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From: Richard Rios <RRios@Olsonhagel.com>
Sent: Friday, September 22, 2017 7:26 AM
To: Jodi Rmke; Maria Audero; Allison Hayward; Brian Hatch; Sukhi Brar
Subject: Proposed Regulation in response to In re Rios Opinion (O-17-001)

Ms. Brar and Commissioners: At its August 2017 meeting, the Commission adopted the In re Rios Opinion (O-17-001) concluding that the contribution limit imposed by Government Code section 85305 does not limit contributions made from a state candidate to another state candidate's controlled recall committee. Commission staff is proposing a conforming amendment to 2 CCR §18535. While we believe the Commission's proposal is a first step in the right direction, we do not believe it goes far enough in addressing the issues presented by the Commission's adoption of the opinion. In addition to the amendment to 2 CCR §18535 proposed by staff, I write to request that the Commission also take the following conforming actions:

1. Identify and modify FPPC materials impacted by the opinion and conforming regulatory changes

There are a variety of FPPC materials that will be impacted by the In re Rios Opinion and conforming regulatory changes. We request that the FPPC identify all such materials and modify them in accordance with the opinion including the FPPC Fact Sheet on Recall Elections, the California State Contribution Limits Guide and all applicable FPPC Campaign Guides. We also recommend that the Commission identify advice letters that will be superseded by the opinion and take steps to ensure that the public is notified that the advice letters have been superseded.

2. Amend 2 CCR §18531.5

Regulation 18531.5 specifically states that the Chapter 5 contribution limits do not apply to contributions *accepted* by a state candidate who is subject to a recall. We recommend that the Commission adopt a conforming amendment to Regulation 18531.5 clarifying that the exception to the contribution limit provided by Section 85315 applies to the *making* and receiving of contributions to a state candidate controlled recall committee. We propose the following language:

18215(b)(1). Target Officer. Pursuant to Section 85315, the contribution limits of Chapter 5 of the Act do not apply to contributions made to or accepted by an elected state officer who is the target of a recall into a separate recall committee established to oppose the qualification of the recall measure or the recall election. Pursuant to Section 85315, the voluntary expenditure limits of the Act do not apply to expenditures made by an elected state officer who is the target of a recall to oppose the qualification of the recall measure or the recall election.

3. Amend 2 CCR §18535 to Expressly Exempt Candidate Controlled Legal Defense Funds from the Limit in Section 85305

Gov. Code section 85304 allows a candidate for state office or state elected official to establish a legal defense fund for purposes of defraying attorney's fees and other related legal costs incurred for the candidate's or official's legal defense if the candidate or official is subject to a civil, criminal or administrative proceeding arising out of an election campaign or the performance of official duties. Legal defense funds may only be

used to defray attorney fees and other related legal costs. Section 85304(b) provides an exemption to the contribution limits to state candidate controlled legal defense funds:

A candidate may receive contributions to this account that are not subject to the contribution limits set forth in this article. However, all contributions shall be reported in a manner prescribed by the commission.

Although Section 85304(b) provides a clear exception to the contribution limits contained in Article 3 of Chapter 5 – which includes the limit on contributions between state candidates provided by Section 85305 – the Commission advises that Section 85305 imposes a limit on the amount of contributions that may be made from one state candidate to another state candidate’s legal defense fund. (See Fair Political Practices Commission, [2017 State Contribution Limits and Voluntary Expenditure Ceilings](#), July 12, 2016, p. 2.) However, the Commission’s interpretation is based on its view that Section 85305 is an expenditure restriction and not a contribution limit, an approach that was rejected by the Commission in the In re Rios Opinion.

We therefore request that the Commission amend Regulation 18535 to also clarify that the limit on contributions imposed by Section 85305 does not apply to contributions from a state candidate to another state candidate’s legal defense fund.

4. Amend 2 CCR §18535 to Expressly Exempt Candidate Controlled Ballot Measure Committees from the Limit in Section 85305

The Court’s decision in Citizens to Save California v. Fair Political Practices Commission (2006) 145 Cal.App.4th 736 makes it clear that contribution limits cannot be applied to candidate controlled ballot measure committees. Nevertheless, the Commission has historically advised that Section 85305 imposes a limit on the amount that may be given by one state candidate to another state candidate’s controlled ballot measure committee. This limit applies even though there is no similar limit on contributions from other sources – including on local candidates who may give unlimited sums to a state candidate’s controlled ballot measure committee. Prior to the In re Rios Opinion, the Commission justified imposing a limit on contributions from a state candidate to another state candidate’s controlled ballot measure committee on the basis that Section 85305 established an expenditure restriction – and not a contribution limit. However, as discussed above, the Commission expressly rejected this interpretation finding instead that Section 85305 imposes a contribution limit on state candidate contributions.

Given the Commission’s conclusion in the In re Rios Opinion that Section 85305 is in fact a contribution limit, and continued application of the limit on contributions from one state candidate to another state candidate’s controlled ballot measure committee is contrary to the decision in Citizens to Save California v. Fair Political Practices Commission, we believe that the Commission must amend 2 CCR 18535 to provide that Section 85305 does not impose a limit on contributions from one state candidate to another state candidate’s controlled ballot measure committee.

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We appreciate your consideration of this request. Please note that these comments are not offered on behalf of a client, but rather on behalf of our law firm which is in an interested party in this proceeding

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