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October 17, 2017

VIA ELECTRONIC MAIL

The Honorable Jodi Remke, Esq., Chair
The Honorable Commissioners Maria Audero, Brian Hatch, and Allison Hayward
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Proposed Amendments to FPPC Regulation Section 18535

Dear Chair Remke and Commissioners,

I am writing on behalf of West Hollywood City Councilman John Heilman (“Councilman Heilman”) who is submitting this comment letter in support of Mr. Richard Rios, Esq.’s request that the Fair Political Practices Commission (the “FPPC” or “Commission”) amend its regulations to expressly exempt ballot measure committees and legal defense committees from the contribution limits of Section 85305 of the Political Reform Act (the “Act”). This comment letter will focus on the necessity of amending FPPC Regulation 18535 to expressly exempt legal defense committees from Section 85305 of the Act.

Councilman Heilman first thanks the Commission for its sound and well-reasoned decision in the *In re Rios Opinion* (“*Rios Opinion*”) which held that the contribution limit placed on state candidates under Section 85305 of the Act did not apply to target officer controlled anti-recall committees provided for under Section 85315 of the Act.¹ The United States Ninth Circuit Court of Appeals has previously expressly held that the First Amendment of the United States Constitution prohibits the imposition of contribution limits on committees formed to support or oppose recalls.² Thus, the *Rios Opinion* wisely adhered to judicial precedent and avoided an interpretation of the Act that almost certainly would have violated the First Amendment of the United States Constitution³ and Article I, Section 2 of the California Constitution.⁴

¹ *In re Rios Opinion* (O-17-001).

² *Farris v. Seabrook*, 677 F. 3d 858, 861 (9th Cir. 2012) (affirming the permanent preliminary injunction against campaign contribution limits placed on recall committees violating the First Amendment). *Accord* CAL. CONST. art. III, § 3.5(a) (“An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power to declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional.”).

³ U.S. CONST. amend. I; *Buckley v. Valeo*, 424 U.S. 1, 14-16 (1976)(*per curiam*).

⁴ CAL. CONST. art. I, § 2(a) (“Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”); *Woodland Hills Residents Association v. City Council of Los Angeles*, 26 Cal. 3d 938, 946 (Cal. 1980).

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The Commission is now considering implementing regulatory changes to FPPC Regulation 18535 that will conform to the *Rios Opinion* although these proposed changes appear limited to just target officer controlled anti-recall committees. Councilman Heilman believes that amendments to FPPC Regulation Section 18535 should expressly exempt state candidate controlled legal defense committees from the contribution limits of Section 85305 because such an amendment (1) conforms with the textual analysis of the *Rios Opinion*, (2) adheres to existing judicial authority that the FPPC lacks authority under the Act to impose contribution limits on legal defense committees, and (3) ensures that no contribution limit in violation of the Frist Amendment or the California Constitution is imposed upon state candidates.⁵

A. The same principles of statutory interpretation that guided the outcome in the *Rios Opinion* also apply equally to legal defense committees.

The *Rios Opinion* stands for the proposition that where the Act authorizes a state candidate to create a separate committee that is not for the purposes of seeking elective office and expressly exempts that committee from contribution limits, the contribution limit of Section 85305 will not be read into that provision in order to limit contributions to that committee from other state candidates.⁶ The *Rios Opinion* arrived at that conclusion by analyzing the plain and unambiguous text of Section 85315.⁷ The Commission follows the same principles of statutory interpretation as the Courts.⁸ “[The courts] begin by examining the statutory language, giving the words their usual, ordinary meanings and giving each word and phrase significance.”⁹ “If the

⁵ Councilman Heilman’s conclusion that applying Section 85305 to target officer controlled anti-recall committees is unconstitutional remains unchanged. Any suggestion that there is no restriction on the rights of state candidates to contribute to Senator Newman’s anti-recall committee because a state candidate could simply find a new committee that was opposed to Senator Newman’s recall as long as it was not candidate controlled is misplaced. As the California Supreme Court has cautioned, “restraints on freedom of speech are not justified simply because alternative forms of expression are available.” *Huntley v. Public Utilities Commission*, 69 Cal. 2d 67, 77 (1968). It is also doubtful that such an alternative really exists as there is little, if any, reason for outside groups to establish an independent expenditure committee or for outside committees who support Senator Newman to spend independently when they can contribute unlimited amounts directly to Senator Newman’s anti-recall committee. It bears repeating that regardless of perceived intent of the voters to restrict elected state leaders, “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.” *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (*per curiam*).

