatic examples is voter passage
3 of Proposition 13 in 1978, which overhauled the state's property
4 tax rules and led to a restructuring of state and local
5 government finance.¹⁰ More recently, Californians have denied
6 recognition of out-of-state same-sex marriages (Proposition 22,
7 1998), prohibited use of affirmative action in state hiring and
8 education (Proposition 209, 1996), increased criminal sentences
9 for "third strike" offenders (Proposition 184, 1994), approved
10 expansion of casino gambling on Indian reservations (Proposition
11 5, 1998), and denied recovery of non-economic damages for
12 uninsured accident victims (Proposition 217, 1998).

13 Proponents and opponents of California ballot measure
14 initiatives spend hundreds of millions of dollars each election
15 year to influence voters. In 1998 alone, \$200 million was spent
16 for and against twelve propositions on the statewide ballot.
17 (Leidigh Dec., filed September 12, 2000.) The Ninth Circuit
18 aptly described the "cacophony of political communications"
19 produced by such large sums of money, from which voters "must
20 pick out meaningful and accurate messages." Getman, 328 F.3d at
21 1105. The volume is particularly high in the ballot measure
22 context, where contributions and expenditures are unlimited. (UF
23 ¶ 78.)

24 Voters rely on information regarding the identity of the
25 speaker to sort through this "cacophony", particularly where the

26
27 ¹⁰ See Michael A. Shires, *Research Brief: Changes in State*
28 *and Local Public Finance Since Proposition 13*, Public Policy
Institute of California, March 1999.
http://www.ppic.org/content/pubs/RB_399MSRB.pdf

1 effect of the ballot measure is not readily apparent. (UF §§ 52-
2 54, 62, 64.) While the ballot pamphlet sent to voters by the
3 state contains the text and a summary of ballot measure
4 initiatives, many voters do not have the time or ability to study
5 the full text and make an informed decision. (UF § 55.) Since
6 voters might not understand in detail the policy content of a
7 particular measure, they often base their decisions to vote for
8 or against it on cognitive cues such as the names of individuals
9 supporting or opposing a measure, as listed in the ballot
10 pamphlet, or the identity of those who make contributions or
11 expenditures for or against the measure, which is often disclosed
12 by the media or in campaign advertising. (UF § 56.) Such cues
13 play a larger role in the ballot measure context, where
14 traditional cues, such as party affiliation and voting record,
15 are absent. (UF § 56.)

16 However, because groups supporting and opposing ballot
17 measures frequently give themselves ambiguous or misleading
18 names, reliance on the group, without disclosure of its source of
19 funds, can be a trap for unwary voters. For example, a tobacco
20 manufacturing group that opposes regulations on smoking might
21 call itself "Citizens for Consumer Protection". This name might
22 mislead voters into thinking that Citizens for Consumer
23 Protection is a consumer advocacy group when, in fact, it
24 protects the commercial interest of the tobacco industry. If the
25 organization's donor information is disclosed and opposing groups
26 and the press publicize the information, voters have a better
27 chance of discerning the organization's true interest. (UF §
28 71.)

1 Interest groups also seek to conceal their political
2 involvement by availing themselves of complicated arrangements
3 consisting of nonprofit corporations, unregulated entities and
4 unincorporated entities. (UF ¶ 77.) Without disclosure
5 requirements, citizens are likely to be uninformed and unaware
6 that tens of millions of dollars are spent on ballot measure
7 campaigns by such veiled political actors. (Id.)

8 According to several of defendants' experts, disclosure of
9 this information is of critical importance, in light of the
10 nature and complexity of the direct democracy process in
11 California. (UF ¶ 74, 75.) Voters tend to agree. When asked,
12 voters have indicated that information regarding the source and
13 amount of campaign contributions to ballot measures plays an
14 important role in their decision-making. (UF ¶ 67.) Voters rate
15 such information as more valuable than newspaper endorsements,
16 campaign mailings, TV and radio advertisements, and endorsements
17 by interest groups, politicians or celebrities. (Id.)

18 In light of the number and complexity of ballot measures
19 confronted by California voters, the staggering sums expended to
20 influence their passage or defeat, the very real potential for
21 deception through the formation of advocacy groups with appealing
22 but misleading names, and voters' heavy reliance on funding
23 source information when deciding to support or oppose ballot
24 measures, the court finds that California has a compelling
25 informational interest in providing the electorate with
26 information regarding contributions and expenditures made to pass
27 or defeat ballot measure initiatives.

28 While the court believes California's interest in fully

1 informing voters is sufficient, California also has an compelling
2 interest in maintaining the integrity of its electoral and
3 legislative processes by revealing the identity of veiled
4 political actors and preventing such actors from concealing their
5 identities by funneling money through organizations such as CPLC.
6 Defendants have cited several examples from past elections of
7 such deceptive practices. (See e.g., Aff. of Steve Hopcraft ¶¶
8 8-13; Aff. of Lenny Goldberg ¶¶ 8-25.) One such example,
9 involves CPLC directly. In February 2002, CPLC established the
10 California Pro-Life Council Inc. Independent Expenditure
11 Committee ("IE PAC"). Twelve days later, IE PAC received its
12 only contribution to date, \$10,000.00 from the Bay Area Free
13 Enterprise PAC (UF ¶ 40.) Less than a week earlier, the Bay Area
14 Free Enterprise PAC had received its only contributions,
15 \$25,000.00 from PG & E and \$1,000.00 from the Smokeless Tobacco
16 Council, Inc. Without the PRA's disclosure requirements, the
17 true source of IE PAC's funds could not be exposed.

