To:	Chair Remke, Commissioners Audero, Hatch, and Hayward
From:	Zachary W. Norton, Senior Commission Counsel
Subject:	Proposed Amendments to Regulation 18535 (Restrictions on Contributions Between State Candidates)
Date:	December 11, 2017

Requested Action

The Commission has been asked to adopt amendments to Regulation 18535,[1] which would expressly permit unlimited contributions from a state candidate to another state candidate's legal defense fund or candidate controlled ballot measure committee. An amendment to Regulation 18535 implementing this request has been prepared by Staff for consideration by the Commission.

Discussion

Section 85305 prohibits a candidate for elective state office or committee controlled by that candidate from making any contribution to any other candidate for elective state office in excess of the contribution limits set forth in subdivision (a) of Section 85301. Section 85315 allows an elected state officer to accept campaign contributions to oppose the qualification of a recall measure, and if qualification is successful, the recall election, without regard to the campaign contributions limits.

Regulation 18535 was initially adopted in 2002 and provides the Commission rules clarifying the intercandidate transfer limits in Section 85305. Previously, the Commission interpreted the intercandidate transfer limit, currently $4,400, to apply to a contribution from one state candidate to another state candidate, whether that contribution be to the candidate's election committee, recall committee, legal defense fund, or candidate-controlled ballot measure committee.

However, at its July 27, 2017 hearing, the Commission deliberated over issues raised with respect to the interplay between Sections 85305 and 85315, and whether the prohibition in Section 85305 restricted contributions from state candidates to other state candidates who are the subject of a recall. The Commission decided to issue an opinion finding that Sections 85305 and 85315 require that there be no limit on contributions from state candidates to a recall committee controlled by another state candidate to oppose the recall of that state candidate. The

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[1] The regulations of the FPPC are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source. The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code.

Commission adopted the new opinion, *In re Rios* Opinion, No. O-17-001, at its August 17, 2017 hearing.[2]

At its October meeting, consistent with this opinion, the Commission adopted amendments to Regulation 18535 permitting unlimited contributions from a state candidate to another state candidate who is the subject of a recall.

During the deliberation of the amendments to Regulation 18535, a comment letter was received asking that the Commission also consider reversing the longstanding Commission interpretation that Section 85305's restriction on state candidate contributions to another state candidate applied to contributions to another state candidate's legal defense fund or candidate controlled ballot measure committees. While the Commission could not take action on this request in October because it was outside the scope of the *In re Rios* Opinion, the Commission asked that staff prepare a regulatory amendment incorporating the requested actions.

Summary of Action

For the Commission's consideration, Staff has prepared an amendment to Regulation 18535 as requested. Amended language would expressly permit unlimited contributions from a state candidate to another state candidate's legal defense fund and candidate-controlled ballot measure committees. Since noticing Regulation 18535 for adoption, and holding an interested persons meeting, no further public comments have been received.

Attachment:

1- Amendment to Regulation 18535

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[2] At the October 19, 2017 meeting, the Commission voted to amend the opinion. The amended opinion was published on October 30, 2017.