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TO: Supporters of Proposition 47 -- California's Statewide School Bond

FROM: Steven S. Lucas
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RE: Permissibility of 501(c)(3)/Foundation Contributions to CCFC
Issues Committee

This law firm serves as Treasurer and Legal Counsel of, and prepares campaign reports for, the Community College Facility Coalition Issues Committee ("CCFC Issues Committee").

Organizations and foundations which are exempt from tax under Internal Revenue Code section 501(c)(3) may not spend more than an "insubstantial" amount of their funds on "direct lobbying", which includes contributions to a statewide ballot measure committee such as CCFC Issues Committee. (See 2 IRS Reg. § 56.4911-2(b)(1)(iii)(d).)

A 501(c)(3) organization which contributes to CCFC Issues Committee may rely on one of two rules to determine whether or not its expenditures for ballot measure activity (or other direct lobbying) are "insubstantial":

1. A case-by-case test, based upon all of the facts and circumstances surrounding the totality of the organization's spending and its proportionate expenditures for ballot measure activity. The consensus among tax practitioners is that expenditures of 5% or less of an organization's total spending for the tax year for lobbying will be "insubstantial", whereas 20% will be found to be "substantial." We generally advise that, absent making the 501(h) election described below, an organization concerned about a possible IRS finding that expenditures for direct lobbying are "substantial" should ensure that such spending remains below 5% of total tax year expenditures.

2. Alternatively, a 501(c)(3) organization may make an election under Internal Revenue Code section 501(h). By making this election, the organization may take advantage of a "safe harbor" permitting it to spend up to 20% of its first \$500,000 of total annual expenditures on direct lobbying, including ballot measure activity. The "safe harbor" contains a sliding scale which permits the 501(c)(3) organization, in addition, to spend up to 15% of its second \$500,000 of total annual expenditures, plus 10% of the third \$500,000, plus 5% of all expenditures over \$1.5 million (subject to a total direct lobbying expenditure cap of \$1,000,000 per tax year).

Please note that in order for a 501(c)(3) organization not to turn itself into a political recipient committee (subject to special reporting requirements), it should not solicit any contributions to the organization for political purposes, but rather should simply make use of funds which it has raised for other or broader purposes to make a contribution to the CCFC Issues Committee. Moreover, in the event that this is the 501(c)(3) organization's first political contribution during the current calendar year and the four preceding calendar years, there is a presumption that the organization is not operating as a political recipient committee (subject to special reporting requirements). (See FPPC Regulation 18215(b)(1).)

Please note however that a 501(c)(3) organization may qualify as a California "Major Donor" if its state and local political contributions total \$10,000 or more during the calendar year. Major Donors must complete and file a Major Donor Report (FPPC Form 461) on a semi-annual basis, as well as 24 hour Late Contribution Reports (FPPC Form 497) for contributions of \$1,000 or more made during the last 16 days before an election. Please consult the Fair Political Practices Commission at www.fppc.ca.gov.