



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**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 and Disposition of Contributions after Election to Office in Primary Election, Proposed Amendments to Regulations 18531.2 and 18537.1.

**Date:** November 8, 2024

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### **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, and the other concerning the disposition of general election contributions when a candidate receives a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election. However, before the Commission adopted the proposed regulatory amendments, legislation passed addressing these issues, making staff’s proposed regulatory changes moot. In addition to addressing the issues identified by staff in the prior regulation amendment proposal, the recent legislation adopted a definition that conflicts with an existing Commission regulation. Consequently, staff now presents for adoption proposed regulatory amendments to clarify the application of the Political Reform Act (the “Act”)<sup>1</sup> as amended by the recent legislation and remove the regulatory definition superseded by the recent statutory amendments.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 takes effect January 1, 2025. It amends Sections 85317 and 85318. Specifically, this legislation adds a definition of “subsequent election,” which had previously only been defined in Regulation 18537.1(c). As this regulatory definition is no longer necessary, staff proposes removing the subdivision from the regulation. Additionally, 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

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<sup>1</sup> 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.

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.

## **Background**

### *Law*

The Political Reform Act has varying rules governing what a candidate can do with campaign funds that are not spent on an election. Generally, there are three outcomes: A candidate-controlled committee (1) returns unspent campaign funds to contributors; (2) transfers unspent funds to another committee and attributes the funds to the original contributors; (3) carries over the funds as a lump sum to a subsequent campaign for the same office without attributing the funds to the original contributors.

As a general rule, Section 85306 permits a candidate to transfer campaign funds from one committee for elective office controlled by the candidate to another. The committees must attribute transferred contributions using either a “last in, first out” or “first in, first out” accounting method. Funds may not be transferred if the funds attributed to a specific contributor exceed the contribution limits of Section 85301 or 85302 when aggregated with all other transfers attributed to, and contributions from, the same contributor.

Section 85317 is an exception to the general rule in Section 85306. It permits a candidate to carry over contributions raised for one election to pay campaign expenditures incurred in connection with a subsequent election for the same office. The term “subsequent election for the same office” is interpreted in existing Regulation 18537.1(c) as (1) the election to the next term of office immediately following the election/term of office for which the funds were raised; (2) the general election, which is subsequent to and for the same term of office as the primary election for which the funds were raised; or (3) the special general election, which is subsequent to and for the same term of office as the special primary election for which the funds were raised. This definition, adopted by the Commission in 2002, was a matter of significant debate over a series of Commission meetings and was intended to limit the application of the attribution exception in Section 85317 due to concerns about the potential use of the exception in Section 85317 to circumvent contribution limits.

Lastly, 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.

### *Prior Regulatory Proposal*

Staff previously proposed regulatory amendments addressing two specific scenarios not previously addressed in existing law or regulation. The first scenario concerned 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 because staff believes withdrawing from a primary election is similar in nature to losing in a primary, or withdrawing from a general election, and therefore campaign funds raised for a general election in which the candidate did not run should be returned to the contributors consistent with Section 85318. 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.

The second scenario staff originally proposed the Commission address via regulation was clarifying which rule applied to general election funds raised prior to a primary election when the candidate is elected to office by receiving a majority of votes in the primary election.<sup>2</sup> Staff had identified three possible options for interpreting existing law in the circumstance where a general election is not required: (1) permit carry over of general election funds pursuant to Section 85317; (2) permit transfer of general election funds with attribution to contributors and subject to contribution limits pursuant to Section 85306; or (3) require the return of the general election funds to contributors pursuant to Section 85318. Staff recommended the Commission choose option 3 and adopt a regulation requiring a candidate who does not run in a general election to return contributions raised for the general election to the contributors consistent with Section 85318.

SB 948 amended Section 85317 to adopt option number two above as the rule permitting the transfer of general election funds pursuant to Section 85306 when a candidate wins office outright in a primary election. Since this ambiguity in the law has been addressed in statute, regulatory action is no longer necessary.

### *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

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<sup>2</sup> 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.

office but does not file a declaration of candidacy<sup>3</sup>. 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 and would be consistent with the conclusion in *Kaufman* and the rules that apply when a candidate withdraws from the general election.

In addition to addressing the scenarios previously highlighted by staff for regulatory action, the Legislature also took the opportunity with SB 948 to amend Section 85317 to provide a specific definition of a “subsequent election for the same elective... office.” The recent amendment defines “subsequent election” in the statute to explicitly allow the carry over of contributions for “any subsequent election for the same elective state, county, or city office.” (emphasis added.) Thus, the definition of “subsequent election” found in Regulation 18537.1(c) is no longer necessary, and staff proposes removing the subdivision from the regulation.

### **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 so that a candidate would be required to refund general election contributions when the candidate withdraws *after* filing a declaration of candidacy. Under existing law, a candidate must refund left-over money when a candidate does not run or withdraws from a general election. This proposed change is consistent with the idea that a withdrawal from the primary election also effectuates a withdrawal from the general 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 indicates that there be 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.<sup>4</sup>

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<sup>3</sup> Election 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). Is filed with the filling officer for the particular office sought, city clerk, county registrar, or the Secretary of State.

<sup>4</sup> *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).

*Definition of “Subsequent election...”*

Staff proposes removing the definition of “subsequent election for the same elective state office” contained in Regulation 18537.1(c) regulation because it is no longer necessary and conflicts with the new definition added to Section 85317.

**Education/Outreach Efforts**

Staff will distribute the amended regulations 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* Advice letter indicating it has been superseded by statutory amendment. Further, staff will reach out to city and county elections officials to ensure they are aware of the new and amended statutes and regulations.

**Conclusion**

Recent statutory amendments have modified the rules for refunding contributions after withdrawal from a primary election and the disposition of general election funds when a candidate wins office in a primary election by receiving a majority of the votes cast for an office at the primary election, so that the candidate is elected to the office without advancing to the general election. These changes would bring the regulations in line with the statutory amendments, and clarify the existing regulations.

**Attachments:**

**Proposed Amended Regulation 18537.1**

**Proposed Amended Regulation 18531.2**