

**Alternate Draft Two**

**BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

In the Matter of:	)	
	)	No. O-21-001
Opinion requested by	)	April 15, 2021
Nicholas Sanders, Esq.	)	
	)	
_____	)	

BY THE COMMISSION: Nicholas Sanders, on behalf of the California Political Attorneys Association, has requested an opinion of the Fair Political Practices Commission (“Commission”) on the following question:

**QUESTION**

When applying the contribution limits in Government Code section 85301<sup>1</sup>, as amended by Assembly Bill 571 (2019), are contributions to local candidates made prior to AB571’s effective date (January 1, 2021) for an election held after that date aggregated with any contribution from the same contributor to the same recipient made after the effective date?

**CONCLUSION**

No. Contributions made prior to AB 571’s effective date for an election held after that date are not aggregated with any contribution from the same contributor to the same recipient made after the legislation’s effective date.

**BACKGROUND**

In 2019, the Governor signed AB 571 into law with a delayed effective date of January 1, 2021. AB 571 imposes a contribution limit on elective city and county offices in jurisdictions that do not enact an ordinance imposing contribution limits. (Section 85301.) AB 571 effectively applied existing contribution limits for state elected officers to local elected officers in jurisdictions that do not have contribution limits. Typically, contribution limits apply per election, regardless of when the contribution is received. (Section 85301.)

In response to requests for informal advice, the Commission’s Legal Division has advised requestors that for those local offices subject to contribution limits established by AB 571, a contribution made prior to January 1, 2021 for an election after that date, should be aggregated with any contribution made after that date from the same contributor to the same recipient for the same election to ensure compliance with the new contribution limits. The California Political

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<sup>1</sup> All statutory references are to the California Government Code unless otherwise indicated.

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Attorneys' Association (CPAA) argues this interpretation is a retroactive application of the law and that it does not align with the position taken when the contribution limit was imposed on elective state offices under Proposition 34, which went into effect January 1, 2001.

### ANALYSIS

#### **A. The Determination That the Contribution Limit AB 571 Imposes on Elective City and County Offices Does Not Apply to Contributions Made by Contributors Prior to January 1, 2021 for an Election Held on or after January 1, 2021 in Jurisdictions Subject to the Limits Is Supported by Examining the Plain Meaning of the Text of the Relevant Statutes.**

When the Commission interprets a statute, it follows the same canons of statutory construction employed by the courts. *Britton et al. v. Dallas Airmotive, Inc. et al.* (2007) 153 Cal.App.4th 127, 131-132 explains:

Our primary objective in interpreting a statute is to determine and give effect to the underlying legislative intent. We begin by examining the statutory language, giving the words their usual, ordinary meanings and giving each word and phrase significance. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions ... relating to the same subject matter must be harmonized to the extent possible. An interpretation that renders related provisions nugatory must be avoided; each sentence must be read not in isolation but in the light of the statutory scheme; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (Internal citations and quotation marks omitted.)

The general campaign contribution limits are contained in Chapter 5 of the Political Reform Act (the "Act"). Prior to the enactment of AB 571, the Act did not include contribution limits for local offices. AB 571 amended, among other provisions of the Act, Section 85301 to establish default campaign contribution limits for local elected officers at the same level as the limit on contributions from individuals to candidates for Senate and Assembly:

A person shall not make to a candidate for elective county or city office, and a candidate for elective county or city office shall not accept from a person, a contribution totaling more than the amount set forth in subdivision (a) per election, as that amount is adjusted by the Commission pursuant to Section 83124. This subdivision does not apply in a jurisdiction in which the county or city imposes a limit on contributions pursuant to Section 85702.5.

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(Gov. Code, § 85301, subd. (d)(1).)

Importantly, the legislation also provided an effective date for the provision: “[t]his subdivision shall become operative on January 1, 2021.” (Gov. Code, § 85301, subd. (d)(2).) Therefore, the Legislature expressed its intention that the limitation is to apply to contributions made on or after January 1, 2021. As a result, interpreting the limitation to apply to contributions made before that date would be contrary to the plain and unambiguous intent expressed by the Legislature.

Accordingly, the plain meaning of the language in subdivisions (d)(1) & (2) allows for individuals to contribute the maximum amount under the law<sup>2</sup> to elective city and county offices subsequent to AB 571’s effective date.

### **B. Legislation Should Not Be Interpreted to Include an Express Requirement the Legislature Itself Did Not Provide.**

When construing the meaning of a statute, the Court in *People v. White* (1954) 122 Cal.App.2d 551 stated:

It is, however, against all settled rules of statutory construction that courts should write into a statute by implication express requirements which the legislature itself has not seen fit to place in the statute. This rule was clearly stated in *People v. One 1940 Ford V-8 Coupe*, 36 Cal.2d 471, 475: ‘In construing the statutory provisions a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does not appear from its language. The court is limited to the intention expressed.’

