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VIA ELECTRONIC MAIL

Chair Miadich and Commissioners Baker, Cardenas, Wilson, and Wood
Fair Political Practices Commission
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Sacramento, CA 95811
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Re: Response to March 8, 2021 Memo

Dear Chair Miadich and Commissioners:

On behalf of the California Political Attorneys Association ("CPAA"), we appreciate the Commission's March 8, 2021 memorandum regarding whether AB 571's contribution limits should be applied in a manner which includes contributions given before January 1, 2021, though we disagree with the conclusions contained therein. In short, we do not believe that the memorandum properly addresses the clear constitutional constraints, the constraints set forth by AB 571's statutory language, or the historic application of Proposition 34's contribution limits. While the memorandum includes many examples, which are tangentially related to AB 571's application, they are simply not relevant to the key inquiries CPAA raised. We were not able to provide comment on the memorandum at the Commission's Law and Policy Committee meeting on Monday, March 15, 2021, and therefore present the following response for the Commission's consideration.

The memorandum does not address CPAA's arguments regarding the express language of Section 85306. Section 85306(a), applicable to county and city candidates, covers the *transfer* of funds by a candidate from one controlled committee to a different controlled committee for elective state, county, or city office of the same candidate. This section would not apply when the candidate did not establish a new controlled committee, but simply solicited and received contributions *prior* to January 1, 2021 to a committee formed for an election in 2021 or later.

The memorandum also does not address the more significant constitutional burden placed on – rather than the mere disclosure of – political participation. Since First Amendment considerations in making and accepting campaign contributions are directly at issue here, the interests affected by potential retroactive application are different than what Staff describes. (See *Buckley v. Valeo* (1976) 424 U.S. 1, 14 [contribution limits "operate in an area of the most fundamental First Amendment activities"]; *McCutcheon v. Federal Election Com.* (2014) 572 U.S. 185, 209 [First Amendment requiring erring on the side of protecting political speech rather than suppressing it].) As stated in Section 83111.5, "The Commission shall take no action to implement this title that would abridge constitutional guarantees of freedom of speech, that would deny any person of life, liberty, or property without due process of law, or that would deny any person the equal protection of the laws."

For example, the cited *Mintzer* Advice Letter (No. I-15-242) concerned disclosures required by Section 84222, not contribution limits, and is thus distinguishable. As the United States Supreme Court stated in *Citizens United v. Federal Election Com.* (2010) 558 U.S. 310, 369-70, while disclosure permits the public to react to political speech, the First Amendment protects that speech in the first place.

Finally, the statutory language of AB 571 itself provides a clear answer to which the memorandum fails to respond; according to the bill's preamble (and throughout the bill itself), *commencing* January 1, 2021, a candidate for elective county or city office is prohibited from accepting a contribution over $4,900 per election. This means that *beginning* January 1, 2021, the candidate could accept contributions up to $4,900 per election in addition to any contributions received from the same donor prior to January 1, 2021. This remains consistent with the goal and intent of AB 571, as the memorandum's citation of legislative history confirms.

Thank you for your consideration of these comments.

Very truly yours,

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