18 Accordingly, the court finds that defendants have a
19 compelling state interest in informing the electorate regarding
20 contributions and expenditures made to pass or defeat ballot
21 measure initiatives and in maintaining the integrity of its
22 electoral and legislative processes preventing veiled political
23 actors from concealing their involvement in the political
24 process.

25 **III. Least Restrictive Means**

26 The court next must determine whether the challenged
27 PRA provisions are "closely tailored to advance the [state's
28 compelling] interest." Getman, 328 F.3d at 1101.

1 Initially, however, the court addresses CPLC's contention
2 that this case is governed by the "major purpose test" as framed
3 by Buckley, supra, and reaffirmed by Federal Election Commission
4 v. Massachusetts Citizens fo Life, Inc. ("MCFL"), 479 U.S. 238
5 (1986).¹¹ According to CPLC the "major purpose test" prohibits
6 the government from imposing PAC-like registration and reporting
7 requirements on organizations who do not have campaign activity
8 as their major purpose. (AVC ¶ 135.) CPLC argues that, because
9 the Ninth Circuit referred to MCFL in its decision, it was
10 telegraphing to this court that this "is a major purpose case."

11 The Court disagrees that the Ninth Circuit, by citing MCFL,
12 intended that this court bypass a careful, fact-intensive strict
13 scrutiny analysis and instead apply a "per se rule" that CPLC
14 suggests can be found lurking within the text of Buckley and
15 MCFL.¹² Moreover, even if Buckley and MCFL did create the bright-
16 line test advocated by CPLC, rather than simply reaching
17 conclusions after engaging in a strict scrutiny analysis in the
18 factual context of those cases, such test is inapplicable here.

19 Both Buckley and MCFL addressed overbroad provisions of the
20 Federal Election Campaign Act of 1971 ("FECA"), which regulated
21 multi-purpose organizations when doing so did not advance the
22 FECA's stated purposes.

23 In Buckley, the Court addressed the constitutionality of §
24

25 ¹¹ This court previously addressed this issue and found
26 that the so-called major purpose test did not apply in this case.
27 See October 24, 2000 Mem. and Order Denying Preliminary
28 Injunction.

28 ¹² Neither Buckley nor MCFL directly reference a "major
purpose test."

1 434(e) of the FECA, which imposed disclosure requirements on
2 “[e]very person (other than a political committee or candidate)”
3 making contributions or expenditures exceeding \$100.00. Buckley,
4 424 U.S. at 79. The Court first narrowly defined “political
5 committee” to encompass only “organizations that are under the
6 control of a candidate or the major purpose of which is the
7 nomination or election of a candidate” Id. The Court concluded
8 that “expenditures of candidates and of ‘political committees’ so
9 construed can be assumed to fall within the core area sought to
10 be addressed by Congress.” Id.

11 The Court then drew contrast to expenditures by individuals
12 and groups other than political committees: “when the maker of
13 the expenditure . . . is an individual other than a candidate or
14 a group other than a ‘political committee’ the relation of the
15 information sought to the purposes of the Act may be too remote.”
16 Id. at 79-80. The Court salvaged § 434(e) by narrowly defining
17 “expenditures” to capture only those funds used for
18 communications that expressly advocate the election or defeat of
19 a clearly identified candidate. Id. at 80. The Court explained
20 that its interpretation avoided overbreadth problems because
21 “[t]his reading is directed precisely to that spending that is
22 unambiguously related to the campaign of a particular federal
23 candidate.” Id.

24 Similarly, the FECA provision challenged in MCFL was
25 invalidated because it applied corporate PAC regulations to non-
26 profit corporations, when the rationale for the regulations did
27 not apply to non-profit corporations. Massachusetts Citizens for
28 Life, Inc. (“MCFL”) was a non-profit corporation subject to an

1 enforcement action by the Federal Elections Commission for
2 printing and distributing a "Special Edition" of its newsletter
3 prior to the 1978 Massachusetts primary election. Under § 441b
4 of the FECA, corporations - including non-profit corporations -
5 generally were prohibited from making direct expenditures in
6 connection with any election to any political office. In order
7 to make political expenditures, MCFL was required to establish a
8 "separate segregated fund" which was subject to greater
9 disclosure requirements than non-corporate entities. 2 U.S.C. §§
10 441b(a), (b) (2) (c). In addition, MCFL could receive
11 contributions only from "members," defined under the FECA to
12 exclude persons who have merely contributed to or indicated
13 support for an organization. 2 U.S.C. §§ 441b(a), (b) (4) (A).

