

May 17, 2016

Chair Jodi Remke
Commissioner Maria Audero
Commissioner Eric Casher
Commissioner Gavin Wasserman
Commissioner Patricia Wynne
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Assembly Bill 2523 – Local Contribution Limits – Recommend “Support if Amended”

Dear Commissioners,

On behalf of Common Cause and our members, I am writing to recommend an alternative to the staff’s recommendation to oppose Assembly Bill 2523 (Mullin), which would establish a default, \$4,200 campaign contribution limit in those local jurisdictions that have not adopted any limits. The very first finding of the Political Reform Act (PRA), which created the Commission, was that “local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.” G.C. §81001(a). We believe it would be inconsistent with the mission of the Commission to oppose local contribution limits.

Commission staff primarily recommends opposing because it believes the Commission should enforce these contribution limits and not local district attorneys, a policy decision on which reasonable minds can differ. However, an “oppose unless amended” position indicates that the Commission **would prefer the status quo of no contribution limits at all at the local level** rather than have default contribution limits exist but without FPPC enforcement. Today, special interests can and do provide contributions *the size of an average Californian’s annual salary* directly to candidates for local office. We hope the Commission would not endorse the position that AB 2523 is worse than this status quo. We recommend that the Commission instead adopt a substitute motion of “Support If Amended” or “Neutral With Recommend Amendments.” This would allow the Commission to continue to express concerns, if it has any, and work with the author’s office on them, without opposing important reform.

The Need for AB 2523

Under current law, local governments *may* enact local contribution limits, but the vast majority have *not* done so. Based on Common Cause’s statewide review, only *23 percent* of cities and *28 percent* of counties have enacted local limits; the percentage of districts with limits is even lower. In jurisdictions without limits, contributors can give *any amount* to candidates for local office. Common Cause’s research of local contributions found many examples of contributors giving \$20,000, \$50,000, and even \$90,000+ contributions to a single candidate. In some cases, *more than 50 percent* of a candidate’s campaign war chest came from just one or two contributors.

Unfettered campaign contributions undermine democracy, which is why contributions are limited at the state level. Allowing unlimited campaign contributions can create the possibility of corruption or undue influence, and contributes to voter cynicism with government. Whenever a candidate is financially dependent on just a handful of contributors there is a risk that they will value their contributors' interests over those of the people they serve. Moreover, requiring candidates to seek support in smaller amounts but from a broader number of contributors has a democratizing effect, and can help the competitiveness of community-supported candidates who are not tied to special interests.

AB 2523 merely shifts the *default rule* under state law when it comes to local contribution limits. Whereas currently the default is that local jurisdictions have *no* contribution limits unless they specially enact them, under AB 2523 local jurisdictions would have a default \$4,200 contribution limit (the same as state legislative candidates) unless they specially enact a different limit, *which can be lower or higher than \$4,200*. AB 2523 would stop the worst contribution abuses in jurisdictions without limits, while respecting the traditional autonomy that has been given to locals to set contribution limits more precisely tailored to the needs of their communities.

Commission staff noted four concerns in its analysis, which we would like to briefly address.

AB 2523 does not amend the PRA.

First, staff observes that this bill does not amend the Political Reform Act (PRA). That is correct and, in Common Cause's view, appropriate. As staff notes, the PRA expressly authorizes the Legislature to enact restrictions outside of the PRA. The Legislature has done so on many occasions.¹ In fact, AB 2523 amends the *same division of the Elections Code* where local campaign contribution limits are currently addressed. Because the bill does not provide for FPPC enforcement of local contribution limits, we do not believe these limits should be placed in the PRA; it would even be unusual to add a carve-out from FPPC enforcement into the PRA.

There is no evidence AB 2523 will generate confusion.

Second, staff is concerned that establishing local limits may somehow create confusion because local candidates would be subject to the local limits and the FPPC's reporting requirements. However, if this were true, it would already be the case in the over 100 local jurisdictions that currently have contribution limits. Common Cause is not aware of significant confusion in those jurisdictions, and similarly we do not expect significant confusion with this bill. However, we welcome working with the FPPC to minimize the potential for confusion.

District Attorney enforcement of AB 2523.

Third, staff suggest that the local district attorneys do not have capacity to enforce the local limits. In fact, the vast majority of local jurisdictions that have contribution limits have chosen to vest enforcement powers with the local district attorney, which suggests this is not the case. We believe that local enforcement is an appropriate option for local contribution limits which mirrors existing practice and maintains local control. If experience should show that this option is not working well after a few years of implementation, the Legislature could return to this issue, with the benefit of real world experience.

¹ See, for example, Chapter 4 of Division 18 of the Elections Code; Section 18680 of the Elections Code; or all of Division 20 of the Elections Code.

Local Administrative Body-FPPC interaction.

Fourth and finally, staff is concerned about “what systems would be established to investigate complaints and approve administrative penalties for jurisdictions who adopt contribution limits and how those systems interact with the Commission’s enforcement powers.”

However, AB 2523 does not require the creation of local administrative bodies. Local jurisdictions have always had the right to create such bodies and AB 2523 simply references this ability as an optional mechanism for local enforcement of local contribution limits.

More importantly, we do not believe these concerns rise to the level where the Commission should say it is *better that the status quo of unlimited contributions should continue*. There is a clear need and public support for contribution limits. California is an outlier when it comes to local contribution limits. Of the 38 states that have contribution limits, only four, including California, do not also have local limits. In fact, Californians have *twice* voted to establish contribution limits at the local level as part of comprehensive campaign reform packages, but court injunctions prevented them from going into effect. The campaign finance reform community supports this legislation, including California Common Cause, the League of Women Voters, California Clean Money Campaign, and Money Out Voters In.

The author has worked carefully with locals to craft legislation that addresses campaign finance abuse while respecting local autonomy. We feel it would be contrary to the Commission’s purpose to oppose this bill, and we respectfully ask the Commission to take an alternative position.

Should you have any questions, I can be reached at: 510-798-3425 or nheidorn@commoncause.org.

Sincerely,



Nicolas Heidorn
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California Common Cause