⁶ By limiting what state candidates may give to other committees, Section 85305 operates as a separate contribution limit. *Service Employees International Union v. Fair Political Practices Commission*, 955 F.2d 1312, 1322 (9th Cir. 1992) (explaining that an “inter-candidate transfer ban . . . operates as a contribution limitation because it limits the amount one candidate may contribute to another.”).

⁷ *Rios Opinion* at Page 2 (concluding that “the plain meaning of Section 85305 and 85315 allows for state candidates to contribute unlimited funds to a recall committee controlled by another state candidate.”).

⁸ *Rios Opinion* at Page 1.

⁹ *Britton v. Dallas Airmotive, Inc.*, 153 Cal. App. 4th 127, 131 (Cal. Ct. App. 2007).

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terms of the statute are unambiguous, [the courts] presume the lawmakers meant what they said, and the plain meaning of the language governs.”¹⁰

Currently, the Act provides for four types of additional committees that state candidates may control without running afoul of the one-bank account rule.¹¹ First, state candidates who are successful in their bids for state elective office may control a separate officeholder committee.¹² Second, state candidates may also control separate ballot measure committees.¹³ Third, a state candidate who, as an elected state officer, becomes the subject of a recall campaign may establish a separate anti-recall committee.¹⁴ Finally, a state candidate, under certain circumstances, may also establish a separate legal defense committee.¹⁵

Of these separate committees, only officeholder committees are subject to applicable contribution limits.¹⁶ As noted in the *Rios Opinion*, target officer controlled anti-recall committees are not subject to contribution limits.¹⁷ Additionally, state candidate controlled ballot measure committees are not subject to contribution limits.¹⁸ Finally, like anti-recall committees and ballot measure committees, state candidate controlled legal defense committees are also exempt from applicable contribution limits.¹⁹ The only true textual difference between the provisions is that Section 85304 exempts legal defense committees from the contribution limits of “this article” while Section 85315 exempts anti-recall committees from the contribution limits of “this chapter.”

In the *Rios Opinion*, the Commission noted that Section 85305 and Section 85315 are both located in Chapter 5 of the Act which is entitled “Limitations on Contributions”.²⁰ Accordingly, by the Act’s plain language, the contribution limit of Section 85305 was one of the “campaign contribution limits set forth in this chapter” that was inapplicable to anti-recall committees.²¹ Similarly, both Section 85305 and Section 85304 are within Article III of Chapter

¹⁰ *Estate of Griswold*, 25 Cal. 4th 904, 911 (Cal. 2001).

¹¹ *Broadhurst* Advice Letter, No. I-11-120 (“Under the Act’s “one bank account rule,” a candidate for elective office may have only one campaign bank account and one controlled committee for each specific election.”); *Ross* Advice Letter, No. A-03-040 (concluding that establishing a local ordinance to provide for separate legal defense committees for local candidates would violate the Act’s one-bank account rule); *Kawagoe* Advice Letter, No. A-02-109 (concluding that “the one-bank-account rule only allows a candidate for elective office to have one campaign bank account and one controlled committee for each specific election, not an additional legal defense fund.”).

¹² CAL. GOV’T. CODE § 85316(b).

¹³ CAL. GOV’T. CODE § 85303(c); CAL. CODE REGS. tit. 2, § 18521.5 (2017).

¹⁴ CAL. GOV’T. CODE § 85315(a).

¹⁵ CAL. GOV’T. CODE § 85304(a).

¹⁶ CAL. GOV’T. CODE § 85316(b)(1)(3).

¹⁷ CAL. GOV’T. CODE § 85315 (a).

¹⁸ *Citizens to Save California v. Fair Political Practices Commission*, 145 Cal. App. 4th 736, 754 (Cal. Ct. App. 2006). See also CAL. GOV’T. CODE § 85303(c).

¹⁹ CAL. GOV’T. CODE § 85304(b).

²⁰ *Rios Opinion* at Page 2.

²¹ *Id.*

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5 which is similarly entitled “Contribution Limitations”. Section 85305 is a contribution limit on state candidate controlled committees that is set forth within the Article. Accordingly, by the plain language of the statute, the contribution limit of Section 85305 does not apply to legal defense committees. The Commission should amend the regulations of Section 18535 to expressly exempt legal defense committees from limitations.