14 On appeal, the Supreme Court held that the government did
15 not have a compelling interest in imposing corporate PAC
16 regulations on MCFL. The Court noted that Congress' purpose in
17 placing restrictions on corporate political contributions and
18 expenditures was to avoid the "corrosive influence of
19 concentrated corporate wealth," which is not an indication of
20 support for the corporation's political ideas, but rather
21 constitutes "economically motivated decisions of investors and
22 customers." Id. at 257-258. The Court found this concern
23 completely inapplicable to MCFL, whose resources "in fact reflect
24 popular support for the political positions of the committee."
25 Id.

26 The PRA does not suffer the same defect of overbreadth
27 confronted by the Court in Buckley and MCFL because the PRA does
28

1 not apply a one-size-fits-all disclosure regime to committees,
2 regardless of their level of political involvement. To the
3 contrary, disclosure obligations under the PRA are adjusted based
4 on an organization's political activity. Unlike "primary
5 purpose" committees, which disclose all receipts and
6 expenditures, multi-purpose committees must disclose only
7 contributions and expenditures actually spent in connection with
8 political activities. By this method, the PRA elicits
9 contribution and expenditure information necessary to inform
10 voters about the political activities engaged in by multi-purpose
11 organizations without overburdening such organizations with
12 unnecessary disclosure of non-political financial information.¹³

13 Accordingly, the court concludes that the so-called "major
14 purpose test" is inapplicable to this case.¹⁴ However, this is
15

16 ¹³ There are other important distinctions between the FECA
17 and the PRA. Under the PRA, corporations and labor organizations
18 are permitted to make direct independent expenditures for
19 political advocacy. By contrast, under the FECA, most businesses
20 having a corporate form as well as labor unions can make
21 independent expenditures only from a committee formed solely for
22 political purposes. See 2 U.S.C. § 441b. As discussed in MCFL,
23 these separate "political committees" are subject to onerous
24 reporting requirements, including the requirement to disclose all
25 contributions and expenditures, even if unrelated to express
26 ballot measure advocacy. There is no such counterpart under the
27 PRA. Rather, corporations like CPLC are free to make
28 expenditures and contributions directly from their general
treasury. Moreover, the FECA's regulatory scheme cut off nearly
all of MCFL's funding for political advocacy because its donors
did not qualify as "members" under the FECA. No parallel
provisions are present in the PRA which would limit the source of
funds available to CPLC.

¹⁴ A second question, which the court need not reach in
light of its conclusion that the major purpose test is
inapplicable, is whether CPLC's major purpose is campaign
activity. CPLC suggests that it's major purpose is not campaign
activity because less than 50% of its funds are expended on such

(continued...)

1 not to say that CPLC's level of involvement in political advocacy
2 is irrelevant. To the contrary, the court will consider whether
3 the PRA imposes any "unnecessary administrative or organizational
4 requirements" on MCFL in evaluating whether the PRA disclosure
5 regime is narrowly drawn. Getman, 328 F.3d at 1107.

6 The court now addresses whether the challenged provisions of
7 the PRA are narrowly drawn to advance California's compelling
8 interest. For purposes of this analysis, the court adopts the
9 organizational framework outlined by the Second Circuit in
10 Landell v. Sorrell, 382 F.3d 91 (2d Cir. 2002), as amended,
11 October 26, 2004. Under that approach, defendants must establish
12 that (1) the disclosure rules at issue advance the state's
13 compelling interests, (2) CPLC can effectively advocate its
14 political goals under the rules, and (3) the rules are the least
15 restrictive means available to accomplish the stated compelling
16 interests. As part of this last inquiry, the court will take
17 into count the Ninth Circuit's admonition that disclosure laws
18 may not impose unnecessary and overly burdensome administrative
19 costs and organizational requirements. Getman, 328 F.3d at 1107.

20 Initially, however, the court should describe the reporting
21 and disclosure regime challenged by CPLC. If a multi-purpose
22 organization expends greater than \$1,000.00 on express ballot
23

24 ¹⁴ (...continued)
25 activity. Under CPLC's 50%-plus-one definition, an organization
26 could spend \$25 million on express ballot measure advocacy but
27 not have a major purpose of campaign activity because its total
28 funds were \$51 million. Alternatively, an organization expending
just \$1,000.00 but with total funds of \$1,500.00 would be a major
purpose organization. For purposes of this order, the court need
not determine the appropriate method for determining a group's
major purpose.

1 measure advocacy, *but has not made expenditures for advocacy*
2 *exceeding the \$1,000.00 threshold within the past four years*, the
3 organization qualifies as an independent expenditure committee,
4 but not as a recipient committee. To become a recipient
5 committee, the organization must receive contributions of
6 \$1,000.00 or more. Under the "one bite at the apple" rule, the
7 organization's donors would not be "contributors" because the
8 organization had no history of political activity to put the
9 donors on notice that their donations would be used for political
10 purposes. Cal. Code. Regs. tit. 2 § 18215(b). However, the
11 organization would qualify as an independent expenditure
12 committee, and would be required to appoint a treasurer, comply
13 with record keeping requirements, and file campaign reporting
14 statements disclosing its expenditures. See Cal. Gov't Code §§
15 82013(b), 84100, 84104, 84200(b), 82036.5. Notably, however,
16 since independent expenditure committees do not receive
17 contributions, *there is no provision for disclosure of their*
18 *source of funds.* (See Wardlow Aff. in Opp'n to Pl.'s Mot. for
19 Summ. J. ("Wardlow Aff. II") ¶ 7.) CPLC does not now challenge
20 the reporting and disclosure requirements for independent
21 expenditure committees. (See Pl.'s Mem. in Supp. of Mot. for
22 Summ. J. at 27-28, Pl.'s Opp'n to Defs.' Mot. for Summ. J. at 1.)

