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June 4, 2021

Ms. Julie Waddell
California Secretary of State
1500 11th Street
Sacramento, CA 95814
Via email: jwaddell@sos.ca.gov

RE: Cal-Access Replacement System Implementation

Dear Ms. Waddell:

I write to you on behalf of my client, the California Republican Party (CRP), to raise several concerns regarding issues with the Cal-Access Replacement System (CARS). I understand the Secretary of State's office will decide whether to proceed with the June 30th launch date by close of business June 4, 2021.

Below, I highlight CRP's primary concerns and ask that your office take these concerns into account when making the decision regarding the implementation timeline for the new filing system. CRP wants the new filing system to be a victory for transparency and public disclosure but believes the Secretary of State's office has some additional issues to resolve in order to ensure its success, some of which are unique to political parties.

1. Communications to Filers: CRP is concerned that SOS does not currently have adequate contact information for all filers and officers to ensure they will be able to register appropriately to use the CARS system in time to file the semi-annual report. Not all filers are required to disclose email addresses on their reports such that SOS can send an email communication regarding the new system to all filers. For example: Major donors are not required to register, and the Form 461 does not provide a place to include an email address. If SOS sends letters to the last known physical address of each filer, there are likely a number of filers whose addresses have changed. In addition, CRP is concerned the mailed letters will not reach filers in time to take action for the semi-annual filing deadline. Importantly, major donors may be subject to 24-hour reporting requirements at the time the new system goes live due to various special elections. If a major donor does not timely receive a communication from SOS to register with CARS, the major donor may not be able to file a required 24-hour report. While this issue may not impact the parties directly, it will impact a number of donors to political party committees.

2. Signer Registration Issue: CRP is concerned the current system for signer registration places an extraordinary burden on the filing community and that the process for setting up filers is overly difficult. CRP believes there are better, more efficient mechanisms to register signers and would suggest SOS consider a system similar to the one currently employed by the FEC. This will be a significant impediment to receiving timely public disclosure from major donor committees and county central committees, many of which are managed by volunteer treasurers lacking technical familiarity and reliable internet connectivity.
3. Leniency Policy for Late Filings: SOS has not, to date, produced any written policy confirming that leniency will be afforded to the filers who file reports late as a result of issues with using the new system. There will be an inevitable percentage of filers who are unable to timely file as a result of technological issues. SOS must take this into account and create an official policy to grant leniency to late filers and not penalize filers who try to timely file but are unable to do so because of complications with the new system.

In addition, CRP also requests that SOS provide the public with details regarding the technical support that SOS will provide to filers attempting to use the new system, including information on the support and resources that will be available outside of business hours

4. Removal of the Public Note Field: CRP understands that the public note and memo fields may not be available as part of the new system. The regulated community has repeatedly emphasized the importance of these fields, but SOS has not indicated that this feature will be included in the new system.

Removal of the public note field is extremely problematic for all types of filers, and especially for political party committees or other organizations making member communication expenditures. On Form 497 reports, the committee making the membership communication has an obligation to disclose the expense, but the form does not contain any field for the committee to denote the expense is for a membership communication. The political party committees use the memo field to inform the public that the expenditure is for a membership communication, reportable only by the spending committee and which does not need to be disclosed by the candidate or committee referenced in the communication.

For example: A political party committee pays for a mailer and sends it only to the members of the party. The intent of the mailer is to urge the membership to vote YES on a certain statewide candidate. The expense occurs within 90 days of an election. The total cost is \$200,000. The political party committee is required to submit a Form 497 disclosing a \$200,000 expenditure supporting the candidate and is required to note that the expense was a member communication. The public note makes the public aware the \$200,000

disbursement is a member communication and will only be reported by the party. If the \$200,000 expenditure were an in-kind contribution, both the party and the supported candidate would be required to file a Form 497 Late Contribution Report. The public note helps make the public record clear the expense is a member communication and alleviate the notion the supported candidate has missed a Late Contribution Report.

Moreover, on Form 497, political party committees and other types of filers use the public note field to disclose when a contribution is an estimate, and also to denote when a contribution is an in-kind contribution since the form does not provide a space for this information.

In addition to issues on Forms 497 and 496, removal of the public note and memo features presents several additional problems for purposes of Form 460. Political party committees, for example, are required to split certain expenses between the parties' federal and state accounts and the federal account is required to pay back its fair share. Receipt of the fair share reimbursement from the federal account is disclosed on schedules I and C of Form 460 and the public note field is necessary to explain the purpose of these entries and the reimbursement.

The memo note field is also critical to disclose intermediary transactions. For events such as conventions, individuals sometimes pay their dues (which are treated as contributions to the party) and are reimbursed by their employer. In this circumstance, the employer (or their PAC) is the contributor and the individual who initially paid is the intermediary. The parties routinely disclose these intermediary transactions using the memo and public note fields. The parties also understand that other types of filers, such as unions, routinely use the memo field to disclose when an organization serves as an intermediary for contributions from its members to a political action committee.

The ability for filers to include memos and public notes on reports is critical to transparent public disclosure. While the forms include most information that a filer may need to disclose, the forms are not exhaustive, and filers need a means to include additional explanation.

5. Partial Document Submissions: CRP understands the new system at SOS will control the cover page information for campaign reports. CRP wants assurance that a third-party SOS generated cover-page will accurately reflect the report filed. The filer will be signing off an image of the report cover page with the expectation that the public filing will accurately mirror the image they have approved. Ultimately, CRP prefers the report generated in our third-party software to be the cover page actually filed with the Secretary of State. CRP is very concerned that the stand-alone cover sheet generated by SOS will not reflect the data accurately.

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In addition, because political party committees are subject to multiple, sometimes overlapping deadlines in connection with special elections, CRP is concerned whether the system will be able to recognize when the last report was filed, the period that the report was filed for, and the next filing period where the party may have an obligation.

As noted in the linked filing schedule, so far in 2021 there have been multiple overlapping special elections, including in SD 30, AD 18, AD 54, and AD 79.

https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Filing%20Schedules/2021/2021_%20State_PP_Jan_Dec_AD_79_AD_54_AD_18_SD_30.pdf

On more than one occasion, the filing deadlines have occurred within one week of each other. The reports are triggered based on activity within the period. If a committee receives contributions of \$1,000 or more, a filing is required. However, if the \$1,000 threshold is not met in that period, the committee's next filing obligation rolls into the following reporting period.

CRP is unclear whether the new filing system takes these complex filing schedules into account in assessing the next report that a committee is required to file.

CRP appreciates your consideration of these concerns as you evaluate the launch date for CARS.

Sincerely,



Ashlee Titus

General Counsel, California Republican Party