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June 28, 2017

**VIA ELECTRONIC MAIL**

Ms. Jodi Remke, Chair  
Ms. Erin Peth, Executive Director  
Fair Political Practices Commission  
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**RE: Request for Commission Opinion and Regulation regarding staff interpretation of Cal. Gov. Code §§85315 and 85305**

Dear Chair Remke and Ms. Peth:

On June 12, 2017, I requested that the Commission make a determination of law reversing Commission staff's interpretation that Government Code Sections 85315 and 85305 impose a \$4,400 limit on the amount that may be contributed from a state candidate to a recall committee controlled by another state candidate. (See Johnson Advice Letter, A-08-032, April 11, 2008.) The request was made on behalf of my client, the Senate Democratic Caucus. Executive Director Peth treated the request as a request for a legal opinion which she denied because "the Commission has consistently concluded that contributions made by other state elected officials to a state candidate's controlled recall committee are subject to the \$4,400 limit on contributions between state candidates."

Formal written advice provided by Commission staff is not considered a declaration of policy by the Commission. (2 CCR §18329(b)(6).) We are not aware of any circumstance in which the staff's interpretation of Sections 85315 and 85305 has been considered by the Commission.

As indicated in my initial request, we believe that the Johnson Advice Letter incorrectly interprets Sections 85305 and 85315 based on a common sense reading of the two statutes. Section 85315 reads: "[a]n elected state officer may accept campaign contributions to oppose the qualification of a recall measure . . . without regard to the campaign contribution limits set forth in this chapter." (Emphasis added.) Section 85305 provides: "A candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the limits set forth in subdivision (a) of Section 85301."

In the Johnson Advice Letter, Commission staff concluded that unlimited contributions may be "received" by a state candidate's recall

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committee pursuant to Section 85315, but that Section 85305 prohibits a committee controlled by another state candidate from “making” a contribution in excess of \$4,400 to a state candidate’s recall committee. The staff’s interpretation renders meaningless the provision in Section 85315 allowing an elected state officer to accept unlimited contributions for his or her recall committee because no candidate can receive a contribution that another candidate is legally barred from making.

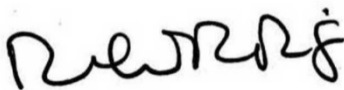
We believe the correct interpretation of these statutory provisions is that no limits apply to contributions made by a state candidate to another state candidate’s recall committee. The \$4,400 limit on contributions provided by Section 85301(a) applies to contributions from one state candidate to another state candidate’s committee for election or re-election to state office. The court’s decision in Citizens to Save California v. FPPC (2006) 145 Cal.App.4<sup>th</sup> 736 invalidating an FPPC regulation that imposed contribution limits on candidate controlled ballot measure committees strongly supports this interpretation of the statute because the court specifically found that “Proposition 34 was designed to limit contributions to a candidate’s election or reelection campaign committee, not other committees.” (Citizens to Save California, supra, at 752.)

Pursuant to 2 CCR §18321, this letter shall serve as a request that the Commission review at its next meeting the Executive Director’s decision not to order an opinion and, instead, order an opinion to be issued. Further, while we appreciate that the Commission will reconsider the decision to issue an opinion at its next meeting, we remain concerned that the opinion process will not result in an expeditious resolution of the issue. Prompt resolution is necessary because, as long as the current interpretation is in place, members of the Senate Democratic Caucus and other state candidates are prohibited from contributing more than \$4,400 to the committee established by Senator Newman to oppose his recall. Therefore, in addition to the opinion, we would appreciate the Commission’s consideration of an amendment to 2 CCR §18531.5(b)(1) making it clear that the contribution limits in Chapter 5 of the Act do not apply to contributions made to or accepted by an elected state officer who is the subject of a recall. We would propose that the regulation be considered at the next Commission hearing and, if approved, take effect immediately.

Thank you for your consideration of this request.

Very truly yours,

**OLSON HAGEL & FISHBURN LLP**



**RICHARD R. RIOS**

cc: Commissioners Audero, Hatch, and Hayward