23 If the organization expends \$1,000.00 or more on express
24 ballot measure activity *for a second time within a four-year*
25 *cycle*, its donors become "contributors" by virtue of the
26 organization's past history of political involvement. The
27 group's donors are now on notice that their donations may be used
28 for political purposes. Because the group receives

1 "contributions" of \$1,000.00 or more, it qualifies as a recipient
2 committee.¹⁵ Cal. Gov't Code § 82013(a). As such, it would be
3 subject to the following disclosure and administrative
4 requirements:

- 5 1. Registration as a recipient committee, which
6 requires the filing of a Statement of Organization
7 (Form 410), on which the organization must
8 identify its name and the identification number
9 assigned by the state; its address and telephone
10 number; the name of address of a Treasurer and
11 other principal officers, if any, and; if it is a
12 multi-purpose organization such as CPLC, a brief
13 description of its political activities, including
14 whether it supports/opposes candidates or ballot
15 measures and whether activities have common
16 characteristic such as party affiliation. In
17 addition, if the committee, is controlled, it must
18 identify the name of the controlling committee.
19 Cal. Gov't Code §§ 84101, 84102.
- 20 2. Appointment of treasurer, who is authorized to
21 make expenditures and accept contributions on
22 behalf of the committee. Cal. Gov't Code § 84101.
- 23 3. Maintenance of records "necessary to prepare
24 campaign statements" and otherwise comply with the
25 PRA, which must be kept for four years. Cal.
26 Gov't Code § 84104 and Cal. Code Regs. tit. 2 §
27 18401.
- 28 4. Disclosure of expenditures and contributions over
\$100.00 for express ballot measure advocacy.
(Wardlow Aff. ¶¶ 10-12.)
5. Reporting Requirements: Recipient committees must
file Semi-Annual Statements. Cal. Gov't Code §
84200. If the organization does not make
reportable contributions or independent
expenditures during the period, it only need file
a one-page statement of non-activity (Form 425).
(Wardlow Aff. ¶ 15.) If, on the other hand, the
organization does make contributions or
expenditures above threshold levels, it will be
required to file as many as four pre-election
reports for contributions or independent
expenditures of greater than \$500.00 during the

25 ¹⁵ Alternatively, the organization can create a separate
26 recipient committee, commonly referred to as a PAC, through which
27 to engage in express ballot measure advocacy. This alternative
28 simplifies record keeping and accounting. (See Wardlow Affid. ¶
13.) Under either alternative however, the organization now is a
recipient committee or controls a recipient committee and must
satisfy applicable PRA reporting requirements.

1 reporting period and, for the 16-day period before
2 the election, CPLC must file late independent
3 expenditure reports within 24 hours if it
4 contributes \$1,000.00 or more to support or oppose
5 a measure appearing on the ballot.¹⁶ In addition,
6 if the group makes contributions or independent
7 expenditures of totaling \$1,000.00 or more to a
8 single ballot measure, it must file a separate
9 independent expenditure report, which is linked
10 directly to the ballot measure supported or
11 opposed. Cal. Gov't Code § 84203.5; Wardlow Aff.
12 ¶ 18.

- 7 6. Notification to contributors of \$5,000.00 or more
8 that they may qualify as major donors. Cal. Gov't
9 Code § 84105 and Cal. Code Regs. tit. 2 § 18427.1.
10 7. Committee Termination Filing Requirements. Once a
11 recipient committee is organized, it cannot
12 terminate and end reporting requirements until it
13 has (1) ceased to receive contributions and make
14 expenditures and does not anticipate making
15 expenditures in the future, (2) eliminated or
16 declared it has no ability to discharge all of its
17 debts, (3) has no surplus funds, and (4) filed all
18 required campaign statements disclosing all
19 reportable transactions. Cal. Code Regs. tit. 2 §
20 18404.

14 The questions before the court then, are whether the
15 above-referenced requirements advance the compelling
16 interests described by the state, whether CPLC can continue
17 to effectively advocate under such rules, and whether the
18 rules constitute the least restrictive means by which the
19 state could achieve its objectives.¹⁷

20 ///

22 _____
23 ¹⁶ Reporting obligations are modified in odd years, when
24 no general election occurs. For sake of brevity, the court
25 focuses on the higher reporting obligations in even years. See
26 Wardlow Aff. ¶¶ 13-19 for a full explanation of the requirements.

25 ¹⁷ Many of the disclosure and organizational requirements
26 for recipient committees are equivalent to those for independent
27 expenditure committees under the PRA, to which CPLC does not
28 object. See Pl.'s Mem. in Supp. of Mot. for Summ. J. at 27-28.
It appears that CPLC's principal objection is to the requirement
that recipient committees disclose the source of funds used for
political expenditures.