B. When the Act authorizes the creation of a separate state candidate controlled committee where funds raised into that committee are treated differently than funds raised into a state candidate committee formed for election to a specific office, the Commission lacks authority to impose contribution limits by regulation onto that committee.

In *Citizens to Save California v. Fair Political Practices Commission*, the California Court of Appeals invalidated FPPC Regulations imposing contribution limitations upon state candidate controlled ballot measure committees as exceeding the authority of the Commission under the Act.²² The Act, in line with longstanding United States Supreme Court precedent, exempted ballot measure committees from applicable contribution limits.²³ However, the FPPC had implemented contribution limits on these committees if they were controlled by state candidates.²⁴ The FPPC defended their imposition of contribution limits on ballot measure committees controlled by candidates on the grounds that contributions to these ballot measure committees were in reality contributions to candidates and could be limited accordingly.²⁵

The Court disagreed with the FPPC, finding that the contributions could not be considered contributions to candidates for the purpose of being elected to a specific office because the funds raised into ballot measure committees were actually treated far differently under the Act than they were when they were contributed to a candidate controlled committee formed for election to a specific office.²⁶ Accordingly, the Court found that there was no authority under the Act to impose a separate contribution limit on these committees.²⁷ The same logic that was applied in *Citizens to Save California* equally applies to legal defense committees.

Like target officer controlled anti-recall committees, contributions to and expenditures from legal defense committees are treated differently from contributions to and expenditures from state candidate controlled committees created for election to specific office. Like target officer controlled anti-recall committees, the creation of a legal defense committee by a state

²² *Citizens to Save California v. Fair Political Practices Commission*, 145 Cal. App. 4th 736, 739 (Cal. Ct. App. 2006).

²³ *Id.* at 741.

²⁴ *Id.* at 742.

²⁵ *Id.* at 751 (explaining that the FPPC had attempted to create a legal fiction in order to impose contribution limits that ordinarily would be prohibited under the First Amendment).

²⁶ *Id.* (reasoning that “If contributions to candidate-controlled ballot measure committees are limited in accordance with the amount permitted for the candidate's office because the contributions are deemed made to a candidate for elective office, then the other rules pertaining to candidates must also apply.”).

²⁷ *Id.*

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candidate does not require the filing of a new candidate intention statement.²⁸ Legal defense committees may only be created in defense of an actual criminal, civil, or administrative proceeding brought against the candidate for “directly out of the conduct of an election campaign, the electoral process, or the performance of the officer’s governmental activities and duties.”²⁹ Legal defense committees cannot be created for recount or close count elections, random audits by the Franchise Tax Board, or created in instances where the conduct of a state candidate is only incidental to their official duties and not directly related to official or election conduct.³⁰

Relatedly, campaign funds raised into legal defense committees “may be used only to defray those attorney fees and other related legal costs.”³¹ The Act specifically defines “attorney’s fees and other legal costs” as “Attorney’s fees and other legal costs related to the defense of the candidate or officer” and “Administrative costs directly related to compliance with the requirements of this title.”³² The Act also specifically excludes “expenses for fundraising, media or political consulting fees, mass mailing or other advertising, or, except as expressly authorized by subdivision (c) of Section 89513, a payment or reimbursement for a fine, penalty, judgment or settlement, or a payment to return or disgorge contributions made to any other committee controlled by the candidate or officer.”³³ The FPPC’s regulations further limit administrative costs to recordkeeping and reporting requirements of legal defense committees that the Act requires.³⁴ These strict restrictions are in sharp contrast to campaign funds raised into state candidate controlled committees created for a specific office which generally must be spent on expenses reasonably related to seeking or holding that particular office.³⁵

Legal defense committees must be terminated in a far more restricted manner than regular committees controlled for elective office. Within ninety (90) days of the last legal

²⁸ Compare CAL. CODE REGS. tit. 2, § 18531.5(c)(1)(2017) (“A target officer opposing a recall is not required to file a new statement of intention to be a candidate for elective office pursuant to Section 85200.”), and CAL. CODE REGS. tit. 2, § 18530.4(e)(2017) (“A contribution to and an expenditure from a legal defense account is not subject to the provisions of Sections 85200, 85201, or Article 4 (commencing with Section 85400) of Chapter 5 of Title 9 of the Government Code.”).

