California Bureau of State Audits
MEMORANDUM NUMBER 2

To: Elaine M. Howle, State Auditor

From: Steven Benito Russo, Senior Staff Counsel
Sharon Reilly, Chief Counsel

Subject: Proposed Regulations 60804, 60806, 60809, 60811, 60812, 60813, 60815, 60816, 60819, 60820, 60821, 60822, 60825, 60827, and 60828: Conflicts of Interest

Date: July 31, 2009

Introduction

The Voters FIRST Act (the "Act")[1] provides for the creation of the Citizens Redistricting Commission (the "commission") that will redraw the boundaries of California's legislative and Board of Equalization districts based on decennial census information. It also provides for the creation of the Applicant Review Panel (the "panel") that will select 60 individuals who will comprise a final pool of applicants from which the members of the commission shall be chosen. In outlining the process that must be undertaken to select the members of the commission and the panel, the Act identifies certain activities and relationships that the Act describes as constituting conflicts of interest that automatically disqualify an individual from serving on the commission or on the panel. However, many of the terms used to describe what constitutes a conflict of interest are ambiguous. In addition, depending on how broadly the terms are interpreted, they may serve as a basis for challenging the validity of certain provisions of the Act on grounds that they create unconstitutional barriers to serving as a member. We propose the regulations discussed in this memorandum to alleviate the ambiguity of the terms highlighted in this memorandum that pertain to conflicts of interest and provide interpretations of these terms supporting the constitutionality of the Act's provisions.

Background

Government Code, section 8252[2] describes in very broad terms the processes for selecting the members of the commission and for selecting the members of the panel. In setting forth these processes, section 8252, subdivision (a)(2) requires the disqualification of anyone applying to serve on the commission who has any of the conflicts of interest described in that subdivision from the applicant pool. Similarly, section 8252, subdivision (b) provides that no one selected to serve on the panel may have any of the conflicts of interest that are listed in subdivision (a)(2).

---

[1] The Voters FIRST Act is contained in Article XXI of the California Constitution and Government Code, sections 8251 through 8253.6.

[2] All statutory references in this memorandum are to Government Code section 8252.

In setting forth what constitutes a conflict of interest for a prospective member of the commission or the panel, section 8252, subdivision (a)(2) provides a list of conflicts in two separate subparagraphs. Subparagraph (A) lists a series of conflicts arising from an individual or a member of his or her immediate family having engaged in certain specified activities within the preceding 10 years. Subparagraph (B) lists a series of conflicts arising from the individual having certain specified relationships with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization.

More specifically, subparagraph (A) provides that an individual has a disqualifying conflict of interest if that individual or a member of his or her immediate family has done any of the following:

- Been appointed to, been elected to, or been a candidate for federal or state office.
- Served as an officer, employee, or paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office.
- Served as an elected or appointed member of a political party central committee.
- Been a registered federal, state, or local lobbyist.
- Served as paid congressional, legislative, or Board of Equalization staff.
- Contributed two thousand dollars ($2,000) or more to any congressional, state, or local candidate for elective public office in any year.

Subparagraph (B) provides that an individual has a disqualifying conflict of interest if that individual is serving as staff or as a consultant to, is under a contract with, or has an immediate family relationship with the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. Subparagraph (B) defines the term "immediate family" as used throughout subdivision (a) as a person with whom the individual has a bona fide relationship established through blood or legal relation, including parents, children, siblings, and in-laws.

While the two subparagraphs provide general direction in their mandate that people having engaged in certain activities or having certain relationships must be disqualified from selection to or service on the commission or the panel, the terms used in these subparagraphs require a significant amount of interpretation to apply them to particular situations. For example, the mandatory disqualification of anyone who has been appointed to a federal or state office leaves open questions about what constitutes an "appointment" and what constitutes a "state or federal office" as these terms have no universally accepted meaning. The term "appointed" could be interpreted narrowly to only include being appointed by the Governor and confirmed by the Senate, as occurs when certain high ranking officials are appointed to their positions (see, for example, Gov. C, § 1322), or broadly to include being appointed by any appointing authority, as occurs when individuals are appointed to fill rank and file civil service positions (Gov. C. § 18500, et seq.) Similarly, the term "state office" could be interpreted narrowly to include only state elective office, or broadly to include every position in state government.

