



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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February 21, 2024

Amber Maltbie  
Nossaman LLP  
777 South Figueroa Street, 34th Floor  
Los Angeles, CA 90017

Re: Your Request for Advice  
**Our File No. A-23-175**

Dear Ms. Maltbie:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Under the Act, do campaign funds that were raised while a ballot measure committee was candidate controlled remain subject to restrictions set forth in Regulation 18521.5(d) after the committee becomes noncandidate controlled, or can the funds be used pursuant to Section 89512.5 given that 60 days have passed?

### CONCLUSION

Campaign funds raised while a ballot measure committee is candidate controlled must be disbursed pursuant to Regulation 18521.5(d)(1-3) because they were raised for a candidate controlled committee. However, the funds need not be disbursed pursuant to subdivision (d)(3) exclusively as a result of an effective termination when the committee became noncandidate controlled, because Regulation 18521.5(d)(3) is permissive in nature.

### FACTS AS PRESENTED BY REQUESTER

You are the attorney for Joe Buscaino For Better Communities (the “Committee”). The Committee is currently a state general purpose ballot measure committee, and Ms. Buscaino is the

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

principal officer. While Mr. Buscaino was still in office and a candidate, the Committee was candidate controlled.

Mr. Buscaino was previously a Los Angeles City Councilmember and candidate for Los Angeles Mayor in the March 2022 primary election. He no longer holds elected office and is not a candidate to any office, nor does he intend to be in the foreseeable future. The Committee's Form 410 was amended to reflect that the Committee is no longer candidate controlled and the Mr. Buscaino is now the Committee's principal officer.

You seek advice as to how the Committee is permitted to use funds that were raised while it was still a candidate controlled committee given that it is no longer candidate controlled and more than 60 days have passed since the Committee changed status.

### ANALYSIS

Section 82007 defines the term "candidate" which includes: "An individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office..." Section 82007 also provides that "an individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214." Here, Mr. Buscaino is no longer a candidate and the Form 410 for the candidate controlled ballot measure committee he previously controlled has amended to designate the committee as a noncandidate controlled ballot measure committee.

Regulation 18521.5(d) provides for the permissible uses of campaign funds held by a candidate controlled ballot measure committee:

"(1) Except as permitted under paragraphs (2) and (3) below, committee funds must be used only to make expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or pre-qualification activities relating to such measures. Such expenditures include, but are not limited to, payment of the committee's reasonable and ordinary operating costs, administrative overhead, fundraising activities, travel, compliance costs, and attorney's fees incurred as a result of the committee's activities.

(2) The committee may at any time return all or part of a contribution to a committee contributor.

(3) A committee that is preparing to terminate its status as a committee may, at any time within 60 days prior to the effective date of its termination, disburse some or all of its leftover funds in either of the following ways:

(A) Pursuant to subdivision (b)(3) of Section 89519.

(B) To a political party committee, so long as the funds are not used for a contribution as defined in Section 82015 to a candidate, or for a communication which expressly advocates the nomination, election or defeat of a clearly identified candidate as defined in Section 82031."

Section 89519(b)(3) provides that campaign funds may be used in the following way:

“(3) Donations to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.”

Additionally, noncandidate controlled ballot measure committees are subject to Section 89512.5, which requires that expenditures by a noncandidate controlled committee shall be reasonably related to a political, legislative, or governmental purpose unless the expenditure confers a substantial benefit on any individual or individuals with authority to approve the expenditure of campaign funds held by the committee. In which case, the expenditure must be directly related to a political, legislative, or governmental purpose.

We have previously issued advice surrounding how to properly disburse funds when a ballot committee changes from candidate controlled to noncandidate controlled. (*Pirayou* Advice Letter, No. A-19-048.) In *Pirayou*, it was determined that the ballot measure committee at issue was still candidate controlled but would become noncandidate controlled in the near future. We noted that when a candidate controlled ballot measure committee changes its status to a noncandidate controlled the committee “would be in effect terminating its status as a candidate controlled ballot measure committee, Regulation 18521.5(d) would be applicable and the Committee may use its funds as provided in that portion of the regulation.” We also stated “once the Committee changes its status to a noncandidate controlled ballot measure committee, Regulation 18521.5(d)(1-3) would not apply to the use of the Committee’s campaign funds that are raised *after* the change in status,” implying that would not be the case for funds acquired prior to the status change of the committee.

While *Pirayou* allowed the candidate controlled ballot measure committee to disburse their funds pursuant to Regulation 18521.5(d)(3) when it “effectively” terminated and became noncandidate controlled, we do not believe it mandates that the funds exclusively be disbursed in that manner given the permissive language of the Regulation itself in stating the funds *may* be disbursed under (d)(3). Regulation 18521.5(d)(3) contemplates that not all of the funds will be distributed under that subdivision by using the phrase “some or all.” Here, we find that the limitations imposed on candidate controlled ballot measure committee expenditures are contained within the entirety of Regulation 18521(d)(1-3), not simply subdivision three because of the effective termination and roll over to a noncandidate controlled ballot measure committee.

Given *Pirayou* and the permissive nature of Regulation 18521.5(d)(3), we advise that funds raised *prior* to the Committee’s change from candidate controlled ballot measure committee to noncandidate controlled ballot measure committee must be disbursed pursuant to Regulation 18521.5(d)(1-3), not exclusively subdivision (d)(3).<sup>2</sup> Funds raised *after* the Committee became

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<sup>2</sup> We note that while Regulation 18521.5(d)(3) typically only applies within 60 days of a committee terminating, in this unique situation where the committee did not technically terminate but rather changed from a candidate controlled to noncandidate controlled committee disbursement may still occur under (d)(3) outside of the 60 days prior to termination as such a result would be consistent with the intent of the Regulation to properly disburse funds raised for a candidate controlled ballot measure committee.

noncandidate controlled do not have to follow the limitations set forth within Regulation 18521.5(d)(1-3) and should be disbursed pursuant to Section 89512.5.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge  
General Counsel

By:   
Valerie Nuding  
Counsel, Legal Division

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