²⁹ CAL. GOV’T. CODE § 85304(a).

³⁰ CAL. CODE REGS. tit. 2, § 18530.4(g)(2)(2017); *Forsyth* Advice Letter, No. A-13-036 (noting that a legal defense committee could not be established for a San Francisco Sheriff who was facing criminal charges for domestic violence as those charges were unrelated to his conduct in office).

³¹ CAL. GOV’T. CODE § 85304(a).

³² CAL. GOV’T. CODE § 85304(d)(1).

³³ CAL. GOV’T. CODE § 85304(d)(2).

³⁴ CAL. CODE REGS. tit. 2, § 18530.4(g)(1)(A)(ii)(2017) (providing that administrative costs only refer to direct compliance with reporting and recordkeeping requirements of the Act); *Lopez* Advice Letter, No. A-16-191 (concluding that a state candidate could establish an Act Blue or Democracy Engine account to raise money into a legal defense committee but could not use the legal defense committee’s funds to directly pay the merchant card fees from those transactions).

³⁵ See CAL. GOV’T. CODE § 89510(b) (“All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.”).

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dispute being resolved, all legal defense committee funds must be expended and the legal defense committee terminated.³⁶ Any unused funds in an amount above \$5,000.00 are required to be returned to contributors.³⁷ If the amount is below \$5,000.00, unused funds in a legal defense committee are made automatically surplus and cannot be transferred to other committees.³⁸ These termination rules greatly contrast with the expansive and more lenient termination rules of candidate controlled committees for elective office.³⁹

Given that the funds raised into state candidate controlled legal defense committees are treated far differently from funds raised into candidate controlled committees for specific elective office, the Act provides no authority to impose contribution limits onto legal defense committees simply because they happen to be controlled by a candidate. Because the funds raised into a legal defense committee are so carefully regulated and restricted in how they must be spent, they cannot be considered contributions to candidate's committee for specific office.⁴⁰ Accordingly, following *Citizens to Save California*, the Commission should amend Regulation 18535 to make clear that the contribution limits of Section 85305 do not apply legal defense committees.

C. The Commission should amend Regulation 18535 to exempt legal defense committees from the contribution limits of Section 85305 because applying Section 85305 to legal defense committees would violate the First Amendment of the United States Constitution and Article I, Section 2 of the California Constitution.

Under the First Amendment, the government may not create different campaign contribution limits for different speakers and different messages.⁴¹ In *Davis v. FEC*,⁴² decided eleven days after the *Johnson* Advice Letter was issued, the United States Supreme Court held that the Millionaire's Amendment of the Bipartisan Campaign Reform Act (the "BCRA") was unconstitutional under the First Amendment.⁴³ There, the Court considered a scheme where due to higher personal spending by a Congressional candidate, his opponents were allowed a higher contribution limit while maintaining the same contribution limit for contributors to his own campaign.⁴⁴ The Supreme Court held that creating different contribution limits on this basis violated the First Amendment.⁴⁵

³⁶ CAL. CODE REGS. tit. 2, § 18530.4(i)(2017).

³⁷ CAL. CODE REGS. tit. 2, § 18530.4(h)(1)(2017).

³⁸ CAL. CODE REGS. tit. 2, § 18530.4(h)(2)(2017).

³⁹ See CAL. CODE REGS. tit. 2, § 18404.1(a)(2017).

⁴⁰ *Citizens to Save California*, 145 Cal. App. 4th at 753.

⁴¹ *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014) (plurality opinion); *Arizona Free Enterprise Club's Freedom PAC v. Bennett*, 564 U.S. 721 (2011); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Davis v. FEC*, 554 U.S. 724 (2008).

⁴² 554 U.S. 724 (2008).

⁴³ *Id.* at 744-745.

⁴⁴ *Id.* at 728-730.

⁴⁵ *Id.* at 742.