The meaning of the term "bona fide relationship" is especially open to a range of interpretations, as the Act provides no guidance regarding how this term should be interpreted, and there are no California statutes or regulations interpreting the term. However, understanding what constitutes a bona fide relationship established through blood or legal relation is essential to applying the conflict of interest provisions of the Act. Only persons with whom an individual has a bona fide relationship can be considered immediate family members of the individual, and thus cause the individual to have a disqualifying conflict of interest based on their actions. Thus, if we interpret the term narrowly, it means very few people – only those persons in a very close relationship with the individual can cause that individual to have a disqualifying conflict of interest. But if we interpret the term broadly, it means a wide range of people – even persons who have very little contact with the individual yet who are somehow related by blood or marriage – can cause the individual to have a disqualifying conflict of interest.

Resolving the ambiguity of these terms through the adoption of regulations is therefore essential to the mechanics of putting the Act into effect, as otherwise there is no clarity regarding who the State Auditor must disqualify as having an impermissible conflict of interest. In addition, the choices made through the adoption of these clarifying regulations regarding how the conflict of interest provisions are to be applied carry very important implications for the constitutionality of the Act. As the conflict of interest provisions necessarily create barriers to service on the panel and the commission, which are public offices, we must take care to ensure that whatever barriers are created are consistent with federal and state constitutional standards.

It is a well-established principle of federal and state law that the right to participate in political activity, which includes the right to hold public office, is a fundamental right.[3] So any restriction on that right is subject to strict scrutiny review by the courts and must be justified by a compelling state interest and be narrowly tailored to avoid being overbroad. As the California Supreme Court declared in *Bagley v. Washington Township Hospital District*, (1966) 65 Cal. 2d 499, a court will consider a restriction on the right to hold public office overbroad unless the restriction has a clear relationship to the compelling interest that is being furthered by the restriction and that interest outweighs the negative impact of the restriction.

One aspect of interpreting the conflict of interest provisions that requires particular attention is an interpretation of those provisions that defines as a conflict of interest activities and relationships with individuals who have engaged in activities outside of California. Such activities are obvious candidates for examination as to whether they are so related to the task of redistricting that they result in an inability to perform the duties of a commissioner or a panel member with the necessary degree of impartiality. As the California Supreme Court noted in *Fort v. Civil Service Commission*, (1964) 61 Cal. 2d 331, at 338:

> ". . . [T]he more remote the connection between a particular activity and the performance of official duty the more difficult it is to justify restriction on the ground that there is a compelling public need to protect the efficiency and integrity of the public service. It is thus at least questionable whether restrictions

[3] See *Davis* v. *Grossmont Unif. School Dist.*, (1991) 930 F.2d 1930; *Edelstein* v. *City and County of San Francisco*, (2002) 29 Cal. 4th 164.

> relating to issues and candidates in jurisdictions other than the employing entity can be justified even so far as concerns partisan activities."

Accordingly, an interpretation of the conflict of interest provisions that, wherever possible, limits the disqualifying activities or relationships to activities and relationships that involve candidates, officials, and political parties in California, rather than some other jurisdiction, best the constitutionality of the Act.

Another aspect of interpreting the conflict of interest provisions that requires particular attention is the interpretation of those provisions that set the parameters for what constitutes an immediate family relationship. This is a very important area of interpretation as a person wanting to serve on the commission or the panel can be disqualified from serving, not just based on his or her own activities, but based on the activities of his or her immediate family members. Thus, an interpretation of the conflict of interest provisions that, wherever possible, limits the scope of who may be considered an immediate family member to those persons who are so intimately involved with a prospective commissioner or panelist that they would be in a position to exert undue influence over the prospective commissioner or panelist best supports the constitutionality of the Act.

With these general principles in mind, we propose fifteen regulations to provide greater clarity to the conflict of interest provisions of the Act.

Proposed Regulations

Proposed Regulation 60804. Appointment to Federal or State Office

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been appointed to, been elected to, or been a candidate for federal or state office. As noted earlier in this memorandum, the term "appointed" could be construed either narrowly to only include being appointed by the governor, or broadly to include being appointed by any appointing authority. How the term is interpreted is therefore very significant, as the interpretation dictates how much of a barrier subdivision (a)(2)(A) imposes to serving on the panel or the commission.

