

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
Opinion requested by)
Richard R. Rios, Esq.)
)
)
_____)

No. O-17-001
August 7, 2017

BY THE COMMISSION: Richard Rios, counsel for the Senate Democratic Caucus, has requested an opinion of the Fair Political Practices Commission (“Commission”) on the following question:

QUESTION

Does the contribution limit set forth in Government Code section 85305¹ apply to a contribution made by a candidate for elective state office, or a committee controlled by that candidate, to a committee controlled by an elected state officer opposing a recall measure as described in Section 85315?

CONCLUSION

No. The limitation on inter-candidate contributions of campaign funds in Section 85305 does not apply to contributions to a committee controlled by an elected state officer opposing a recall measure as described in Section 85315.

ANALYSIS

A. The Determination That State Candidates May Contribute Unlimited Funds to A Recall Committee Controlled by Another State Candidate Is Supported by Examining the Plain Meaning of the Text of the Relevant Statutes.

When the Commission interprets a statute, it follows the same canons of statutory construction employed by the courts. *Britton et al. v. Dallas Airmotive, Inc. et al.* (2007) 153 Cal.App.4th 127, 131-132 explains:

Our primary objective in interpreting a statute is to determine and give effect to the underlying legislative intent. We begin by examining the statutory language, giving the words their usual, ordinary meanings and giving each word and phrase significance. The meaning of a statute may not be determined from a single word or sentence; the words must be construed in context, and provisions ... relating to the same subject matter must be harmonized to the extent possible. An interpretation that

¹ Unless otherwise indicated, all further statutory references are to the Government Code.

renders related provisions nugatory must be avoided; each sentence must be read not in isolation but in the light of the statutory scheme; and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (Internal citations and quotation marks omitted.)

The general campaign contribution limits are contained in Chapter 5 of the Political Reform Act (the “Act”).² Section 85305 is an inter-candidate contribution limit contained in Chapter 5 that states “[a] candidate for elective state office or committee controlled by that candidate may not make any contribution to any other candidate for elective state office in excess of the limits set forth in subdivision (a) of Section 85301.” In turn, Section 85315 provides that “[a]n elected state officer may accept campaign contributions . . . *without regard to the campaign contributions limits set forth in this chapter.*” (Emphasis added.) Accordingly, by its plain language, Section 85315 waives the application of “campaign contributions limits” found within Chapter 5 but it does not define the phrase “campaign contributions limits.”

In order to determine whether Section 85305 is a campaign contributions limit for purposes of the waiver in Section 85315, a court would consider the statutory language in the context of the entire statute and the statutory scheme of which it is a part. (*In Re J.F.* (2011) 196 Cal.App.4th 321, 331.) And although Section 85305 does not use the exact term “campaign contributions limits,” it does use analogous language. For instance, Section 85305 prohibits a candidate from making a “contribution” in excess of specified “limits.” The term “limits” is defined in the dictionary as “a prescribed maximum or minimum amount, quantity, or number.” (See Merriam-Webster Online Dict., <https://www.merriam-webster.com>.) A maximum monetary amount for a campaign contribution would likely be encompassed by the plain meaning of the phrase “campaign contributions limits.” Additionally, Section 85305 is located in an article titled “Contribution Limitations,” which supports a conclusion that Section 85305 is a campaign contributions limit for purposes of Section 85315.

Accordingly, the plain meaning of Sections 85305 and 85315 allows for state candidates to contribute unlimited funds to a recall committee controlled by another state candidate.

B. The Determination That State Candidates May Contribute Unlimited Funds to A Recall Committee Controlled by Another State Candidate Is Further Supported by Considering the Legislative History of Section 85305.

Apart from looking to the plain meaning of the relevant statutes, there is evidence that the voters would have understood Section 85305 to act as a campaign contributions limit. When an enactment follows voter approval, the ballot summary and arguments and analysis presented to

² The Political Reform Act is contained in Title Nine of the Government Code, Chapters 1-11, Sections 81000 to 91014.

the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language in the enactment. (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 306.)

Here, the Legislative Analyst's analysis of Proposition 34 refers to the restriction in Section 85305 as a campaign contribution limit by stating as follows:

Campaign Contribution Limits ... This measure repeals a provision of Proposition 208 that bans transfers of funds from any state or local candidate or officeholder to another candidate, but establishes limits on such transfers from state candidates.

(Ballot Pamp., Gen Elec. (Nov. 7, 2000) pp.13-14.) The language presented to the voters in the analysis by the Legislative Analyst specifically referenced Section 85305 as a "campaign contribution limit." It thus follows that, in enacting Section 85315, the voters intended to include Section 85305 in the limits waived by that Section.

Moreover, this interpretation of Section 85305 is also supported by language from case law that describes a previous complete ban on inter-candidate transfers as a "contribution limitation" rather than an "expenditure limitation." In *Service Employees Intern. Union v. Fair Political Practices Com'n* (9th Cir. 1992) 955 F.2d 1312, 1322, the court distinguished inter-candidate bans from intra-candidate bans on transfers of contributions between campaign funds for the same candidate. The court reasoned that "the ban on intra-candidate transfers operates as an expenditure limitation because it limits the purposes for which money raised by a candidate may be spent," but found that the inter-candidate ban "operates as a contribution limitation because it limits the amount one candidate may contribute to another." (*Ibid.*)

Therefore, by looking to the plain meaning of Sections 85315 and 85305, the voters' intent in enacting Proposition 34 and relevant case law, it is evident that the phrase "campaign contributions limits" in Section 85315 includes the limit described in Section 85305.