1 **A. Advancement of California's Compelling Interests**

2 As a general matter, the PRA's disclosure requirements
3 directly advance the state's informational interests.
4 Requiring limited disclosure of expenditures made by CPLC
5 for express ballot measure advocacy directly advances the
6 state's interest in informing voters regarding who is paying
7 for the political messages they receive. Similarly,
8 disclosure of the *source of CPLC's funds* used for political
9 advocacy advances the state's interest in revealing the
10 identity of groups that attempt to conceal their political
11 involvement by routing money through groups like CPLC. See
12 Bellotti, 435 U.S. at 792 n.32 (striking down prohibition on
13 corporate advocacy in support of/opposition to ballot
14 measures but noting that disclosure of source of funds may
15 be required "so that the people will be able to evaluate the
16 arguments to which they are being subjected.") (citing
17 Buckley, 424 U.S. at 67); Citizens Against Rent Control, 454
18 U.S. at 290 (concluding that the integrity of the political
19 system is adequately protected if contributions are
20 identified in public filings revealing the amounts
21 contributed); American Civil Liberties Union of Nevada v.
22 Heller, 378 F.3d 979 (9th Cir. 2004) (holding that on-
23 publication disclosure of publication's financial sponsors
24 and noting that off-publication disclosure rules are less
25 intrusive and more effective in informing voters regarding
26 the identity of persons supporting a candidate or ballot
27 proposition.)

28 In addition, the PRA's specific record-keeping and

1 reporting obligations advance the state's interest in
2 providing usefully-organized information to voters in a
3 timely fashion. Pre-election reports and late contribution
4 reports ensure that voters have the benefit of information
5 regarding contributions made close to election day while
6 that information is still relevant to making informed voting
7 decisions. It almost goes without saying that to prepare
8 such reports, CPLC must maintain the necessary records.

9 Moreover, the PRA's organizational requirements for
10 groups engaging in express ballot measure advocacy in excess
11 of the \$1,000.00 threshold advance the purpose of informing
12 voters by providing voters with basic information regarding
13 the group's identity, how it may be contacted, and its
14 general objectives. Further, by requiring a group to submit
15 simple non-activity reports when not engaged in ballot
16 measure advocacy, and to file a one-page form when the
17 committee terminates, greatly assists the FPPC in its
18 efforts to ensure it has received, and can make available to
19 voters, information regarding all political expenditures
20 made in connection with California elections. Without these
21 requirements, the FPPC and voters would be unable to
22 ascertain if a group who stopped reporting had simply gone
23 out of existence or was flouting its disclosure obligations.
24 (See Wardlow Aff. II ¶ 5.)

25 The clear correlation between the state's interest and
26 the requirements imposed by the PRA stands in direct
27 contrast to the FECA provisions at issue in MCFL. In MCFL,
28 the state's asserted interest in avoiding the corrosive

1 influence of corporate money on the political process was
2 not advanced by imposing the burdensome PAC reporting regime
3 on MCFL, a non-profit organization. MCFL, 479 U.S. at 263
4 (“the concerns underlying the regulation of corporate
5 political activity are simply absent with regard to MCFL.”)
6 This is not the case here, where the challenged regulations
7 directly advance the state’s purposes.

8 Accordingly, the court finds that the disclosure rules
9 and corresponding reporting, administrative and
10 organizational requirements advance the state’s interest in
11 fully informing the electorate regarding the source of
12 contributions and expenditures made for express ballot
13 measure advocacy and in preventing veiled political actors
14 from concealing their identities by channeling funds through
15 groups like CPLC.

16 **B. Ability to Effectively Advocate**

17 Initially, the court notes that the challenged
18 provisions of the PRA do not directly limit CPLC’s ability
19 to make expenditures and receive contributions. CPLC can
20 for example, accept contributions from corporations and
21 labor unions, and there is no limit on the amount of
22 contributions it may accept. Likewise, CPLC may make
23 independent expenditures to support or oppose candidates
24 and/or ballot measures without limitation.

25 However, even absent direct expenditure and
26 contribution limitations, a regulatory regime may be so
27 oppressive as to effectively chill speech. See MCFL, 479
28 U.S. at 255 n.7 (noting that reporting and disclosure

1 responsibilities may create a disincentive for an
2 organization to speak); Getman, 318 F.3d at 1104 n.21
3 (noting need to apply strict scrutiny because disclosure and
4 reporting requirements are "more burdensome for multi-
5 purpose organizations (such as CPLC) than for political
6 action committees whose sole purpose is political
7 advocacy.") In this case however, the court finds that the
8 PRA's disclosure, reporting and organizational requirements,
9 while not trivial, do not prevent CPLC from effectively
10 advocating.

11 Initially, the court reiterates that, unlike the
12 disclosure provisions struck down by the Supreme Court in
13 Buckley and MCFL, which required disclosure of *all* receipts
14 and expenditures, the PRA requires disclosure only of
15 contributions and expenditures for express political
16 advocacy. The PRA does not compel disclosure of CPLC's non-
17 political expenditures or its full membership lists. CPLC
18 has submitted no evidence that this limited disclosure
19 requirement would somehow impede its ability to raise and
20 expend funds for express ballot measure advocacy.¹⁸

21 Nor does the court find that the PRA's organizational
22 and administrative requirements are so burdensome as to be a
23 disincentive for CPLC's to engage in political advocacy.
24 MCFL, 479 U.S. at 255 n.7. Creation of a committee requires

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26 ¹⁸ The court recognizes that the government, not CPLC,
27 bears the burden to demonstrate that the challenged PRA
28 provisions are narrowly tailored. The court references the lack
of evidence submitted by CPLC only to support its conclusion that
the government has satisfied its burden to demonstrate that CPLC
can effectively advocate under the PRA provisions.

