



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

To: Chair Silver, Commissioners Baker, Ortiz, Wilson, and Wood

From: Dave Bainbridge, General Counsel, Zachary W. Norton, Senior Commission Counsel

Subject: Refunding Contributions After Withdrawal from Primary Election, Proposed Amendments to Regulation 18531.2.

Date: January 6, 2025

Executive Summary

At the Commission’s meeting in August 2023, staff presented for pre-notice discussion amendments to two regulations addressing two distinct scenarios, one amendment concerning the refunding of contributions when a candidate chooses to withdraw from the primary election. However, before the Commission adopted the proposed regulatory amendment, legislation passed addressing the issue, making staff’s proposed regulatory change moot. Staff presented these amendments for adoption at the Commission’s November 2024 meeting. The Commission voted to adopt amendments to one regulation, which removed now obsolete language, but requested that adoption of amendments to Regulation 18531.2 be postponed until the January meeting to allow for additional opportunity for public comment. Consequently, staff now presents for adoption proposed regulatory amendments to Regulation 18531.2 to clarify the application of the Political Reform Act (the “Act”)¹ as amended by the recent legislation and remove the regulatory definition superseded by the recent statutory amendments.

Reason for Proposed Regulatory Action

On July 15, 2024, the Governor signed [SB 948](#) (Limon – Treatment of General Election Funds), which took effect January 1, 2025. It amends Sections 85317 and 85318. Specifically, SB 948 provides that a candidate who raises funds for the general election before the primary election, and who does not file a declaration of candidacy to qualify for a primary election, may transfer these funds to a committee for the same or a different office if the candidate withdraws before the primary election. However, the new law does not explicitly address the scenario where a candidate raises funds for a general election before the primary election, files a declaration of candidacy, and then withdraws before the primary election. Staff is proposing a regulatory provision to address that scenario.

¹ The Political Reform Act is set forth in Government Code Sections 81000 through 91014, and all further statutory references are to this code. The Commission’s regulations are contained in Division 6, Title 2 of the California Code of Regulations, and all regulatory references are to this source.

Background

Law

Under the Act's one-bank account rule², contributions raised for a specific election must be deposited into a single, designated account established for that election. However, Section 85318 creates an exception to this rule and the Act's contribution limits that allow candidates to raise general election and primary election funds simultaneously. For purposes of the Act's contribution limits, a primary election and a general election are considered different elections.³

Existing Section 85318 requires a candidate who raises campaign funds for a general election prior to a primary election to return those general election funds to contributors if the candidate is defeated in the primary election or otherwise withdraws from the general election. Recent amendments to this section now explicitly allow a candidate who does not file a declaration of candidacy to qualify for a primary or special primary election to transfer funds to a committee established for the same or a different office subject to the Act's existing transfer rules in Section 85306 that establish how they may be transferred, and require these funds be attributed to each specific contributor. This amendment explicitly states that a candidate who does not file a declaration of candidacy is not "defeated in the primary election or special primary election" and does not "otherwise withdraw from the general election or special general election" for the purposes of this section.

Prior Regulatory Proposal

Staff previously proposed regulatory amendments addressing what a committee may do with campaign funds raised for a general election when the candidate withdrew from the primary election. The FPPC had provided conflicting advice on this scenario (see *Kaufman* Advice Letter, A-06-106 advising a candidate who withdrew before a primary election to return general election campaign funds pursuant to Section 85318; and *Brown* Advice Letter, A-09-276 advising a candidate who withdrew before a primary election that he could transfer campaign funds raised for the general election to another committee for elective office pursuant to Section 85306.)

Staff proposed that the Commission adopt a regulation codifying one of the two conflicting interpretations. Staff recommended adopting the conclusion in the *Kaufman* letter. Before the Commission took action on the regulatory proposal, the Legislature passed SB 948, which largely adopted the *Brown* letter interpretation by permitting a candidate who withdraws from a primary election before filing a declaration of candidacy to transfer those funds raised for the general election to another committee.⁴

² Section 85201.

³ Section 82022.

⁴ Proposition 34 created contribution limits, and most of the discussion in the Voter Information Guide for the 2000 General Election focused on contribution limits, disclosure requirements, and penalties for violations. There is a mention of prohibitions on campaign fund transfers, but nothing that provides insight into any express intent as to the matters currently before the Commission.

