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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

December 14, 2011

VIA MESSENGEROffice of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Dawn McFarland

Re: *Corporate Political Accountability Act*

Dear Ms. McFarland:

Pursuant to Elections Code section 9001(a), I request that the Attorney General prepare a title and summary of a measure entitled the "Corporate Political Accountability Act." The text of the measure, a check for \$200.00, and the certifications required by Elections Code sections 9001(b) and 9608 are enclosed.

Please direct all correspondence and inquiries regarding this measure to:

Thomas A. Willis
James C. Harrison
Remcho, Johansen & Purcell, LLP
201 Dolores Avenue
San Leandro, CA 94577
Phone: (510) 346-6200
Fax: (510) 346-6201

Sincerely,



Thomas A. Willis

Enclosures
(00159795)

Section 1. Title. This Act shall be known as the "Corporate Political Accountability Act."

Section 2. Findings and Declarations

The People of California find and declare that:

(a) Corporations make significant political contributions and expenditures to support and oppose California candidates, political parties and political causes. Decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than shareholders.

(b) Corporations acting through their boards and executives are obligated to conduct business for the best interests of their owners, the shareholders. Corporate boards and executives that use corporation funds to support and oppose political candidates, parties and causes in California opposed by their shareholders are not acting for the best interests of the shareholders.

(c) Historically, shareholders have not had a way to know, or to influence, the political activities of corporations they own. Shareholders and the public have a right to know how corporations are spending their funds to make political contributions or expenditures benefiting California candidates, political parties, and political causes.

(d) Corporations should be accountable to their shareholders prior to making political contributions or expenditures. Requiring the express approval of a corporation's shareholders prior to making political contributions or expenditures will establish necessary accountability.

(e) California political candidates, parties and causes should not accept corporate contributions and expenditures that do not have the support and approval of the shareholders, who are the owners of the corporation.

Section 3. Article 3.5 (commencing with § 85350) is added to Title 9 of the Government Code to read:

§ 85350 Prohibition on Corporate Political Contributions and Expenditures.

- (a) As used in this section, the following terms have the following meanings:
- (1) "Approval of the shareholders" shall mean a vote meeting the requirements of Section 152 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time).
 - (2) "Ballot measure" means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

- (3) "Corporation" means (i) any corporation with shareholders, (ii) any entity in which a corporation with shareholders has an equity interest or, (iii) in the case of a subsidiary or affiliate of such a corporation or entity, the ultimate parent entity of such subsidiary or affiliate.
 - (4) "Indirectly" means the corporation knows or has reason to know its funds will be used to make contributions or expenditures for political activities.
 - (5) "Political activities" means contributions or expenditures made to, or in support of or opposition to, any candidate, political party, committee, voter registration campaign, ballot measure campaign, issue advocacy campaign, or any other political or legislative cause.
 - (6) "Public corporation" means any corporation that files reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended.
 - (7) "Purpose of the measure" means the official title and summary prepared by the Attorney General, County Counsel or City Attorney.
 - (8) "Ultimate parent entity" shall have the meaning set forth in 16 C.F.R. § 801.1(a)(3), or any successor rule or regulation that may exist from time to time.
 - (9) "Written consent of shareholders" means an action taken by the shareholders of a corporation without a meeting that meets the requirements of Section 603 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time).
- (b) Notwithstanding any other provision of law, and except as provided in subdivision (d), it is unlawful for a corporation to, directly or indirectly, make any political contribution or expenditure for political activities or for an officer or director of a corporation to consent to any political contribution or expenditure by a corporation prohibited by this section.
 - (c) It shall be unlawful for any candidate, political party, committee, or other person knowingly to accept or receive any political contribution or expenditure not in compliance with subsection (d).
 - (d) A corporation may only make political contributions or expenditures for political activities if it complies with the requirements of this section. No provision of this section shall relieve any corporation of its obligations under any rule or regulation promulgated by the United States Securities and Exchange Commission.
- (1) A corporation meets the requirements of this section if it does all of the following:
 - (A) Within 30 days of the close of the corporation's fiscal year, the corporation shall prepare a report entitled "Political Contributions and Expenditures in California" detailing the contributions or expenditures

made to support political activities during the just completed fiscal year and provide a written copy of such report to its shareholders. A public corporation will be deemed to have complied with this section by including such report in its annual report to shareholders under a caption entitled "Political Contributions and Expenditures in California." In addition, any corporation which maintains a website shall disclose on that website the report to its shareholders. A report made pursuant to this section shall include the following:

