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California State Senate

JOHN L. BURTON
PRESIDENT PRO TEMPORE

COMMITTEES:
RULES
CHAIRMAN



December 4, 2001

Chairman Karen Getman
Commissioner Sheridan Downey, III
Commissioner Thomas S. Knox
Commissioner Carol Scott
Commissioner Gordana Swanson
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: December 7, 2001 Commission Meeting
Agenda Item No. 4 (Adoption of Regulation 18537.1)

Dear Chairman Getman and Commissioners:

As authors of Proposition 34 and its subsequent amendments (see Senate Bill 1223, Stats. 2000, ch. 102 and Senate Bill 34, Stats. 2001, ch. 241), we write to strongly oppose the adoption of proposed Regulation 18537.1, which is on the agenda for the Commission's December 7, 2001 meeting (Agenda Item No. 4).

The proposed version of the regulation not only ignores the clear language in Government Code Section 85317 but is contrary to our intent in drafting Proposition 34. It also deviates from the overall scheme of Proposition 34 and arbitrarily discriminates against contributors who desire to fully participate in state elections.

Plain Meaning and Intent

Section 85317 provides as follows:

Notwithstanding subdivision (a) of Section 85306, a candidate for elective state office may carry over contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with a subsequent election for the same elective state office.

By any reasonable reading of the statute, this permits contributions that are unspent in one state election to be used in any future election to the same office without attribution to specific contributors (as normally required in Section 89306(a)). Proposed Regulation 18537.1 ignores

this plain language and provides that Section 85317 only allows the unattributed carry over of funds if they are unspent in a state primary election and carried over for use in the immediately following general election.

Specifically, Section 85317 provides that, regardless of the attribution rules of Section 85306(a), a state candidate may carry over contributions raised in "one election" to pay for "a subsequent election" to the same state office. The statute does not say, as suggested by Regulation 18537.1, that contributions raised in a "primary election" may only be carried over to pay for "the subsequent general election."

Where the words of a statute are unambiguous, they must be given their plain meaning unless there is some strong indication of an alternative legislative intent. It is incomprehensible to us how the Commission could find any ambiguity in the words "one election" and "a subsequent election" in Section 85317, let alone discern that the electorate intended this to mean "primary election" and "the subsequent general election."

The federal campaign finance laws permit unspent campaign funds to be used in subsequent elections to the same office. Section 85317 was based on the federal model and intended to work the same way. We do not know how the rule could have been stated any more clearly than how it is stated in Section 85317.

Proposition 34's Scheme and Regulation 18537.1's Arbitrary Discrimination against Contributors

Besides ignoring the plain meaning of Section 85317, proposed Regulation 18537.1 ignores how Section 85317 operates within the overall scheme of Proposition 34 and has the effect of arbitrarily discriminating against contributors.

Proposition 34 imposes per-election contribution limits. To avoid a possible legal challenge for imposing unconstitutional expenditure limits, it permits candidates to transfer contributions between any of their state candidate committees. (Section 85306(a).) However, to maintain the integrity of the contribution limits, the transfers are only permitted if they are done in a way that prevents a contributor from giving more money for a specific election than would be permitted under the contribution limits. (Section 85306(a).) Thus, for example, Section 85306(a) prevents an Assembly candidate who opens a Senate campaign committee from transferring Assembly contributions to the Senate committee that, when added to the Senate contributions, exceed the per-contributor contribution limits for the Senate race.¹

By permitting the use of unspent contributions from one state election in any subsequent election to the same state office, Section 85317 fits within this scheme. It permits contributors to make contributions on a per-election basis that do not exceed the contribution limits for that election.

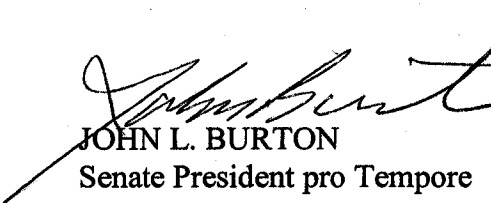
¹ This applies to contributions raised for elections held after January 1, 2001.

Proposed Regulation 18537.1 ignores this scheme. Instead, it selectively allows unspent contributions from the primary election to be used in the subsequent general election but not in any other elections for the same state office. Thus, the regulation imposes an arbitrary rule that effectively classifies the use of the contributions in one case (the subsequent general election) as "non-corrupting" and their use in any other case (a future election to the same office) as "corrupting." We fail to see the logical distinction in this classification.


Even worse, Regulation 18537.1 works to arbitrarily discriminate against campaign contributors who desire to fully participate in the state electoral process. An example will illustrate this point. Assume Contributor X makes the maximum contribution to a Senate candidate in the general election. After the election, the Senate candidate has excess campaign funds and she transfers them into her Senate committee for the next election. Under the regulation, if the Senate candidate attributes part of the transferred funds to Contributor X, then Contributor X, without his knowledge or consent, has now been prevented from exercising his legal right to make the maximum contribution to the same candidate in the next Senate election. Other contributors to the first Senate election will not have the same restriction if they were lucky enough not to have their transferred contributions selected for attribution. Thus, through the construct of proposed Regulation 18537.1 and not through Proposition 34, Contributor X has a lower contribution limit for the second Senate election than other contributors.

Proposed Regulation 18537.1 is legally incorrect and constitutionally flawed. We urge the Commission to reject the regulation.


Sincerely,



JOHN L. BURTON
Senate President pro Tempore



ROBERT M. HERTZBERG
Speaker of the Assembly



ROSS JOHNSON
Vice Chair, Senate
Rules Committee