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In *Citizens United v. Federal Elections Commission*, the Supreme Court invalidated independent expenditure limits placed upon corporations in the narrow time period preceding an election.⁴⁶ As the Court explained, the First Amendment prohibits “restrictions distinguishing among different speakers, allowing speech by some but not others.”⁴⁷ More importantly though the Supreme Court rejected the government’s stated rationale for the law of protecting dissenting shareholders of corporations because in creating different limits for different speakers, the statute was both under-inclusive and over-inclusive.⁴⁸ First, the Court reasoned that if the goal was really to protect dissenting shareholders, the BCRA would not have banned speech in only certain kinds of media some 30-60 days before an election as “a dissenting shareholder’s interests would be implicated by speech any media at any time.”⁴⁹ Second, the statute covered all corporations including those with single shareholders and those that were non-profit.⁵⁰

Finally, in *McCutcheon v. Federal Elections Committee*,⁵¹ the United States Supreme Court held that creating different contribution limits for different contributors to the same committees violated the First Amendment.⁵² In *McCutcheon*, the Supreme Court held that aggregate campaign contribution limits on donors under the BCRA violated the First Amendment.⁵³ There, federal campaign finance laws limited the total aggregate amount that a donor could contribute to federal candidates in a single year was \$48,600.⁵⁴ Thus, even though contribution limits for individual campaigns at the time were \$2,600 for both the primary and general election cycles, once a contributor had reached the \$48,600 total limit, that contributor could not make any further contributions to additional candidates.⁵⁵

As a result, the Court held that the aggregate limits represented a significant First Amendment restriction on political campaign contributions as “to require one person to contribute at lower levels than others” imposes a burden on participation in the electoral process.⁵⁶ In analyzing that contribution limitation, which created different contribution limits for different contributors to the same committee, the Supreme Court rejected that there was any

⁴⁶ *Citizens United v. FEC*, 558 U.S. 310, 318 (2010).

⁴⁷ *Id.* at 340.

⁴⁸ *Id.* at 361-362.

⁴⁹ *Id.* at 362.

⁵⁰ *Id.*

⁵¹ 134 S. Ct. 1434, 1442 (2014) (*plurality opinion*).

⁵² *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014) (*plurality opinion*); *Arizona Free Enterprise Club’s Freedom PAC v. Bennett*, 564 U.S. 721 (2011); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Davis v. FEC*, 554 U.S. 724 (2008).

⁵³ *McCutcheon v. FEC*, 134 S. Ct. 1434, 1442 (2014) (*plurality opinion*).

⁵⁴ *Id.*

⁵⁵ *Id.* at 1443 (explaining that “the base limits thus restrict how much money a donor may contribute to any particular candidate or committee; the aggregate limits have the effect of restricting how many candidates or committees the donor may support, to the extent permitted by the base limits.”).

⁵⁶ *Id.* at 1448-1449 (“To require one person to contribute at lower levels than others because he wants to support more candidates or causes is to impose a special burden on broader participation in the democratic process.”).

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true anti-corruption interest.⁵⁷ The Supreme Court also rejected the arguments that these limits created some sort of anti-circumvention measure.⁵⁸

Applying Section 85305 to legal defense committees would impose a contribution limit for state candidates while no contribution limits would exist for any other kind of contributor. Corporations, labor unions, registered non-profits, billionaires, big city mayors, and Congressional leaders could all contribute unlimited amounts to legal defense committees so long as they were not state candidates.⁵⁹ It is true that there are some narrow instances in which the First Amendment allows the prohibition of contributions from certain contributors but these restrictions are applicable to narrowly limited classes of individuals under carefully limited circumstances and do not create different contribution limits.⁶⁰

For example, non U.S. citizens and non-permanent residents may be prohibited from making campaign contributions and expenditures.⁶¹ It is constitutionally permissible to prohibit federal contractors from making contributions to federal candidates while they are either in the process of either performing the federal contract or negotiating their federal contract.⁶² Those exceptions are allowed when they are narrowly tailored and ample evidence is provided demonstrating the actual links to corruption, the necessity of the restriction in actually combatting that corruption, and the restriction is the least restrictive means possible.⁶³ Certainly, there is no finding anywhere in the Act that a contribution from a state candidate is somehow more corrupting than a contribution to any other individual including a solely local or federal candidate.⁶⁴

⁵⁷ *Id.* at 1452 (concluding that if there was no corruption concern in giving nine candidates up to \$5,200 each, “it is difficult to understand how a tenth candidate can be regarded as corruptible if given \$1,801, and all others corruptible if given a dime.”).

⁵⁸ *Id.* at 1452-1457 (explaining that it was speculative at best to assume that aggregate limits helped ensure that someone could not recontribute the funds they had received to another candidate).

⁵⁹ CAL. GOV’T. CODE § 82047.

⁶⁰ *Davis*, 554 U.S. at 738 (explaining that “We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other”).