Current Regulatory Proposal

As discussed above, the statutory changes made by SB 948 make the prior proposed regulatory changes clarifying what a committee may do with general election funds when the candidate withdraws before the primary largely unnecessary. However, the statutory amendment to Section 85318 in SB 948 only applies to a candidate who opens a committee for a particular office but does not file a declaration of candidacy.⁵ The proposed regulatory amendment would address withdrawal *after* filing a declaration of candidacy by making clear that doing so will require the refund of contributions raised for the general election. This proposed regulatory change is consistent with the explicit language of the recent statutory amendment, which only allows for the transfer of funds raised for the general election when the candidate withdraws from the primary election before filing a declaration of candidacy. To interpret this provision as also allowing the transfer of funds raised for the general election by a candidate who withdraws from the primary election *after* filing a declaration of candidacy would render the distinction drawn in the statute meaningless and ignore the distinction it creates through the addition of the declaration of candidacy language.⁶

Proposed Amended Regulations

Refunding Contributions After Withdrawal from Primary Election-Regulation 18531.2

Staff proposes amendments adding additional language to existing subdivision (a) of Regulation 18531.2 to clarify that a candidate would be required to refund general election contributions when the candidate withdraws *after* filing a declaration of candidacy. Whether a declaration of candidacy had been filed was not previously a relevant distinction in the statute, Commission advice, or the regulatory changes previously proposed by staff. Under Section 85318, a candidate must refund general election funds when a candidate does not run or withdraws from a general election. The recent legislation added a provision to Section 85318 that operates as an exception to the general rule requiring the return of general election contributions when a candidate does not run in the general election. The legislation did not add a similar exception when the candidate files a declaration of candidacy. As a result, the staff is proposing this amendment to address the potential ambiguity the legislation creates. This proposed change is consistent with the idea that a withdrawal from the primary election by a candidate, who has filed a declaration of candidacy to appear on the ballot, also effectuates a withdrawal from the general

⁵ Elections Code § 8040 pertains to the declaration of candidacy for candidates in primary elections. That statute provides that the declaration of candidacy must be signed by the candidate and verified by a Notary Public or other officer, acknowledging the name and occupation designation requested to be printed on the ballot. The declaration of candidacy also requires verification of statutory and constitutional qualifications for the office (including, but not limited to, citizenship, residency, and party preference, if required). It is filed with the filling officer for the particular office sought, city clerk, county registrar, or the Secretary of State.

⁶ The surplusage canon (*verba cum effectu accipienda sunt*, or “words are to be taken as having effect”) states that “the courts must lean ... in favor of a construction which will render every word operative, rather than one which may make some idle and nugatory.” *Delaware v. Pennsylvania*, Nos. 220145, 220146, 2021 U.S. LEXIS 6295, at *60 (July 23, 2021). Under this canon of construction, “we generally must ‘accord[] significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose,’ and have warned that ‘[a] construction making some words surplusage is to be avoided.’” (*People v. Valencia* (2017) 3 Cal.5th 347, 357.)

election for that office. It would also achieve a consistent result as to the refund of contributions upon withdrawal from a general election.

We note that the original regulatory proposal made no distinction between candidates who had not yet filed a declaration of candidacy and those who did file the declaration. The Legislature specifically amended Section 85318 to state that a candidate who does not file a declaration of candidacy to qualify for a primary election is not defeated in the primary election and does not otherwise withdraw from the general election, so that a candidate who does not file a declaration of candidacy may transfer funds the same or a different office subject to the attribution rules. By specifically choosing to allow a transfer only by those candidates who do not file a declaration of candidacy, the recent statutory amendment implies a different result in instances where a candidate withdraws from a primary election after filing a declaration of candidacy, and this regulatory amendment is consistent with the statutory change.⁷

Education/Outreach Efforts

Staff will distribute the amended regulation to interested parties via the Newly Adopted, Amended or Repealed Regulations email list, update the “Newly Adopted, Amended or Repealed Regulations” page on the Commission’s website, and make necessary updates to training and educational materials resulting from the regulatory changes. Staff also intends to add a disclaimer on the *Kaufman* and *Brown* Advice letters noting the statutory amendments. Further, staff will reach out to city and county election officials to ensure they are aware of the new and amended statutes and regulation.

Conclusion

Recent statutory amendments have modified the rules for refunding contributions after withdrawal from a primary election. This change would bring the regulation in line with the statutory amendments to clarify and further implement the existing regulation.

Attachment:

Proposed Amended Regulation 18531.2

⁷ *Expressio unius est exclusio alterius* (expression of one is the exclusion of the other) is a recognized rule of statutory construction that the expression of certain things in a statute necessarily involves the exclusion of other things not expressed. (*In re J.W.* (2002) 29 Cal.4th 200, 209).