



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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July 27, 2020

Andrew S. Becker  
Secretary & Rules Committee Chair  
Democratic Party of Sacramento County  
4040 T Street  
Sacramento, CA 95819

Re: Your Request for Advice  
**Our File No. A-20-044**

Dear Mr. Becker:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTIONS

1. If the Democratic Party of Sacramento County (“DPSC”) pays for voter contact (e.g., paid canvassing, text banking, phone banking, etc.) to registered democrats in Supervisor District 3 in coordination with Gregg Fishman’s (“Mr. Fishman”), a candidate for Sacramento County Board of Supervisors, District 3 campaign, would the paid voter contact count as a “member communication” and therefore not be subject to the county’s contribution limits?
2. Can the DPSC hold a fundraiser to raise funds to support its member communications and can the DPSC feature Mr. Fishman as a candidate at the fundraiser?

### CONCLUSIONS

1. Since DPSC is paying for voter contact directed specifically at registered democrats in Supervisor, District 3, for the election of the Mr. Fishman in Sacramento County Board of Supervisors, District 3, the voter contacts are considered “member communications” and therefore not subject to the county’s contribution limits. However, such payments are subject to the Act’s reporting requirements.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. The cost of the fundraiser would be considered an in-kind contribution to the candidate featured and thus, would be subject to the applicable contribution limit.

### **FACTS AS PRESENTED BY REQUESTER**

You are the secretary and rules committee chair of DPSC, a registered state general purpose political party central committee and you seek advice on behalf of DPSC.<sup>2</sup> DPSC would like to engage in member communications to registered democrats in support of Mr. Fishman, a candidate for Sacramento County Board of Supervisors, District 3. DPSC has already contributed the maximum monetary contribution allowable under the county's contribution limits to Mr. Fishman.

DPSC would like to pay for voter contact (e.g., paid canvassing, text banking, phone banking, etc.) to registered democrats in Supervisor District 3 in coordination with Mr. Fishman's campaign and would like to know if this contact would fall under the "member communication" exemption and therefore not be subject to the county's contribution limits.

DPSC would also like to hold a fundraiser to raise funds to support its member communications. The fundraiser would feature Mr. Fishman as a guest speaker and would be promoted via social media and email to DPSC's membership. The event flyer would list Mr. Fishman as a guest speaker. When asked whether it will be clear to those attending the event that the funds raised would be used to send communications supporting Mr. Fishman you responded that DPSC's fundraising is "done to support our monthly fixed expenses and general candidate support. Solicitations for donations to SacDems do not mention or explicitly solicit support for any specific candidate." The fundraising event will be open to the public at large (either in person or video conference) and all funds raised would go to DPSC, not Mr. Fishman or any other candidate.

### **ANALYSIS**

#### Member Communications

Payments made by an organization (including a political party) or its sponsored committee for a communication that supports or opposes a candidate or ballot measure are not contributions or expenditures as long as the communication is made only to the organization's members, employees, or shareholders, or to the families of its members, employees, or shareholders. (Section 85312; Regulation 18531.7.) The communication may not be for general public advertising, such as billboards, newspaper ads, or radio or television ads. (Section 85312; Regulation 18531.7; *Green Advice Letter*, No. A-06-155.)

Members include individuals that are affiliated with a certain political party preference. (*Bell Advice Letter*, No. A-89-644.) Mailers sent by a political party central committee to the party's registered voters advocating for the election of specific candidates are considered "member communications." (*Schwartz Advice Letter*, No. A-10-034.) Payments made by a political party for

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<sup>2</sup> Section 85205 defines a "political party committee" as the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code. By stating that you are a registered state general purpose political party committee we assume you are providing that DPSC meets Section 85205's definition of political party committee.

communications to a member who is registered as expressing a preference for that party on his or her affidavit of registration pursuant to Sections 2150, 2151, and 2152 of the Elections Code that would otherwise qualify as contributions or expenditures must be reported in the same manner as other contributions and expenditures under the Act. (Section 85312).

Based on the facts you have provided, the paid canvassing, phone banking, and text banking would only be communicated to registered democrats in Supervisor District 3. Accordingly, the paid canvassing, text banking, and phone banking would be considered member communications and thus would not be considered an expenditure or contribution for purposes of Section 85312. Nonetheless, such payments are subject to the Act's reporting requirements.

#### *Fundraising for Member Communications*

A "contribution" is "any payment made for political purposes for which a donor does not receive full and adequate consideration." (Regulation 18215(a); also see Section 82015.) A payment is made for political purposes if it is made "for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure" or is received by or made at the behest of a candidate, controlled committee, an official committee of a political party, or an organization formed primarily for a political purposes. (Regulation 18215(a)(1) and (2).)

We have advised that a rally or candidate forum put on to introduce the audience to a select candidate that is sponsored by a political party or other group and not limited to the organization's members is an in-kind contribution to the candidate because it is a payment made at the behest of a candidate. (*Bauer Advice Letter*, No. A-89-640.) A payment is made at the behest of a candidate when the payment is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestions of a candidate. (Section 82041.3; Regulation 18225.7.)

DPSC would like to hold a fundraiser to help fund communications to registered democrats to support Mr. Fishman. The fundraiser will be open to the general public and advertised as one featuring Mr. Fishman as a guest speaker. However, the funds raised at the fundraiser will not be directly contributed to Mr. Fishman. Instead, the funds will go to DPSC and DPSC will use those funds for communications to members supporting Mr. Fishman.

Nonetheless, DPSC will be hosting the fundraising event to introduce the audience to Mr. Fishman as a guest speaker, to which Mr. Fishman would have to agree. Thus, the event will be held, at a minimum, in cooperation or consultation with him. Accordingly, the event will be held at his behest and the cost of that event will be an in-kind contribution to that candidate, subject to the applicable contribution limits.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Katelyn L. Greene*

By: Katelyn L. Greene  
Counsel, Legal Division

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