1 only the identification of a treasurer and the submission of
2 a straightforward form with basic information regarding the
3 organization. In addition, the reporting forms are
4 uncomplicated, with one form used for most types of
5 committees, with attached schedules to assist the preparer
6 in determining what information is required. (Wardlow Aff. ¶
7 12.) In election cycles when CPLC does not engage in
8 political advocacy, it may satisfy its reporting obligations
9 by twice filling out a single-page form. (Id.) The court
10 notes that CPLC currently satisfies these requirements for
11 its existing PACs without apparent difficulty.

12 By contrast, in MCFL the challenged FECA provisions
13 prevented MCFL from using money it collected from its
14 members for political advocacy. As member donations were
15 MCFL's primary source of revenue, the court found that the
16 rules essentially prevented MCFL from engaging in political
17 speech. No analogous restriction is placed in CPLC by the
18 PRA.

19 Accordingly, the court finds that CPLC can advocate
20 effectively under the PRA's disclosure rules and associated
21 organizational and administrative requirements.

22 **B. Least Restrictive Means**

23 Finally, for the challenged regulations to survive
24 strict scrutiny, the government must demonstrate that they
25 are the least restrictive means to achieve the state's
26 objective. Landell, 382 F.3d at 95.

27 As a general matter, courts repeatedly have recognized
28 that post hoc disclosure requirements are a far less

1 restrictive means to regulate political speech than
2 contribution and expenditure limitations and on-publication
3 disclosure requirements. See e.g., Citizens Against Rent
4 Control, 454 U.S. at 299-300 (striking down contribution
5 limitations for local ballot measures but noting that the
6 integrity of the system will be adequately protected by
7 public disclosure); Heller, 378 F.3d at 992 (requiring a
8 publisher to report her identity on her communication is
9 considerably more intrusive than simply requiring her to
10 report to a government agency for later publication how she
11 spent her money).

12 The government has amply demonstrated in this case that
13 there is no available means to achieve the state's
14 informational interest other than requiring organizations
15 making expenditures to disclose that information in a useful
16 and timely fashion. Information contained in publicly filed
17 campaign finance reports is the only reliable source of
18 information available to the public and the press regarding
19 the identity of those actually supporting or opposing a
20 ballot measure as well as those who actually benefit by its
21 passage or defeat. (UF ¶ 83.) If the disclosures were not
22 required from all persons now subject to the PRA's reporting
23 provisions, organizations like CPLC could be used to conceal
24 the identity of major funding sources in election campaigns.
25 (Wardlow Aff. ¶7.) Dismantling the disclosure provisions of
26 the PRA would create loopholes for veiled political actors
27 to exploit and avoid detection of their involvement in
28

1 express ballot measure advocacy.¹⁹ (UF ¶ 81.) The court
2 finds that defendants' have demonstrated the necessity of
3 the PRA's disclosure provisions.

4 CPLC argues however, that the FECA offers a far less
5 restrictive means of defining "contributor" under which
6 CPLC's members likely would not constitute "contributors"
7 triggering CPLC's need to organize as a recipient committee.
8 Under the FECA, contribution is defined as only "funds used
9 for communications that expressly advocate the election or
10 defeat of a clearly identified candidate." Buckley, 424
11 U.S. at 80. By contrast, under Cal. Code Regs. tit. 2 §
12 18215(b), once an organization establishes a history of
13 express ballot measure advocacy, a donor "should have known"
14 that a portion of the contribution could be used for express
15 ballot measure advocacy, and that donor's funds are deemed
16 to be a contribution.

17 CPLC argues that the PRA's definition of
18 "contribution", is unconstitutionally overbroad in that it
19 forces CPLC into recipient committee status under which it
20 must report *all* of its members' contributions.

21 CPLC misstates the reporting obligation for multi-
22 purpose committees under the PRA. (See Pl.'s Mem. in Supp.
23 of Summ. J. at 31-32.) Contrary to CPLC's contention, the
24 PRA requires disclosure of only expenditures made for
25 political purposes. Similarly, CPLC must disclose only

26
27 ¹⁹ CPLC's apparent objection to this evidence is
28 overruled. The stated evidence is relevant and not otherwise
excluded by the Federal Rules of Evidence. Fed. R. Evid. 402.

1 contributions of \$100.00 or more, and those are first
2 "prorated" based on the percentage of an organization's
3 receipts expended for political purposes. (Eichman Aff. ¶
4 9.) To use an example provided by one of the government's
5 experts, assume CPLC made an expenditure of \$25,000.00 to
6 oppose a ballot measure during the 1998 election cycle.
7 Based on its 1998 revenue of \$234,264.00, 10.67% of CPLC's
8 donor's pro rata donations would be treated as
9 contributions. However, only those that equal or exceed
10 \$100.00 must be reported. During that cycle, only three of
11 CPLC's contributors would be reportable. Consequently, CPLC
12 greatly overstates its reporting obligations under the PRA.
13 (See Eichman Aff. ¶¶ 12, 13.)