Similarly the court said in *Seaboard Acceptance Corp. v. Shay*, 214 Cal. 361, 365: ‘This court has no power to rewrite the statute so as to make it conform to a presumed intention which is not expressed. This court is limited to interpreting the statute, and such interpretation must be based on the language used.’

(*People v. White, supra*, at pp 553–54; see also see *Estate of Tkachuk* (1977) 73 Cal.App.3d 14, 18; *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 381.)

As mentioned, AB 571 expressly states that its provisions would become effective on January 1, 2021. Although Section 85301(d)(1) states the contribution limits apply per election, there is no express language qualifying either of those provisions to require aggregation of contributions made prior to January 1, 2021 with those made after that date. Simply put, the legislation does not address that issue and should not now be rewritten so that it conforms to a presumed intention (aggregation requirement) not expressly stated in the legislation itself.

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<sup>2</sup> As of January 1, 2021, the AB 571 contribution limit is \$4,900.

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### **C. AB 571 Should be Interpreted to Avoid an Impermissible Retroactive Application of the Legislation.**

Apart from looking to the plain meaning of the relevant statutes, there is no evidence that the Legislature intended AB 571 to be applied retroactively. “It is settled ... that no statute is to be given retroactive effect unless the Legislature has expressly so declared and that this rule is not limited by a requirement that a statute be liberally construed to effect its objects and promote justice.” (*DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 174; see also *Elsner v. Uveges* (2004) 34 Cal.4th 915, 936 [“[n]ew statutes are presumed to operate only prospectively absent some clear indication that the Legislature intended otherwise [Citations]”].) Here, there is no indication, express or implied, that the Legislature intended the provisions of AB 571 to operate retroactively, and the Act’s instruction that it “should be liberally construed to accomplish its purpose” (Section 81003) does not change that.

The determinative issue, therefore, is whether by aggregating contributions made prior to AB 571’s effective date with contributions made after, the new contribution limits provisions are being applied retroactively.

“A statute is retroactive if it substantially changes the legal effect of past events. [Citations.] A statute does not operate retroactively merely because some of the facts or conditions upon which its application depends came into existence prior to its enactment. [Citations.]” (*Kizer v. Hanna* (1989) 48 Cal.3d 1, 7–8.) Put another way, “[a] retroactive or retrospective law “is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.”” (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 839 quoting *Aetna Cas. & Surety Co. v. Ind. Acc. Com.* (1947) 30 Cal.2d 388, 391; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1206.) The theory against retroactive application of a statute is that the parties affected have no notice of the new law affecting past conduct. (*Borden v. Division of Medical Quality* (1994) 30 Cal.App.4th 874, 879–880; see also *Fox v. Alexis* (1985) 38 Cal.3d 621, 627.)

Here, the test of retroactivity is whether by aggregating contributions made prior to AB 571’s effective date with contributions made after January 1, 2021, the provisions would operate retroactively to substantially alter the legal effect of a prior event.

However, it remains unclear whether aggregating contributions made after the effective date with contributions made prior to the effective date substantially changes the legal effect of the prior contributions. While it stands that a violation of the contribution limit would not occur absent a subsequent contribution made after the effective date of the Legislation, the fact that a contribution limit would not have been exceeded if not for the aggregation of contributions made prior to the effective date could be viewed as a substantial alteration of the legal effect of the first contribution. Accordingly, AB 571 should be interpreted in a manner that avoids the possibility of an impermissible retroactive application of the legislation.

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### **D. Important Public Policy Considerations Weigh in Favor of Avoiding Aggregation of Contributions Made Prior to AB 571's Effective Date with Contributions Made After its Effective Date.**

The issues addressed in this matter involve more than the determination of whether to apply the limits in AB 571 to contributions made prior to its effective date; they involve the potential to infringe on the constitutional rights of contributors, while placing committees at risk of violating the Act.

To be sure, because political contributions are a form of political speech, laws restricting campaign contributions “implicate fundamental First Amendment interests,” (*Randall v. Sorrell* (2006) 548 U.S. 230, 241 quoting *Buckley v. Valeo* (1976) 424 U.S. 1, 23) and the First Amendment requires the Court to “err on the side of protecting political speech rather than suppressing it” (*McCutcheon v. Federal Election Com.* (2014) 572 U.S. 185, 209 quoting *Fed. Election Comm’n v. Wis. Right to Life* (2007) 551 U.S. 449, 457). In addition, “[t]he Due Process Clause also protects the interests in fair notice and repose that may be compromised by retroactive legislation...” (*Landgraf v. USI Film Prod.*, (1994) 511 U.S. 244, 267.)

Moreover, where the legislation expressly states that it becomes effective on January 1, 2021 but contains no provision, express or implied, requiring contributions prior to the effective date of AB 571 to be aggregated with contributions after the effective date, unknowing committees are potentially exposed to serious violations of the Act.

Accordingly, given these practical concerns, important policy considerations weigh in favor of avoiding an interpretation that requires contributions made prior to AB 571's effective date for an election held after that date to be aggregated with any contribution made after the effective date from the same contributor to the same recipient for the same election.

WE CONCUR:

[Concurring Commissioners]