In determining what meaning to attach to the term "appointed" and other terms used in the Act, we have been guided by California Constitution, Article XXI, section 2, subdivision (c)(1), which declares that the process for selecting commissioners "is designed to produce a Citizens Redistricting Commission that is independent from legislative influence." We have also been guided by the language of the uncodified findings and declaration of purpose for the Act found in section 2 of the Act as it appeared in the Official Voter Information Guide for the November 4, 2008 General Election. Subdivision (b) of that section makes it clear that one of the purposes of the Act is to prevent politicians from influencing the redistricting process such that districts are drawn to serve the politicians' interests rather than the interests of the communities they serve. These statements regarding the intent of the Act dictate that the terms used in the conflict of

interest provisions of the Act be interpreted in a manner that requires the disqualification of anyone who is so connected with the partisan politics of California, either by his or her own activities, or by the activities of his or her immediate family members, that the person's ability to make decisions unaffected by the interests of the state's partisan political leadership is either compromised or has the appearance of being compromised. However, these statements also make clear that to remain true to the purposes of the Act, the terms used need not be interpreted so broadly as to bar anyone else from serving on the panel or the commission, and to do so would risk making the application of the conflict of interest provisions overbroad.

Accordingly, we are proposing to define "appointed" as only including being appointed to a federal or state office by the Governor or any member of the Legislature. Any person, who during the 10 year period prior to applying to serve on the panel or the commission has been appointed, or has had a member of his or her immediate family appointed to a position by the Governor or a member of the Legislature, is connected to the partisan politics of California in a manner that is distinguishable from the connection of most Californians. Moreover, that person may be, or is at least shrouded with the appearance of being, beholden to those who will be most affected by redistricting. Thus, defining the term "appointed" in this manner is consistent with the purposes of the Act. Any broader interpretation of the term to include appointments by other authorities at the federal or state level would have much less of a connection to the integrity of the redistricting process, and could therefore be viewed as overbroad.

The regulation declares that subsequent confirmation of an appointment is not necessary for the appointment to create a conflict of interest because it is the appointment itself that creates the actual or apparent lack of independence from legislative or gubernatorial influence, regardless of whether the appointment is confirmed or even requires confirmation. Similarly, the term "appointed" is defined as including not only being placed in a position by the Governor or a member of the Legislature, but also serving in a position at the pleasure of the Governor or a member of the Legislature, within the 10 year period. This is because, from the standpoint of independence, having been allowed to serve in an appointed position at the pleasure of an official is no different from being named to the position by that official.

Proposed Regulation 60806. Bona Fide Relationship

As noted earlier in this memorandum, section 8252 declares that a person can have a disqualifying conflict of interest based on a member of his or her immediate family engaging in any of the activities listed in subdivision (a)(2)(A) of that section or based on having an immediate family relationship with the officials listed in subdivision (a)(2)(B), specifically the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. Section 8252 contains a provision that defines the term "immediate family" as it is used throughout subdivision (a) as anyone with whom the person has a "bona fide relationship established through blood or legal relation," including parents, children, siblings, and in-laws.

While section 8252 is quite express in naming particular family relationships as being included within the scope of the term "immediate family," it is silent regarding the meaning of the term "bona fide relationship." While the term "bona fide" is generally regarded as meaning genuine

or sincere,[4] there is no common meaning for the term as applied to family relationships. Yet, as noted earlier, the meaning given to the term "bona fide relationship" has a significant impact on how broadly the disqualification provisions will be applied, and on the number of persons who will be disqualified from serving on the commission.

Looking again to the purposes of the Act, as referenced in the discussion of the previous regulation, the definition of bona fide relationship needs to be broad enough to include family relationships that are so substantial in nature that a panel or commission member having such a relationship is likely to be vulnerable to influence from the other party to the relationship. However, the definition also has to be restrictive enough to exclude family relationships that have no particular qualities about them, aside from their mere existence, suggesting the other party to the relationship would be able to exert influence over a prospective panelist or commission member.

With these principles in mind, we propose a definition for bona fide relationship that contains three key elements. First, the regulation adds spouse and domestic partner to the list of family members who constitute the members of a person's immediate family, which by the express language of section 8252 already includes parents, children, siblings, and in-laws. We propose this addition because spouses and domestic partners are at least as likely to be able to exert influence over a panelist or commissioner as anyone else on the list.

