

RAVI MEHTA
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FAIR POLITICAL PRACTICES COMMISSION

February 18, 1997

Mr. Thomas S. Cohen
Law Offices of Cohen, Alexander & Clayton
One Boardwalk, Suite 102
Thousand Oaks, California 92101

**Re: Your Request for Advice
Our File No. I-96-364**

Dear Mr. Cohen:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Do the contribution limits of Proposition 208 apply to a recall of several city council members that is expected in the City of Thousand Oaks?

CONCLUSION

The recall of an officeholder is considered to be a "measure" under the Act and therefore the contribution limits of Proposition 208 do not apply to the proponents of the recall or to contributions to the officeholder defending the recall.

FACTS

You state that efforts are underway to recall several council members in the City of Thousand Oaks. You remember that the contribution limits of Proposition 73 were determined to be inapplicable to elected officials subject to recall, and question whether the same is true of Proposition 208.

ANALYSIS

Section 82043 of the Act defines a "measure" as:

[A]ny constitutional amendment or other proposition which is

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18000 - 18995, of the California Code of Regulations.

[A]ny constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot. (Emphasis added.)

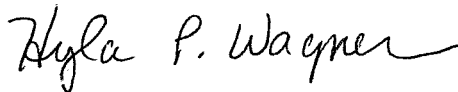
The recall of an officeholder is considered a "measure" under the Act, with the issue before the voters being "shall the officeholder be recalled from office." (See *Roberti* Advice Letter, No. A-89-358 [concluding that a recall election is more like a "measure," than a candidate election] and *Burgess* Advice Letter, No. I-94-393, copies enclosed.)

In *Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290, the Supreme Court held that it was unconstitutional to impose limits on contributions to committees formed to support or oppose ballot measures. Accordingly, the contribution limits of Proposition 208 do not apply to contributions raised for recall elections. As discussed in the *Roberti* Advice Letter, *supra*, the recall process does not begin until an officeholder is served with a notice of intention to circulate a recall petition and the notice is filed and published or posted. (See Elections Code Section 11006.) Contributions raised by an officeholder before the service, filing and publication of a recall notice are subject to the limits of Proposition 208, but contributions raised after a recall has been commenced are not. The officeholder must keep funds raised to defend against the recall in a separate account from his or her campaign bank account. (Section 85201.) Such funds may only be used in connection with the recall effort because the officeholder's other campaign funds must be raised under the limits of Proposition 208. Proponents of a recall who have raised over \$1,000 must register as a committee and file the periodic disclosure reports required by Chapter 4 of the Act.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Staff Counsel, Legal Division

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