14 When presented accurately, the PRA's disclosure
15 provisions are no more intrusive than the FECA's. Rather,
16 the PRA uses a *different* method of reaching the state's
17 objective. In some circumstances, the PRA may require
18 disclosure of more contributors than the FECA; at other
19 times, it will require disclosure of fewer. Moreover, the
20 PRA's definition appears to be more effective and user
21 friendly than the FECA. Unlike the FECA, the PRA does not
22 require organizations to discern a donor's subjective intent
23 in making a donation in order to accurately report
24 contributions. In addition, the PRA definition appears
25 better suited to achieve the state's interest in preventing
26 organizations from concealing their political involvement.
27 Under the FECA's definition, an organization could make a
28 large payment to CPLC without indicating an intent to

1 influence an election which may go unreported. In response,
2 CPLC argues that "giving undesignated funds to an
3 organization would be a very inefficient and unpredictable
4 means of influencing any election." (Pl.'s Reply in Supp.
5 of Summ. J. at 13.) However, where organizations, such as
6 CPLC, have an established history of advocacy for specific
7 causes, a donor seeking to conceal its identity could make a
8 relatively safe assumption that its funds would be used for
9 that purpose in the future. Accordingly, the court finds
10 that the FECA definition of "contribution" would not be a
11 less restrictive alternative to the PRA definition in Cal.
12 Code Regs. tit. 2 § 18215.

13 CPLC next argues that the PRA contribution definition
14 creates an unconstitutional presumption that its members'
15 donations are contributions if CPLC has a prior history of
16 express ballot measure advocacy over the \$1,000.00
17 threshold.²⁰ As CPLC describes it:

18
19 ²⁰ The government disputes this, arguing that Cal. Code
20 Regs. tit. 2 § 18215(b), the so-called "one bite of the apple"
21 rule, creates a presumption that donors or members of an
22 organization like CPLC *do not* have reason to know that their
23 funds will be used for the purpose of making contributions or
24 expenditures in California unless certain factors are present.
(Wardlow Aff. ¶ 10.) However, in opinion letters, the FPPC
appears to apply Cal. Code Regs. tit. 2 § 18215(b) as though it
created a presumption under which organizations that take a
second bite at the apple are presumed to be recipient committees.
For example, in the September 12, 1990 Olson Opinion Letter, the
FPPC indicated that:

25 "Once the [organization] has established a history of
26 making contributions from its general fund, its members
27 are deemed to be on notice in subsequent years that a
28 portion of their payments may be used for political
purposes. Thus, in any subsequent calendar year in
which the [organization] makes contributions out of its
general fund totaling \$1,000 or more, it will qualify

(continued...)

1 Under the regulatory presumption, when an organization
2 make an "independent expenditure" of at least \$1,000.00
3 in a single calendar year, it establishes a 'history'
4 of making 'independent expenditures' and therefore in
5 that same year or within four calendar years, its
6 donors or members are presumed to have 'reason to know'
7 that future donations or dues may be used for such
8 purposes.

9 (Pl.'s Mem. in Supp. of Pl.'s Mot. for Summ. J. at 26.)

10 However, assuming arguendo that the PRA definition of
11 "contribution" contains a presumption, it is not thereby
12 rendered unconstitutional. Contrary to CPLC's suggestion,
13 "presumptions" are not per se constitutionally defective,
14 and the cases CPLC cites do not hold otherwise.

15 CPLC primarily relies on North Carolina Right to Life,
16 Inc. v. Leake, 344 F.3d 418 (4th Cir. 2003), a decision
17 which was vacated and remanded by the United States Supreme
18 Court and has no persuasive value. 124 S. Ct. 2065 (2004).
19 However, it is also distinguishable on its facts. In Leake,
20 the court confronted a North Carolina statute under which a
21 group was presumed to have the "major purpose" of supporting
22 or opposing candidates if it contributed or expended greater
23 than \$3,000.00 during an election cycle. Id. at 428. Once
24 defined as a "major purpose" committee, the group was
25 subject to organizational and administrative requirements,
26 most notably the requirement to disclose *all* contributions
27 received and expenditures made. Id. at 423-24. The court
28 drew analogy to Buckley, which narrowed the FECA's

29 ²⁰ (...continued)
30 as a recipient committee."
31 (Olson Opinion Letter at 3, Ex. B-1 to Eichman Aff.)
32 At a minimum, the passage suggests that contributors are charged
33 with constructive notice of an organization's past political
34 expenditures.

1 definition of "political committee" to include only those
2 organizations that are under the control of a candidate or
3 the major purpose of which is the nomination or election of
4 a candidate." Buckley concluded that requiring detailed
5 contribution and expenditures disclosures by such groups was
6 within the "core area" Congress sought to regulate. Id. at
7 429. However, distinguishing Buckley, the Leake court found
8 that the "major purpose" presumption in that case was based
9 not on the group's major purpose, but on an arbitrary level
10 of political activity. Id. at 430. Thus, the "presumption"
11 treated groups whose actual "major purpose" was not
12 political advocacy as political committees, in violation of
13 the so-called major purpose test.