⁶¹ *Bluman v. FEC*, 565 U.S. 1104 (2012) (affirming the district court’s decision to uphold the total ban on contributions from foreign individuals).

⁶² *Wagner v. FEC*, 793 F. 3d 1, 3 (D.C. Cir. 2015) (*en banc*) (Garland, J.).

⁶³ *Wagner v. FEC*, 793 F. 3d 1, 10-18 (D.C. Cir. 2015) (*en banc*) (Garland, J.) (detailing the lengthy history of corruption of campaign contributions by those seeking federal contracts and the ample evidence provided by the government necessity of implementing a contribution ban on federal contractors in order to maintain clean government and the ban’s narrow yet effective tailoring to that compelling interest).

⁶⁴ See CAL. GOV’T. CODE § 81001; *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 817 (2000) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.”). Curiously, no anti-corruption rationale was offered in the original opinion of the Legal Division which urged that Section 85305 apply to target officer controlled anti-recall committees or even in the dissent. In fact, only Mr. Brian Hildreth, Esq., advocating on behalf of the California Republican Party, offered any anti-corruption rationale argument for why applying Section 85305 to anti-recall committees was constitutionally permissible.

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Moreover, if Section 85305 were read to impose a separate contribution limit onto legal defense committees for state candidates only, it would raise a question as to whether it was actually designed to prevent alleged corruption as state candidates could still contribute to legal defense committees.⁶⁵ Like the restriction in *Citizens United*, such a restriction would be under-inclusive as there would still be some corrupting influence by allowing state candidates to contribute to another state candidate's legal defense committee in the first place. Additionally, it is longstanding constitutional law that candidates and elected officeholders do not receive any less protection under the First Amendment than anyone else.⁶⁶ Accordingly, the imposition of contribution limits on legal defense committees for state candidates and only state candidates would violate the First Amendment.⁶⁷ To avoid this potential violation, the Commission should implement a regulation that expressly exempts state candidate controlled legal defense committees from the contribution limits of Section 85305.⁶⁸

D. Conclusion

Councilman Heilman asks that the Commission amend FPPC Regulation Section 18535 to expressly exempt state candidate controlled ballot measure committees and state candidate controlled legal defense committees. Amending the regulation in this manner conforms to the *Rios Opinion*, adhere to the California Court of Appeals decision in *Citizens to Save California v. Fair Political Practices Commission*, and with the First Amendment of the United States Constitution. Proposed regulatory language has been submitted along with this public comment letter. Please feel free to contact me with any questions.

Respectfully Submitted,
Max Kanin

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⁶⁵ See *Brown v. Entertainment Merchant's Society*, 564 U.S. 786, 802 (2011)(explaining that a statute that is under-inclusive "raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint."); *Citizens United v. FEC*, 558 U.S. 310, 362 (2010) (reasoning that if laws preventing independent expenditures by corporations within 60 days were really meant to protect shareholders of companies, the law would prohibit those same independent expenditures at all times and apply to all communications).

⁶⁶ *Bond v. Floyd*, 385 U.S. 116, 132-133 (1966) (holding that an elected official does not have any less protection under the First Amendment than an ordinary citizen); *Beilenson v. Superior Court*, 44 Cal. App. 4th 944, 950 (Cal. Ct. App. 1996) (holding that the protections afforded by the anti-SLAPP statute protected an elected official just as much it did ordinary citizens).

⁶⁷ *Fair Political Practices Commission v. Reed*, Sacramento County Superior Court, Case No. 34-2013-80001709, filed April 2, 2014 (holding that Section 85501 of the Act, which prohibited candidates from contributing to independent expenditure committees, violated the First Amendment).

⁶⁸ See *Schmid v. Lovette*, 154 Cal. App. 3d 466, 474 (Cal. Ct. App. 1984) (holding that a public community college district was not required to continue applying a law that required public employees to sign an anti-Communist-Party loyalty oath when similar statutes had already been held unconstitutional in United States Supreme Court and California Supreme Court decisions); *In Re Olson*, O-01-112, Page 5, n. 8 (2001).

1 Amend 2 Cal. Code Regs., Section 18535 to read:

2 § 18535. Restrictions on Contributions Between State Candidates.

