



**(Amended and Approved August 17, 2017)**  
**CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION**  
**MINUTES OF HEARING, Public Session**  
**Thursday, July 27, 2017**

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

**CALL TO ORDER**

Chair Remke called the meeting to order at 10:00 am on July 27, 2017, at the State Personnel Board, 801 Capitol Avenue, Room 150, Sacramento, CA 95814. Chair Remke and Commissioners Audero, Hatch and Hayward were present.

**Welcome**

Jodi Remke, FPPC Chair

**Public Comment**

- 1. Public Comment.**

**Approval of Commission Minutes**

- 2. Approval of June 2017 Commission Hearing Minutes.**

Commissioner Hayward made a motion to approve item 2; Commissioner Audero seconded the motion.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.  
The motion passed 4 to 0.

**General Item**

- 3. In re Rios Opinion Request.** Staff: General Counsel Jack Woodside and Commission Counsel Ryan O'Conner. The Commission will consider whether to issue an opinion addressing whether contribution limits apply when state candidates make contributions to a recall committee controlled by another state candidate. Because the matter is covered

by Commission regulations, the Executive Director denied the request. The requestor seeks a review of this denial by the Commission.

- Staff Memorandum
- Rios Appeal
- Leg Counsel Opinion
- Rios Denial
- Rios Request

General Counsel Jack Woodside presented a summarized history of the request and FPPC policy as well as the prepared Staff Memorandum.

Commissioner Hatch asked if the Staff Memorandum was an impartial report or an advocacy piece, and pointed to the Schwarzenegger case that is not mentioned in the analysis.

Counsel Ryan O'Connor answered that the Schwarzenegger case in question, *Citizens to Save California*, was distinguishable from the present case as it did not address recall committees.

Public Comment:

- Richard Rios, Partner, Olson Hagel & Fishburn, on behalf of the Senate Democratic Caucus, stated that the regulation 85305 does not specifically state it is for controlled committees.

Commissioner Hatch asked whether Mr. Rios wanted to address the arguments presented in the comment letter from Mr. Kanin, regarding the unconstitutional nature of the FPPC interpretation based on impermissible limits on ballot measure contributions.

Commissioner Audero asked why legislative intent is an argument in this issue based on regulation 85315 not being ambiguous and for a definition of evident intent.

Chair Remke asked whether Senate Democrats could give unlimited contributions to a committee formed to oppose the recall that is not a candidate-controlled committee. Mr. Rios responded yes.

- Brian Hildreth, Bell McAndrews & Hiltachk, representing the Republican party, stated an administrative agency does not have the authority to decline implementation of a statute based on unconstitutionality. Potential for corruption arises when there are large campaign contributions. The Commission's longstanding interpretation is a source restriction, which is permissible under federal law and is different than receipt restrictions.

Commissioner Hatch asked if the type of committee was expanded, would the argument change.

Commissioner Audero asked if Mr. Hildreth was making the flip argument from the position his firm took in a 2008 advice request letter submitted to the Commission.

Commissioner Hayward stated her confusion on why regulation 85305 would not be a limit in Chapter 5 of the Political Reform Act, highlighting the plain language of the provision.

Chair Remke asked whether a committee formed to oppose the recall that is not a candidate-controlled committee could receive unlimited contributions from members of the Legislature. Mr. Hildreth responded yes.

Commissioner Hatch asked General Counsel Woodside if one candidate was to give funds to another candidate would they then have to report it, based on it being a transfer rather than it a contribution.

Commissioner Audero asked General Counsel Woodside how regulation 85305 is not considered a contribution limitation when a court, and even the Commission, has said otherwise at different times.

Commissioner Hayward believes that an opinion should be issued to reverse the Commission position based on a plain reading of regulations 85305 and 85315. She also believes the *Citizens to Save California* case provides further support.

Commissioner Audero agrees with Commissioner Hayward, as that was the intent behind Proposition 34 as presented to the voters, specifically regulations 85305 and 85315.

Commissioner Hatch stated the drafters of Proposition 34 intended to change the narrative, and he wants to reverse the *Johnson* advice letter. He will vote to issue an opinion.

Chair Remke will vote not to issue an opinion. The transcription of Chair Remke's statement is as follows (submitted by amendment to minutes by Commissioner Hatch on August 17, 2017):

“Well, today I'm going to be voting not to issue an opinion and I also have several reasons, most importantly, I believe that the longstanding Commission interpretation is correct. I believe that the Commission followed an impartial and rational decision making process to reach that conclusion and it was not just in the advice letter and it is also set forth in regulation and a recall fact sheet approved by the Commission. Now if any of the interested parties that are appearing before the

Commission now disagreed with that interpretation they had a variety of avenues to address it over the past fifteen years. Obviously, that includes a legal challenge, statutory amendment for clarification, or even an initiative.

I also think that it is important and the agency has a duty of consistency and that we should adhere to our own informed judgement. Without a change in the law, a court decision, or even a strong factual showing that there were unintended consequences to our interpretation, I do not believe that there is any sound basis to reverse our position. None of the arguments made today in the public comment letters are new. They were and have been available for the last fifteen years through at least two recall elections, in fact, none of the players are new. The only changes have been the makeup of the commission and the current pending recall. Under those circumstances, I believe any decision to rescind our prior interpretation at this time could have negative consequences.

And just to point out a few, which I can see, is that such a reversal could be considered political, potentially impacting the public's perception of the integrity of the commission. I also believe that it could set an undesirable precedent that with each change in the makeup of the commission settled law, rules and policy are subject to change, which I think would bring undesirable uncertainty. And of course a reversal in this politically charged environment could subject us to what I think is unavoidable litigation against us. So in short, I think that this is the wrong time and the wrong venue for the commission to reverse its legal interpretation.”

Commissioner Hatch moved, pursuant to Regulation 18321, that the Commission hereby grant the Commission opinion request sought by Mr. Rios, and further moved that Chief Counsel be instructed to cause a draft Commission opinion to be prepared and properly noticed for consideration by the Commission at the regular August meeting, which draft opinion analysis and conclusion shall be in accord with the analysis and conclusion of Legislative Counsel opinion 1716447. Commissioner Hayward seconded the motion.

Ayes: Commissioners Audero, Hatch, and Hayward

Nays: Chair Remke

The motion passed 3 to 1.

Chair Remke made a motion to allow for the Staff Memorandum and tentative draft opinion to be posted 10 days before the August meeting and briefs by any interested party to be due no later than one day before the August meeting; Commissioner Hatch seconded the motion.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The motion passed 4 to 0.

Chair Remke made a motion to adjourn the meeting; Commissioner Hayward seconded the motion.

Ayes: Commissioners Audero, Hatch, Hayward, and Chair Remke.

The motion passed 4 to 0.

The meeting adjourned at 11:26 am.

Respectfully Submitted,  
Sheva Tabatabaiejad  
Commission Assistant  
Amended and Approved August 17, 2017

Joann Remke, Chair  
Fair Political Practices Commission