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October 9, 2001

BY FACSIMILE AND PERSONAL DELIVERY  
TO OFFICES OF THE COMMISSIONHonorable Karen Getman, Chairman  
Commissioner Carol Scott  
Commissioner Gordana Swanson  
Commissioner Thomas Knox  
Commissioner Sheridan Downey  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento CA 95814Re: Proposed Regulations 18537.1; 18520, 18521, 18523.

Dear Chairman Getman and Commissioners:

I appreciate the opportunity to comment on proposed regulations which are at the "pre-notice" stage. These regulations interpret Proposition 34, either alone, or in the context of its application together with pre-Proposition 34 provisions of the Political Reform Act.

I. *Pre-notice on One Bank Account and Carryover — Proposed Regulation 18537.1*

Government Code Section 85306(a) permits transfers between a candidate's controlled committees on an attribution basis. Government Code Section 85317 expressly prohibits limits on funds raised by a candidate and carried over from a previous election. Together, these statutes mean that a candidate must do the attribution when transferring funds between his or her controlled committees, but the FPPC can't restrict the use of transferred, attributed funds for use in the subsequent general or subsequent elections for the same office (primary or general).

**BY FACSIMILE AND PERSONAL DELIVERY  
TO OFFICES OF THE COMMISSION**

Letter to the Honorable Karen Getman  
and Commissioners  
Fair Political Practices Commission  
October 9, 2001  
Page 2

In light of this interpretation of the two statutes, Option A is clearly too restrictive and inconsistent with the plain meaning of the statutes. Option B is consistent with such meaning. Thus, in my opinion, the Option C "Decision point" I should not be submitted for the adoption hearing or adopted. From a policy standpoint, since *new* money for a *new* election would be subject to limits and the carried-over money would be "attributed," and hence, the contribution limits of Proposition 34 are protected in that way, why restrict carryover only to primary -> general elections in such circumstances?

In the absence of an express restriction, why put such an iron collar on this conduct? This is overregulating and should be avoided.

The Option C "Decision point" 2 seems to ignore the plain meaning of Section 85317 that "carryover" of funds is permitted. Carryover of debts isn't fundraising, it's an intra-candidate transfer. Hence, there is no reason to consider such a transfer to be post-election fundraising subject to the net debts limits. Finally, Option C "Decision point" 3 is simply confusing as a cross reference. We have not fully analyzed how the proposed regulation would work in combination with the proposed new termination rules. However, the new termination rules, as well as the pre-existing and new "surplus funds" rules stand on their own, and the cross reference, though innocuous, seems unnecessary.

2. *Redesignation - Proposed Regulations 18521*

In my view, there is no legal basis for adoption of Option A (the "no redesignation" proposal). Regrettably, many members of the regulated community were absent from the August 2001 Commission meeting at which this was last discussed, and did not offer comment upon this proposal. I regret that I was unable to attend, as the legislative session was focused upon redistricting issues and that commanded my attention. I would like to go back to the August 2001 staff report and offer my comments on the staff's position, as the current staff memorandum appears to start from the assumption of the previous meeting's preliminary conclusions.

The fact that Proposition 34 is organized on a "per election" basis does not authorize restrictions such as the "no redesignation" proposal. There is simply nothing in

**BY FACSIMILE AND PERSONAL DELIVERY  
TO OFFICES OF THE COMMISSION**

Letter to the Honorable Karen Getman  
and Commissioners  
Fair Political Practices Commission  
October 9, 2001  
Page 3

the "per election" provisions that expressly prohibits such redesignation. In fact, Proposition 34 contains transition and carryover rules more extensive than prior campaign reform statutes.

A permissive redesignation rule is not inconsistent with either the "one bank account" rule or Proposition 34. The staff's "mantra" that disallowing redesignation would "aid enforcement" needs some demonstrative evidence to support it. On the other hand, under existing law and regulations, each candidate controlled committee is required to amend its statement of organization and the controlling candidate is required to file a new candidate intention statement when the candidate seeks a new office and redesignates his or her existing committee and bank account for that purpose. Further, each committee is required to maintain records to support activity, and finally, the campaign reports themselves provide significant disclosure of expenditures. Moreover, if the Commission adopts the regulation requiring the disclosure of expenditures on a per election basis in order to enforce Proposition 34's "voluntary spending limits," this disclosure will obviate any need for a "no redesignation" rule. (I had commented to the staff at one of the Interested Persons' meetings this summer that the only situation in which a "no redesignation" rule would serve a useful purpose would be one in which the committee had outstanding debts; however, I had not taken into account the pending new disclosure rule in making that suggestion.)

There is no evidence at all in the record of this proceeding that the existing disclosure and recordkeeping regime is inadequate to permit adequate auditing, which is the critical capability of your enforcement system. In the absence of such facts and law, the Commission has no warrant to adopt a "no redesignation" rule.

For these reasons, I support adoption of Option B. Option B would be the legal, and preferable, regulation.

3. *Proposed Regulations 18520, 18523*

I have no legal or policy objections to these proposed regulations. In particular, proposed regulation 18523 provides useful clarification of what information the

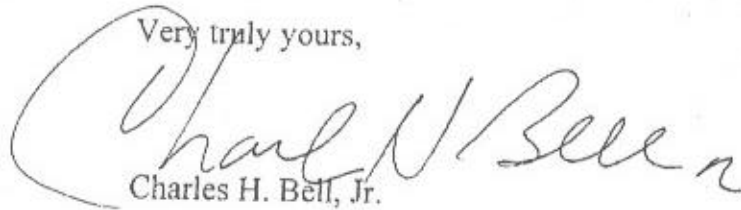
**BY FACSIMILE AND PERSONAL DELIVERY  
TO OFFICES OF THE COMMISSION**

Letter to the Honorable Karen Getman  
and Commissioners  
Fair Political Practices Commission  
October 9, 2001  
Page 4

committee should provide to prospective contributors.

I appreciate the opportunity to comment on these proposed regulations, and will be available to testify at the October 11, 2001 meeting.

Very truly yours,



Charles H. Bell, Jr.

CHB:sa