C. The Waiver in Section 85315 Applies to Both Accepting and Making Contributions.

The plain language of Section 85315 waives contribution limits for accepting campaign contributions, whereas Section 85305 prohibits candidates from making inter-candidate campaign contributions. An argument can be made that Section 85315 does not waive the application of Section 85305 because Section 85305 only applies to making, rather than accepting, contributions. Interpreting Section 85315 in this manner, however, would lead to the conclusion that waiver of the contribution limits applies only to recipients, not contributors.

In determining the effect of statutory language, it is a well-established rule of statutory construction that the provisions should be read "'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.'" [Citations.]

(*People v. Skiles* (2011) 51 Cal.4th 1178, 1185.) Moreover, a literal interpretation will not be followed where it would cause an absurd result. (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1131.) Here, Sections 85301, 85302, and 85303 all include limits on making, as well as accepting, contributions. If the waiver in Section 85315 does not apply to the making of contributions, then it would not waive the limits on making contributions contained in Sections 85301 to 85303 either, thereby causing the waiver to become wholly ineffective, which is an absurd result.

Therefore, in order for the exception in Section 85315 to be effective, it must be read to waive limits on making a contribution as well as limits on accepting a contribution. And courts may read into a statute an exception that must be reasonably and necessarily implied. (See *Phillippe v. Shapell Industries* (1987) 43 Cal.3d 1247, 1265.) Thus, if Section 85315 is interpreted as waiving limits for making contributions for purposes of Sections 85301 to 85303, then it must necessarily be implied that Section 85315 also waives the limit on making contributions for purposes of Section 85305.

Accordingly, Section 85315 waives the limit imposed by Section 85305 on contributions made by a candidate to a committee controlled by an elected officer opposing a recall measure.

D. *Citizens to Save California v. FPPC* Also Lends Support to the Determination That Section 85315 Waives the Campaign Contribution Limit Imposed by Section 85305

To begin, the Political Reform Act includes a recall election within the definition of a “measure.” (Section 82043.) Thus, Section 85303, subdivision (c), may be relevant in determining whether the limit in Section 85305 applies to contributions made by one candidate to the committee of another candidate opposing a recall measure. Section 85303, subdivision (c), provides that “nothing in this chapter shall limit a person’s contributions to a committee ... provided the contributions are used for purposes other than making contributions to candidates for elective state office.” Although Section 82007 defines a “candidate” to include “any officeholder who is the subject of a recall election,” there is a strong argument that making a contribution to a committee to oppose a recall measure may be viewed as having a purpose other than making a contribution to a candidate for elective office.

Consequently, because a recall is considered a ballot measure, rather than an election for an office, a court may find that Section 85303, subdivision (c), prohibits the application of Section 85305 to contributions made to a candidate’s committee to oppose a recall election. For example, in *Citizens to Save California v. California Fair Political Practices Com’n* (2006) 145 Cal.App.4th 736, the court held that the FPPC overstepped its authority³ in adopting former

³ This opinion does not analyze any potential First Amendment concerns with the FPPC’s historical interpretation of this issue. However, to the extent such concerns exist, they should be ameliorated by adoption of this opinion.

Regulation 18530.9, which limited contributions to candidate-controlled ballot measure committees, in part, due to the fact that it conflicted with Section 85303, subdivision (c). The court supported its conclusion by emphasizing that contributions to a candidate-controlled ballot measure committee are not required to be included in a candidate's one bank account under Section 85201, which requires all contributions to the candidate, "or to the candidate's controlled committee," to be deposited into one bank account. (*Id.* at p. 750, italics omitted.) Because the contribution was made to oppose or support a ballot measure, and was not included in the candidate's one bank account, the court did not view the contribution as being for a candidate for elective office." (*Ibid.*)

Similarly, the PRA requires contributions to committees formed to oppose a recall measure to be deposited "in a single bank account ... which is separate from any other bank account held by the officer, including any campaign bank account." (Regulation 18531.5(c)(1).) Additionally, after failure of a recall petition or after a recall election, any remaining funds from the recall committee must be disposed of as surplus funds in compliance with Section 89519. (Section 85315(b).) Thus, the reasoning of *Citizens to Save California* may bolster the conclusion that the funds contributed to a candidate's committee to oppose a recall measure are used for purposes other than making contributions to a candidate for elective state office. If so, then Section 85303, subdivision (c) would also preclude applying the limit in Section 85305 to such contributions.

For all of these reasons, the limitation on inter-candidate contributions of campaign funds in Section 85305 does not apply to contributions to a committee controlled by an elected state officer opposing a recall measure as described in Section 85315.

WE CONCUR:

Maria Audero, Commissioner

Brian Hatch, Commissioner

Allison Hayward, Commissioner