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September 6, 2001

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FAIR POLITICAL
PRACTICES COMMISSION
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Chairman Karen Getman and Commissioners
Fair Political Practices Commission
428 J Street Suite 620
Sacramento, CA 95814

RE: September 10 meeting agenda item
Proposed Regulation 18531.6 – Proposition 34 Treatment of Outstanding Debt

Dear Chairman Getman & Commissioners:

California Common Cause urges you to amend the proposed regulations by adding the word "not" to line 7 of page 1 so that 18531.6.(a)(2) reads, "Contributions for an election held prior to January 2001 may not be accepted in an amount that exceeds net debts outstanding." We believe that this change must be made in order to uphold the clear intent of Proposition 34.

We believe that the intent and the plain language of Government Code Section 85316, enacted through the passage of Proposition 34, is to allow candidates to raise funds to retire outstanding debt from a previous election in amounts subject to whatever limits, if any, were in effect at the time of the election (i.e. not to any limits that may have been enacted subsequent to the election), but to limit the aggregate amount of funds that can be raised for a prior election to the total outstanding debt for that election.

Government Code Section 85316 states:
"A contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable limit for that election."

The question of how to treat outstanding debt from a previous campaign finance system is always an issue in the transition to a newly enacted system. In making the regulatory decision that Section 85316 does not apply to debt existing upon enactment of Proposition 34, we believe that the commission is mooting the very section of the measure that was intended to govern this transition. Nevertheless, we believe that your decision that Section 85316 does not apply to elections held prior to January 1, 2001 compels the commission to limit fundraising to retire a pre-2001 campaign debt to only those candidates that had debt and to only the aggregate amount of that debt.

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The only legitimate means for a candidate to spend money on an election that has already transpired is to pay off any outstanding debt from that election (and to pay for the legitimate costs associated with raising funds to pay off the debt). If a candidate with a debt outstanding from a pre-2001 election raises funds under the pretense that they are intended for the previous election, but chooses not to use those funds to payoff campaign debt, then clearly the funds are being used for a current or future election and, by definition, must be subject to the Proposition 34 limits now in effect. Similarly, if a candidate with a debt outstanding from a pre-2001 election raises funds in excess of the outstanding debt, then those excess funds are being used for a current or future election and must be subject to the Proposition 34 limits now in effect.

The only way to sustain the commission's decision that Section 85316 does not apply to elections prior to 2001 is to limit fundraising for an election prior to 2001 to the total amount of the debt outstanding, because all funds raised in excess of the debt will be used for current or future elections.

Under the regulatory language currently proposed, candidates who ran for state office in 2000 or before would be able to raise individual contributions in unlimited amounts (e.g. for legislative candidates, $3,000 per election limits imposed by Proposition 34) up to and infinitely beyond the aggregate amount of their debt from that election. Even worse, a candidate would not even have to have any debt to raise money in unlimited amounts for an election that has already transpired. Any candidate with a committee that opened prior to 2001 would be eligible to exploit this new loophole.

As a practical matter, under this interpretation, there would be no limits on contributions to sitting legislators. This would be clearly and dramatically contrary to the will of the voters. Furthermore, this interpretation will have the effect of creating a substantial advantage for incumbents over challengers in legislative races in 2002 and beyond. Virtually all incumbent legislators will have committees that opened prior to enactment of Proposition 34, by virtue of the fact that they ran for office in 2000, while most challengers will not.

Some have argued that it is acceptable for candidates to raise funds in unlimited amounts for an election which has already taken place and for which they have no outstanding debt because their ability to spend such funds will be restricted under Proposition 34. We believe that this contention not only misses the point, but also is incorrect.

There are numerous ways that incumbents will be able to exploit this loophole which directly conflict with the intent of the voters to impose limits on campaign contributions and spending by passing Proposition 34. For example:

- A legislator could solicit and receive a contribution of $360,000 from an interest group that has legislation favorable to its interests bottled up in the legislator's committee. Under Proposition 34 the legislator could keep $3,000 for his or her next election and make 119 $3,000 transfers to every sitting member or candidate for the state legislature of that legislator's party. The result is that the interest group would be in a position to exert far greater influence than it would be if it were limited to a contribution of only $3,000. And an ambitious legislator would be able to use that special interest money to advance his or her own career by building good will among the colleagues who vote to determine who serves in leadership positions within the legislature.

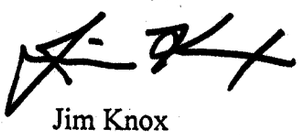
- Legislators could also solicit and receive unlimited contributions to be used for transfers to local officials who serve in jurisdictions that do not have contribution limits. Such transfers can be useful in building local "machines" and in courting potential future members of the legislature who would then be more likely to support the benefactor in leadership votes.

- It is likely that legislators could also use unlimited contributions to transfer to other legislators in unlimited amounts, not even subject to the $3,000 limits, as long as the recipient used it to repay debt from a previous election. Some legislators have debt in the hundreds of thousands of dollars.

We know of no statute, regulation or case law that compels, or even supports, the proposed interpretation. We believe the proposed regulation, as written, is contrary to the intent and plain language of the Proposition 34 and the clear desire of the voters to impose contribution limits. We urge the commission to amend the regulation as suggested above in order to avoid unnecessarily opening this troubling loophole.

Thank you for considering our views in this matter.

Sincerely,



Jim Knox
Executive Director