3 (a) Under Government Code section 85305, a candidate for elective state office, as
4 defined in Government Code section 82024, and any committee(s) controlled by;
5 that candidate may not make any contribution to any other candidate for elective
6 state office in excess of \$3,000 per election except as provided in subdivisions (b),
7 (c), and (d). This amount is adjusted for inflation in January of every odd-numbered
8 year, pursuant to Government Code section 83124 and implementing regulations,
9 and is \$3,000 in 2002.

10 (b) Target Officer Controlled Anti-Recall Committees. Pursuant to Government
11 Code section 85315, the restrictions of Government Code section 85305 do not
12 apply to contributions made by a candidate for elective state office, or any
13 committee controlled by that candidate, to a committee established by an elective
14 state officer to oppose the qualification of a recall measure or oppose the recall for
15 his or elected state office.

16 (c) State Candidate Controlled Legal Defense Committees. Pursuant to Government
17 Code section 85304, the restrictions of Government Code section 85305 do not
18 apply to contributions made by a candidate for elective state office, or any
19 committee controlled by that candidates to a committee established by an elective
20 state officer to defray attorney’s fees and other related legal costs incurred for the
21 candidate’s or officer’s legal defense if the candidate or officer is subject to one or
22 more civil or criminal proceedings or administrative proceedings arising directly out
23 of the conduct of an election campaign, the electoral process, or the performance of
24 the officer’s governmental activities and duties.

25 (d) State Candidate Controlled Ballot Measure Committees. Pursuant to
26 Government Code section 85303(c) and 2 Cal. Code Regs. section 18521.5, the
27 restrictions of Government Code section 85305 do not apply to contributions made
28 by a candidate for elective state office, or any committee controlled by that candidate

1 to a committee controlled by an elective state candidate that is established for
2 purposes other than making contributions to candidates for elective state office.

3 (e) ~~(b)~~ The \$3,000 limit of Government Code section 85305, as adjusted for inflation,
4 applies to contributions made by officeholders and candidates for Governor, other
5 statewide elective offices, the Legislature, and the Board of Administration of the
6 Public Employees' Retirement, and their committee(s), to other candidates for
7 elective state office subject to the provisions of subdivision (g).

8 (f) ~~(e)~~ Except as provided in subdivisions (b), (c), and (d), the restrictions of
9 Government Code section 85305 on contributions made by one candidate for
10 elective state office to another apply to the aggregate total of contributions made
11 from the personal funds or assets of the candidate and contributions made by all
12 committees controlled by that candidate, as defined in Government Code section
13 82016 and 2 Cal. Code Regs. Section 18217.

14 (g) ~~(d)~~ Except as provided in subdivisions (b), (c), and (d), the restrictions of
15 Government Code section 85305 on contributions made by one candidate for
16 elective state office to another apply to all contributions made from, and all
17 contributions made to, any committees controlled by a candidate for elective state
18 office, including committees formed for a pre-2001 election.

19 (h) ~~(e)~~ Pursuant to Section 83 of Proposition 34, the restrictions of Government Code
20 section 85305 are applicable to contributions made by legislative candidates and
21 their controlled committees to any candidate for elective state office, on and after
22 January 1, 2001, and are applicable to contributions made by candidates for
23 statewide elective office, as defined in Government Code section 82053, and their
24 controlled committees, to any candidate for statewide elective office, as defined in
25 Government Code section 82053, and their controlled committees, to any candidate
26 for elective office, on and after November 6, 2002, except as provided in
27 subdivisions (b), (c), and (d).

1 ~~Comment: Accordingly, on and after January 1, 2001, a legislative candidate and~~
2 ~~his or her committee(s) may not contribute to another legislative or statewide candidate~~
3 ~~in excess of \$3,000 per election. On and after November 6, 2002, a statewide candidate~~
4 ~~and his or her committee(s) may not contribute to another legislative or statewide~~
5 ~~candidate in excess of \$3,000 per election. During the period after January 2, 2001, and~~
6 ~~before November 6, 2002, however, a statewide candidate and his or her committee(s) is~~
7 ~~not prohibited from contributing in excess of \$3,000 per election to another statewide~~
8 ~~candidate or to a legislative candidate, though a legislative candidate is prohibited from~~
9 ~~receiving contributions in excess of \$3,000 per election pursuant to Government Code~~
10 ~~section 85301.~~

11 Note: Authority cited: Section 83112, Government Code. Reference: [Sections 85315,](#)
12 [85305, 85304, and 85303.](#)