- (i) The date of the contributions or expenditures;
 - (ii) The amount of the contributions or expenditures;
 - (iii) The name of the candidate, political party, committee, person, issue or legislative cause to which the contributions or expenditures were made;
 - (iv) If the contributions or expenditures were made for or against a candidate, the office sought by the candidate and the political party affiliation of the candidate;
 - (v) If the contributions or expenditures were made for or against a ballot measure, the purpose of the measure and whether the contributions or expenditures were made in support or opposition to the ballot measure.
- (B) Any corporation that proposes to make political contributions or expenditures for political activities shall, at its annual meeting of shareholders, at a special meeting of shareholders, or through the written consent of shareholders, submit for the approval of the shareholders the total amount the corporation proposes to spend on political contributions or expenditures for political activities during the subsequent fiscal year.
- (i) In the event the corporation fails to obtain the approval of shareholders for contributions or expenditures for political activities with respect to any fiscal year, the corporation shall be prohibited from making such contributions or expenditures. In the event the corporation obtains the approval of shareholders for contributions or expenditures for political activities with respect to any fiscal year, the corporation may expend only the percentage of the amount proposed to be spent on contributions or expenditures equal to the percentage of the shares of the corporation affirmatively voted in favor of the proposed contributions or expenditures. This percentage shall be calculated by dividing the number of shares affirmatively voted in favor of the proposed contributions or expenditures by the total number of outstanding

shares of the corporation. Any approved amount may only be expended on contributions or expenditures in such fiscal year, and no carryover to a later fiscal year is permitted.

- (ii) Any request for shareholder approval as provided in (d)(1)(B), must incorporate within the request a copy of the report on the corporation's contributions or expenditures for political activities pursuant to the requirements in (d)(1)(A).
- (iii) No provision of this section shall relieve any corporation of its obligations under Section 604 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time) or any statute, rule or regulation from any other jurisdiction that regulates the solicitation of proxies, and any corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, of its obligations to comply with the proxy rules promulgated under the Securities Exchange Act of 1934, as amended.

(C) If during the current fiscal year, the corporation desires to make political contributions or expenditures for political activities above the amount allowed pursuant to subdivision (B), the corporation shall, at a special meeting of shareholders or through a written consent of shareholders, submit for the approval of the shareholders the increased amount the corporation proposes to spend on political contributions or expenditures for political activities.

- (i) When submitting this request for the approval of the shareholders, the corporation shall inform the shareholders of each specific proposed political contribution or expenditure for political activities in detail consistent with the requirements of (d)(1)(A)(i)-(v).
- (ii) In the event the corporation fails to obtain the approval of shareholders for such contributions or expenditures for political activities, the corporation shall be prohibited from making such additional contributions or expenditures. In the event the corporation obtains the approval of shareholders for such additional contributions or expenditures, the corporation may expend only the percentage of the proposed amount to be spent on contributions or expenditures equal to the percentage of the shares of the corporation affirmatively voted in favor of the proposed additional contributions or expenditures. This percentage shall be calculated by dividing the number of shares affirmatively voted in favor of the proposed additional contributions or expenditures by the total number of outstanding shares of the corporation. Any approved

amount may only be expended on contributions or expenditures in such fiscal year, and no carryover to a later fiscal year is permitted.

- (iii) Any request for shareholder approval as provided in (d)(1)(C), must incorporate within the request a copy of the report on the corporation's contributions or expenditures for political activities pursuant to the requirements in (d)(1)(A).
 - (iv) No provision of this section shall relieve any corporation of its obligations under Section 604 of the California Corporations Code (or any successor statute, rule or regulation that may exist from time to time) or any statute, rule or regulation from any other jurisdiction that regulates the solicitation of proxies, and any corporation with an outstanding class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended, of its obligations to comply with the proxy rules promulgated under the Securities Exchange Act of 1934, as amended.
- (D) Any proposal by a corporation regarding political contributions or expenditures for political activities to be voted upon at an annual or special meeting of shareholders pursuant to subdivisions (d)(1)(B) and (d)(1)(C) shall be set forth in such corporation's form of proxy with the caption "Political Contributions and Expenditures in California."
- (e)
 - (1) Any corporation that makes a political contribution or expenditure for political activities shall maintain records that include copies of each report compiled under subdivision (d)(1)(A) and of each vote of shareholders obtained under subdivisions (d)(1)(B) and (d)(1)(C).
 - (2) Copies of each report compiled under subdivision (d)(1)(A) and a certificate of the chair of the corporation's audit committee (or other committee of the board of directors serving a similar function) or, in the event no such committee exists, the chair of the corporation's board of directors certifying the results of each vote of shareholders obtained under subdivisions (d)(1)(B) and (d)(1)(C) shall be sent to the California Fair Political Practices Commission upon request.
 - (f) The corporation has the burden of proof by clear and convincing evidence to establish that the requirements of this section are met.
 - (g) Any person violating this section is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars (\$10,000) or three times the amount the corporation or person unlawfully contributed, expended, gave or received shall be imposed upon conviction for each violation.

SECTION 4 - Severability

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act, or the application thereof to any person or circumstances, is held invalid such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.

SECTION 5 – Conflicting Measures

In the event that this measure and another measure or measures relating to political contributions and expenditures, in whole or part, by corporations shall appear on the same statewide ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.