Second, the regulation requires that for a relationship to be bona fide it must be an existing relationship, rather than one that has been terminated by death or dissolution. The idea behind this element of the regulation is the obvious one that deceased family members can no longer be a source of influence, and family members estranged by dissolution, particularly in-laws, are unlikely to be a significant source of influence.

Third, the regulation requires that, for a relationship to be bona fide, it has to have specific characteristics about it that demonstrate a prospective panelist or commissioner is particularly likely to be influenced by the interests of the other party. The characteristics cited are any of the following occurring within the preceding 12 months:

- Cohabitation for a period or periods cumulating 30 days or more;
- Shared ownership of any real or personal property having a cumulative value of $1,000 or more; or
- Either party to the relationship providing a financial benefit to the other having a cumulative value of $1,000 or more.

We propose the first characteristic because cohabitation is a strong indicator of being in a substantial relationship with another person where one party to the relationship has significant influence over the other. This naturally flows from: (1) ample opportunity for one party to try to influence the other, (2) the likelihood that the fortunes of one party generally impact the fortunes of the other, and (3) the strong motivation for cohabitants to do what is necessary to maintain a cordial and cooperative relationship with each other by acquiescing to the other person's wishes.

[4] See Merriam-Webster's Collegiate Dictionary 130 (10th ed. 2001).

We propose the second and third characteristics because these types of economic connections also demonstrate that the relationship between the parties is substantial in nature, as it entails a sharing of financial resources. Moreover, in the case of a prospective panel or commission member receiving financial benefits from the other party, the panelist or commission member will, at a minimum, be perceived as beholden to the other party and therefore particularly vulnerable to being influenced.

In determining whether a bona fide relationship exists, the regulation only looks to the characteristics of the relationship over the preceding 12 months, as that is most indicative of the nature of the relationship at the time a person will be serving as a panelist or commissioner. It does not include cohabitation for less than 30 cumulative days during a 12 month period, as lesser periods of cohabitation, such as occasional weekend visits, are not as indicative of a substantial relationship as longer periods of cohabitation. Further, the regulation does not include the joint ownership of property valued at less than $1,000 or the imparting of a financial benefit cumulating less than $1,000 during 12 months because such lesser financial connections are not as indicative of a substantial relationship between the parties. However, the regulation includes the imparting of financial benefits that are both tangible and intangible, including the rendering of services.

In proposing this definition of bona fide relationship, we are well aware that in trying to prevent the conflict of interest provisions from being overbroad, certain family relationships will not constitute a conflict of interest for a prospective panel or commission member even though the specific facts of the relationship may indicate the prospective member may be susceptible to legislative influence due to the relationship. For example, a prospective commission member having a brother who is a member of the Legislature would not have a disqualifying conflict of interest as a result of that relationship under circumstances in which the relationship has not included the requisite amount of cohabitation, joint property ownership, or exchange of financial benefits required to make the relationship a bona fide relationship. If the brothers are truly estranged, the relationship may have no impact on the ability of the prospective commissioner to perform the duties of a commissioner so it would be fair that the relationship does not constitute a conflict of interest. In contrast, if the brothers are not estranged, and the prospective commissioner is indeed loyal to the interests of the Legislator due to the family connection, the prospective commissioner would not be a good candidate to serve. The fact that the relationship does not constitute a conflict of interest should not be a problem, however, because even when a conflict of interest does not exist, the panel still has the authority and the duty to exclude from the pool of 60 of the most qualified applicants anyone who lacks the ability to be impartial in performing the duties of a commissioner. Regulation 60800 includes in the definition of "ability to be impartial" a requirement that a prospective commissioner has "no personal, family, or financial relationships, commitments, or aspirations that might have a tendency to influence someone making a redistricting decision." Thus the panel, with its ability to evaluate applicants individually to determine whether they have the ability to be impartial, will be well poised to keep from the commission any applicant who is subject to legislative influence due to a family relationship, or any other kind of relationship.

Proposed Regulation 60809. Campaign Committee

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective federal or state office. The term "campaign committee" is somewhat ambiguous, in that a candidate for federal or state office may be associated with a number of different kinds of committees that differ in purpose and may differ in the degree of control that the candidate has over their operation. The apparent purpose of the conflict of interest provisions of the Act is to disqualify from service on the panel or the commission anyone who is so connected with the partisan political leadership of California that the person is likely to be influenced by their interests. Thus, it is important to ensure that the term "campaign committee" includes those committees that are controlled by candidates for federal or state office, but need not include any other kinds of committees. Accordingly, this regulation defines a campaign committee as a committee that is controlled by a candidate under either federal or California law. Thus, when referring to a candidate for federal office, we propose defining the term "campaign committee" as an authorized committee of the candidate as defined by federal law, and when referring to a candidate for federal office, the term is defined as a controlled committee of the candidate as defined in California law. A controlled committee under California law includes any ballot measure committee controlled by a candidate.

