

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

January 14, 2025

Chairman Silver and Commissioners
Wilson, Wood, Baker and Ortiz
Fair Political Practices Commission
1102 Q Street, Suite 3050
Sacramento, CA 95811

RE: Item 9 – Proposed Amendment of Regulation 18531.2

Dear Chairman Silver and Commissioners:

We appreciate the opportunity to comment on the Commission's proposed amendments to Regulation 18531.2, which would require a candidate who withdraws from a primary election after filing a declaration of candidacy to refund contributions raised for their general or runoff elections, rather than permitting the candidate to transfer those contributions with donor attribution to a committee for subsequent office.

The proposed regulation follows the Legislature's enactment of SB 948 (Limon/Zbur), Chapter 125, Statutes of 2024, which clarified that a candidate who does not file a declaration of candidacy for a primary election is not considered to have withdrawn from the general election or to have been defeated in a primary or special primary election. The consequence of SB 948 is that candidates who decide not to participate in an election will be permitted to transfer funds raised for a general or special general election to a committee for the same or a different office subject to donor attribution rules.

After the enactment of SB 948, the Legislature also enacted AB 1784 (Pellerin and Carrillo), which permits candidates to withdraw their nomination documents "for any office other than a statewide office that the candidate delivered for filing to the county elections official by delivering a statement of withdrawal to the county elections official" no later than 5:00pm on the 88th day before the primary election. Prior to the adoption of AB 1784, candidates for elective state office had no legal option to withdraw from a primary election after filing nomination papers. Therefore, because AB 1784 was adopted two months after the Legislature passed SB 948 and on an expedited basis, the Legislature did not specifically consider how the candidate transfer rules imposed by SB 948 should apply to candidates withdrawing from a primary election.

Under the express language of Government Code section 85318, a candidate is required to refund contributions raised for a general or special general election only if (1) they are defeated in a primary or special primary election or (2) they withdraw from the general election or special general election. A candidate who withdraws from participating in a primary election after filing nomination papers has neither been defeated in a primary or special primary election nor have they withdrawn from the general or special general election. Therefore, by the express language in the statute, withdrawing candidates should be permitted to transfer, with attribution, contributions raised for the general election just as other candidates who have opted not to participate in the primary election are entitled to under SB 948.

This interpretation is consistent with the Commission's current interpretation of Government Code section 85318. As the Commission noted in the *Brown* advice letter:

... it is difficult to conclude that a candidate who has not even run in the primary election, let alone won it, can "withdraw" from the general election. A more logical reading of Section 85318's requirement to return general election contributions is that it applies only after the candidate has either been defeated in the primary or has won the primary but subsequently withdraws from the general election campaign.

Brown Adv. Ltr., No. A-09-276 (2010). As Legislative analyses of SB 948 make clear, our intent in authoring SB 948 was to codify the advice that the FPPC gave when issuing the *Brown* advice letter.

Because it is inconsistent both with the express language in Government Code section 85318, the Commission's existing interpretation of that statute, and the Legislature's intent in adopting SB 948, we ask the Commission not to approve the proposed amendments to Regulation 18531.2.

Sincerely,



Senator Monique Limon, Chair
Senate Democratic Caucus



Assembly Member Rick Chavez Zbur, Chair
Assembly Democratic Caucus

cc: Richard Rios, Olson Remcho LLP