14 This court has previously found that the major purpose
15 test is not applicable to this case, and Leake highlights
16 the reason for that conclusion. Unlike Buckley, Leake and,
17 MCFL, where the regulatory schemes subjected groups whose
18 major purpose was not political advocacy to the same
19 disclosure requirements as those with such major purpose,
20 the PRA contains a sliding scale under which groups only
21 must disclose those receipts and expenditures actually
22 related to political advocacy. Even if a group takes a
23 "second bite at the apple" under the PRA and thereby becomes
24 a recipient committee, the group still is not treated the
25 same as a primary purpose committee. The latter types of
26 groups are required to disclose *all* receipts and
27 expenditures on the theory that all activity in which they
28 engage is political in light of their purpose. CPLC, as a

1 multi-purpose committee, need only disclose those
2 contributions and expenditures made for political
3 purposes.²¹ As a result, the PRA is distinguishable from
4 the regulatory schemes in Leake, Buckley, and MCFL.

5 CPLC also cites Riley v. National Federation of the
6 Blind, 487 U.S. 781 (1988), and Virginia v. Black, 538 U.S.
7 343 (2003), two cases heavily relied on by the Fourth
8 Circuit in the now-vacated Leake decision. In Riley, the
9 Court considered the constitutionality of a statute
10 prohibiting fundraisers from charging unreasonable or
11 excessive fees. Under the statute, a fee was presumed
12 "unreasonable or excessive" if it exceeded 35%. Noting that
13 the solicitation of charitable contributions was First
14 Amendment protected speech, the Court struck down the 35%
15 presumption as not narrowly drawn to advance the state's
16 purpose of preventing fraud. The Court noted that
17 fundraisers would be subject to the risk of costly
18 litigation regarding the reasonableness of their fees and
19 held that this "must necessarily chill speech." Id.

20 In Black, a plurality of the Court struck down a
21 Virginia cross burning statute which provided that "any such
22 burning of a cross shall be prima facie evidence of an
23 intent to intimidate a person or group of persons." Black,

24
25 ²¹ Buckley endorsed this level of disclosure by multi-
26 purpose organizations, explaining that such groups could be
27 required to report "only funds used for communications that
28 expressly advocate the election or defeat of a clearly identified
candidate: "This reading is directed precisely to that spending
that is unambiguously related to the campaign of a particular
federal candidate." Buckley, 424 U.S. at 80-81.

1 538 U.S. at 1538. After describing the risk that juries
2 will be more likely to convict those who engage in cross
3 burning, regardless of the specific facts of the case, the
4 plurality concluded that the provision "creates an
5 unacceptable risk of the suppression of ideas." Id. at
6 1551.

7 Both Riley and Black are distinguishable. In both, the
8 Court concluded that the presumptions created an
9 unacceptable risk of chilling protected speech because the
10 presumptions were overinclusive and could sweep up conduct
11 not actually regulated by the statutes (i.e., those whose
12 cross burning was not meant to intimidate). Here by
13 contrast, the second bite at the apple rule does not pose a
14 risk that groups who are not engaged in political advocacy
15 will be regulated under the statute. To the contrary, the
16 second bite at the apple rule is triggered only if an
17 organization has made expenditures for express ballot
18 measure advocacy of \$1,000.00 or more during two election
19 cycles within a four year period. Nor does the second bite
20 at the apple rule trigger unnecessary disclosure and
21 reporting obligations. To the contrary, if an organization
22 takes a "second bite at the apple" by making expenditures of
23 \$1,000.00 or more in two election cycles during a four-year
24 period, it is required to disclose only its political
25 expenditures the source of funds used to make the
26 expenditures. Certainly, this imposes greater obligations
27 than apply to independent expenditure committees, which are
28 not required to disclose the source of their funds.

1 However, the requirement that committees like CPLC, which
2 finance their political expenditures with funds received
3 from others, disclose the source of such funds is necessary
4 for California to fully inform its voters regarding the
5 identity of the speaker and to prevent veiled political
6 actors from disguising their participating in the political
7 process by funneling money through multi-purpose
8 organizations such as CPLC.

9 Accordingly, the court finds that the constructive
10 knowledge language in Cal. Code Reg. § 18215(b) does not
11 create an unconstitutional presumption. The court further
12 finds that the regulatory scheme imposed on CPLC and groups
13 like CPLC who engage in express ballot measure advocacy is
14 the least restrictive means available for California to
15 achieve its compelling interest in fully informing voters
16 and preventing organizations from disguising their
17 involvement in express ballot measure advocacy.

18 **CONCLUSION**

19 For the foregoing reasons, CPLC's motion for summary
20 judgment is DENIED and Defendants' motion for summary
21 judgment is GRANTED.

22 IT IS SO ORDERED.

23 DATED: February 22, 2005.

24 /s/ Frank C. Damrell Jr.
25 FRANK C. DAMRELL, Jr.
26 UNITED STATES DISTRICT JUDGE
27
28