Proposed Regulation 60811. Conflict of Interest

Section 8252, subdivision (a)(2) requires the removal of persons having a conflict of interest from the pool of applicants applying to serve on the commission. The paragraph declares that a conflict of interest includes the activities and relationships that are listed in the provisions of subparagraphs (A) and (B) that follow. Paragraph (2) therefore leaves open the possibility that a person may have a conflict of interest on some other basis than what is listed in subparagraphs (A) and (B).

In the interest of providing greater certainty to prospective applicants for the commission, bureau staff, and the public regarding what constitutes a conflict of interest that precludes service on the commission (and service on the panel, as the same conflict of interest provisions are applied to applicants to serve on the panel by section 8252, subdivision (b)), this regulation provides that a conflict of interest is limited to those activities and relationships that are listed in section 8252, subdivision (a)(2).

Proposed Regulation 60812. Congressional, State, or Local Candidate For Elective Office

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, contributed $2,000 or more to any congressional, state, or local candidate for elective public office in any year. The scope of this provision is inherently ambiguous, as it does not indicate whether it is intended to include contributions to any

congressional, state, and local candidate anywhere in the United States, or it is intended to apply more narrowly to just those candidates with a connection to California.

In attempting to resolve the ambiguity of subdivision (a)(2)(A) through a regulation, we are mindful that the subdivision needs to be interpreted in a way that does not make it overbroad, while still achieving the purposes of the conflict of interest provisions of the Act. Regarding the issue of overbreadth, it is apparent that the subdivision cannot be interpreted to bar anyone from serving on the panel or the commission simply because the person contributed $2,000 or more to a candidate in another state who has no interest in or connection with redistricting in California or even with California politics. As noted earlier in this memorandum, the California Supreme Court has opined that restrictions on holding office must be narrowly tailored to avoid being overbroad in their restrictions, and any restrictions related to activities in jurisdictions outside of California are suspect, even when they involve partisan activities. (*Fort v. Civil Service Commission*, supra, 61 Cal. 2d at 338.)

While the subdivision, therefore, cannot be interpreted to apply to contributions to candidates throughout the United States, it is consistent with the purposes of the Act to apply the subdivision to contributions made to congressional, state, and local candidates elected in California. The making of such substantial contributions to California candidates is indicative of a person having political interests and loyalties beyond those of the average citizen. Prospective panel and commission members having such heightened political interests and loyalties, or having immediate family members with those heightened political interests and loyalties, may be more susceptible than others to be influenced by what will benefit or harm particular politicians and political parties, and therefore may not be able to perform their duties in an impartial manner.

Accordingly, we propose defining a congressional candidate for elective public office to mean a candidate for Congress elected from California; defining a state candidate for elective public office to mean a candidate for elective state office in California; and a local candidate for elective public office to mean a candidate for a regional, county, municipal, district, or judicial office in California.

Proposed Regulation 60813. Consultant

Under section 8252, subdivision (a)(2)(B), a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person is a consultant to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. In its use of the term "consultant" the subdivision is somewhat unclear in its application, as the term "consultant" has no generally accepted meaning. The subdivision is also unclear as to whether it applies to consultants for any member of Congress, or just those members of Congress with a connection to California.

This regulation aims to resolve the ambiguity regarding the meaning of "consultant" by defining the term broadly to include any person who has entered into an agreement to provide consulting services. The person may have entered into the agreement either directly as a party to the agreement, or indirectly through a business entity in which the person holds at least a 10 percent

ownership interest. Thus the person cannot escape a conflict by having entered into the agreement through a business entity in which the person holds a substantial ownership interest. The regulation then defines "consulting services" as expert advice or personal services related to conducting campaign activities or holding congressional or state office, as opposed to providing consulting services that are non-political in nature. This addresses concerns about overbreadth discussed earlier in this memorandum.

The regulation then aims at resolving the ambiguity regarding which consultants to the members of Congress are covered by subdivision (a)(2)(B), by declaring that the subdivision only applies to consultants for members of Congress who are elected from California.

Proposed Regulation 60815. Federal Office

Two conflict of interest provisions of the Act include the term "federal office." As noted in the earlier discussion of proposed regulation 60804, section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been appointed to, been elected to, or been a candidate for federal office. Additionally, as noted in the discussion of proposed regulation 60809, section 8252, subdivision (a)(2)(A) declares that a person has a disqualifying conflict of interest if during that same 10 year period the person or a member of his or her immediate family served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective federal office. The use of the term "federal office" in these two conflict of interest provisions carries the same ambiguity identified in other provisions of the Act making reference to federal activities: whether the term includes all federal offices or just those that are connected to California politics.

To address the same concerns about overbreadth discussed earlier in this memorandum, particularly in the discussion of regulation 60812, we propose narrowly defining the term "federal office" as only a congressional office elected from California.

Proposed Regulation 60816. In-law

In its definition of the term "immediate family" section 8252, subdivision (a)(2)(B) includes "in-laws" as one of the relations that may be part of a person's immediate family. Proposed regulation 60806, in providing greater clarity to the term "bona fide relationship established through blood or legal relation", also uses of the term "in-law." While the term is unambiguous in being a reference to persons who are relatives by marriage, it is nonetheless ambiguous in its scope, as the term could be interpreted narrowly to only include the closest of in-laws, such as parents in-law and siblings in-law, or broadly to include cousins in-law, second cousins in-law, and so forth.

Keeping in mind the need to avoid the dangers associated with interpreting the conflict of interest provisions of the Act too broadly, and keeping in mind the ability of the panel to reject applicants for the commission who lack impartiality due to family connections of any kind, we propose giving the term a very narrow meaning. We propose defining the term "in-law" as only

including the father, mother, or sibling of a person's spouse or registered domestic partner. The regulation treats marriage and registered domestic partnership as equivalent sources of in-law relationships, as Family Code, section 297.5 requires that registered domestic partners be treated the same as spouses under California law.

Proposed Regulation 60819. Paid Congressional, Legislative, or Board of Equalization Staff

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as paid congressional, legislative, or State Board of Equalization staff. This provision lacks clarity regarding whether it includes service for any member of Congress elected anywhere in the country and for any legislator elected anywhere in the country, or only includes service to members of Congress and legislators who are connected with California politics. The provision is also rather unclear as to what it means by "paid staff."

Consistent with other regulations aimed at keeping the conflict of interest provisions of the Act from being overbroad, particularly regulation 60812, this regulation interprets serving as "congressional staff" to only include providing services to a member of Congress elected from California and interprets serving as "legislative staff" to only include providing services to a member of the California Legislature.

Regarding the meaning of "paid staff", this proposed regulation defines the term in a manner that makes it synonymous with "paid employee" of the Congress, California Legislature, or State Board of Equalization. Such an interpretation gives Section 8252, subdivision (a)(2)(A) a meaning that is distinct from subdivision (a)(2)(B) of that section, which identifies a conflict of interest as arising from being a consultant to or under contract with a member of Congress, the Legislature, or the State Board of Equalization. This interpretation is also consistent with the Act's goal of keeping off the panel and the commission anyone who may be particularly susceptible to influence as a consequence of being a current or recent employee of Congress, the Legislature, or the State Board of Equalization or of having an immediate family member with that kind of current or recent employment relationship.

Proposed Regulation 60820. Paid Consultant

As noted in the discussion of regulation 60809, section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as a paid consultant of a political party or of the campaign committee of a candidate for elective federal or state office. The same subdivision also makes it a disqualifying conflict of interest for a person to have served as a paid consultant for a political party or to have an immediate family member who has served as a paid consultant for a political party during the 10-year period. As the term "paid consultant" may be subject to different interpretations, this regulation seeks to eliminate

any controversy as to the meaning of the term by defining it simply as providing consulting services pursuant to a contract and in return for compensation.

Proposed Regulation 60821. Political Party

In making service as a paid consultant to a political party a disqualifying conflict of interest, as explained in the discussion of regulations 60809 and 60820, section 8252(a)(2)(A) leaves open a question as to whether serving as a paid consultant for a political party operating anywhere in the world is sufficient to trigger a conflict or interest, or the political party in question must be one operating in California for the consulting services to trigger a conflict of interest. If the former interpretation is chosen, such that serving as a paid consultant for a political party operating exclusively in another state or country would trigger a conflict of interest, there is danger that the conflict of interest exclusion from service on the panel or commission would be considered overbroad, due to a lack of connection with California politics. Accordingly, we are proposing through this regulation that the term "political party" be defined as a political party operating in California. To be considered operating in California, we propose that the party must be making expenditures to support candidates for elective public office in the state. Any other activities, such as collecting contributions for candidates in other states, does not entail nearly as strong of a connection to California politics.

Proposed Regulation 60822. Political Party Central Committee

Section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, served as an elected or appointed member of a political party central committee. As with other terms contained in the conflict of interest provisions of the Act, the term "political party central committee" suffers from ambiguity as to whether it refers to political party central committees operating anywhere in the country, or just those operating in California. Out of a concern for overbreadth, and consistent with other regulations, including proposed regulation 60821, we are proposing to define "political party central committee" in a manner that limits the scope of its reference to the state and county central committees of political parties operating in California.

Proposed Regulation 60825. Registered Federal, State, or Local Lobbyist

Under section 8252 subdivision (a)(2)(A), a person has a disqualifying conflict of interest if the person or a member of the person's immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been a registered federal, state, or local lobbyist. Although the term "registered federal lobbyist" is quite clear to anyone familiar with the registration process for federal lobbyists, and therefore not subject to much interpretation, the terms "registered state lobbyist" and "registered local lobbyist" are somewhat ambiguous and subject to interpretation, as it is unclear whether the terms refer to state and local lobbyists everywhere in the country, or just those connected with California. To address concerns about overbreadth that would come with assigning these terms a nationwide scope, we propose

defining “registered state lobbyist” and “registered local lobbyist” as lobbyists registered in California.

Proposed Regulation 60827. Staff

In addition to appearing in section 8252, subdivision (a)(2)(A), as part of the term “paid congressional, legislative, or Board of Equalization staff,” the term “staff” is also used in subdivision (a)(2)(B) of that section in declaring that a person has a conflict of interest if the person is serving as staff to the Governor, a member of the Legislature, a member of Congress, or a member of the State Board of Equalization. As noted concerning the term “paid staff” in the discussion of regulation 60819, the term “staff” is subject to some degree of interpretation. Moreover, whatever meaning is given to the term should, for the sake of simplicity and avoidance of confusion, be consistent with the meaning given to the term “paid staff” in regulation 60819, while taking into account that as used in subdivision (a)(2)(B), the term “staff” does not include any reference to being paid. We propose defining “staff”, consistent with regulation 60819, as a person employed by the Governor, a member of the Legislature, a member of the Congress of the United States elected from California, or a member of the State Board of Equalization, while specifying that the employment need not include compensation for the employee.

Proposed Regulation 60828. State Office

Finally, just as the conflict of interest provisions of the Act include two references to the term “federal office”, each of those references is accompanied by a reference to “state office.” As noted in the earlier discussion of proposed regulation 60804, section 8252, subdivision (a)(2)(A) declares that a person has a conflict of interest that prevents the person from serving on the panel or the commission if the person or a member of the person’s immediate family has, within the 10 years immediately prior to applying to serve on the panel or the commission, been appointed to, been elected to, or been a candidate for state office. Additionally, as noted in the discussion of proposed regulation 60809, section 8252, subdivision (a)(2)(A) declares that a person has a disqualifying conflict of interest if during that same 10 year period the person or a member of his or her immediate family served as an officer, employee, or paid consultant of the campaign committee of a candidate for elective state office. The use of the term “state office” in these two conflict of interest provisions carries the same ambiguity identified in other provisions of the Act as to whether the term includes all state offices anywhere in the country or just those that are connected to California politics.

To address the same concerns about overbreadth discussed repeatedly in this memorandum, particularly in the discussion of regulation 60812, we propose defining the term “state office” so that it only means a California state office, and includes every office, agency, department, division, bureau, board, and commission within the government of the State of California.

Conclusion

Through the regulations being proposed to interpret the conflict of interest provisions of the Act, we have tried to achieve a delicate balance between giving effect to the intent of the voters in approving the Act and interpreting the terms that the Act uses in manner that is both practical and bolsters its constitutionality.