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**CITY OF OAKLAND**  
*AGENDA REPORT*

TO: Rules and Legislation Committee  
ATTN: Chair Kernighan and Committee Members  
FROM: Council President Patricia Kernighan  
DATE: May 29, 2014  
RE: Ordinance Amending the Oakland Campaign Reform Act to Prohibit the Use or Transfer of Money from Ballot Measure Committees Controlled By Candidates for City Office or City Officeholders

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**SUMMARY**

An Ordinance has been prepared for submittal to the City Council for a proposed amendment to the Oakland Campaign Reform Act to prevent the circumvention of Oakland's contribution limits by prohibiting candidates for city office or city officeholders from controlling ballot measure committees to use those committees to promote their own election or those of other city candidates.

**FISCAL IMPACT**

None

**BACKGROUND**

In 1999, the City of Oakland passed the Oakland Campaign Reform Act (OCRA) in order to curb the growing influence of campaign contributions on Oakland city races. Ordinance 12158 declares that it shall be City policy to "limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters."

City candidates are subject to contribution limits:

**3.12.050 Limitations on contributions from persons.**

A. No person shall make to any candidate for city office and the controlled committee of such a candidate, and no such candidate for city office and the candidate's controlled committee shall accept from any such person, a

contribution or contributions totaling more than one hundred dollars (\$100.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate for city office and the controlled committee of such candidate, and no such candidate for city office and the controlled committee of such candidate shall accept contributions totaling more than five hundred dollars (\$500.00) from any person for each election.

In contrast, under Supreme Court precedent, ballot measures can receive unlimited contributions.

To protect against circumvention, state candidates cannot divert money collected by their controlled ballot measure committees to support their own election or those of other candidates. Campaign Disclosure Manual 3, "Information for Committees Primarily Formed to Support or Oppose a Ballot Measure," p. 1-7 (2007) states, "A candidate may control a ballot measure committee as long as the committee's funds are not used to support the candidate's election or to support or oppose other candidates."

This FPPC Regulation only applies to candidates or office holders of state elective office and does not extend to local candidates or office holders.

Oakland's Campaign Reform Act does not yet contain such an express prohibition, even though it is clearly consistent with the intent of the Act and consistent with FPPC Regulations.

#### **FPPC Regulation 18521.5 – Confining Candidate Controlled Ballot Measure Expenditures to Ballot Measures**

After the ruling in the *Citizens* case, several reports appeared in the press indicating that elected state officers were using funds in their controlled ballot measure committees for numerous purposes not related to ballot measures. One report detailed how a state elected officer raised money into his ballot measure committee, ostensibly to promote a ballot proposition, but transferred \$1.9 million from the committee into his legal defense fund, ultimately spending 12 times more on transfers to the legal defense fund than on the ballot measure. (Memorandum to the Commission, December 31, 2008, "Adoption of Regulations 18521.5 and 18421.8, and Amendment of Regulation 18401, re: Ballot Measure Committees Controlled by Candidates for Elective State Office.") Soon thereafter, the Commission adopted Regulation 18521.5 (effective March 1, 2009) to ensure that state candidates spend their ballot measure committee funds for ballot measures, and not in ways that circumvent the Act's contribution limits.

FPPC Regulation 18521.5 states in part:

(d) Committee Expenditures.

(1) Except as permitted under paragraphs (2) and (3) below, committee funds shall be used only to make expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or pre-qualification activities relating to such measures. Such expenditures include, but are not limited to, payment of the committee's reasonable and ordinary operating costs, administrative overhead,

fundraising activities, travel, compliance costs, and attorney's fees incurred as a result of the committee's activities....

(f) No provision of this regulation shall be construed to permit any of the following:

(1) A contribution of committee funds to a controlled committee of a candidate for elective office that is not operated as a candidate controlled ballot measure committee pursuant to this section.

## ANALYSIS

The Oakland Campaign Reform Act needs to clarify that the diversion of monies from ballot measure committees to Oakland candidate or city office committees is prohibited, as such transfers circumvent the contribution limitations of the Act and are inconsistent with FPPC Regulations.

Adding the following language to the Act would prohibit such circumvention:

3.12.115. Ballot Measure Committees Controlled by Candidates for City Office or City Officeholders.

(a) A candidate for City office or a City officeholder may control a committee to support or oppose the qualification or passage of a measure only if the committee's funds are not used to support the candidate's election to City office or to support or oppose other candidates for City office.

(b) For purposes of this section "committee" means any committee as defined by California Government Code section 82013. However, the prohibitions of this section shall not apply to a committee to oppose the qualification of a recall measure and the recall election of the controlling candidate for City office or controlling City officeholder.

This language is based on FPPC Regulation 18521.5. The ordinance would need to exempt recalls because recalls are ballot measures. (Government Code 82043.) An officeholder who is subject to a recall must be able to control his or her committee to defend against a recall. "City office" is already defined in OMC 3.12.040.

## SUSTAINABLE OPPORTUNITIES

***Economic:*** The proposed resolution is unlikely to create any negative economic impact.

***Environmental:*** The proposed resolution is unlikely to lead to any environmental impact.

***Social Equity:*** This resolution may increase social equity by promoting greater trust in city government and limiting the influence of money on politics.

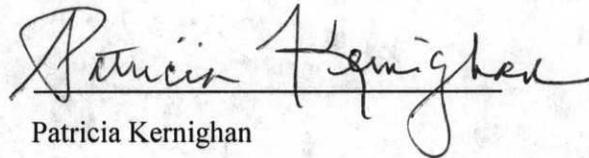
## DISABILITY AND SENIOR CITIZEN ACCESS

There is no direct impact or benefit to seniors or people with disabilities.

**ACTION REQUESTED OF THE CITY COUNCIL**

Council President Kernighan recommends that the City Council receive the report and approve the Ordinance amending OCRA to prohibit the circumvention of Oakland's contribution limits.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia Kernighan". The signature is written in black ink and is positioned above a horizontal line.

Patricia Kernighan

Oakland City Council President, District 2

14 MAY 29 PM 1:38

Approved as to Form and Legality  
**DRAFT**  
Office of the City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT PATRICIA KERNIGHAN

**An Ordinance Amending the Oakland Campaign Reform Act to Prohibit the Use or Transfer of Money from Ballot Measure Committees Controlled By Candidates for City Office or City Officeholders**

**WHEREAS**, in 1999, the City of Oakland passed the Oakland Campaign Reform Act (OCRA) in order to curb the growing influence of campaign contributions on Oakland city races; and

**WHEREAS**, to prevent corruption, existing language in OCRA limits contributions to candidates seeking local office:

3.12.050 Limitations on contributions from persons.

A. No person shall make to any candidate for city office and the controlled committee of such a candidate, and no such candidate for city office and the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than one hundred dollars (\$100.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate for city office and the controlled committee of such candidate, and no such candidate for city office and the controlled committee of such candidate shall accept contributions totaling more than five hundred dollars (\$500.00) from any person for each election;

and

**WHEREAS**, diversions of campaign funds from ballot measure committees to candidate committees are prohibited by the State of California in FPPC Regulation 18521.5 as explained by Campaign Disclosure Manual 3, "Information for Committees Primarily Formed to Support or Oppose a Ballot Measure," p. 1-7 (2007) which states: "A candidate may control a ballot measure committee as long as the committee's funds are not used to support the candidate's election or to support or oppose other candidates;" and

**WHEREAS**, this proposed amendment to the Oakland Campaign Reform Act would ensure consistency with California law and prevent circumvention of the City's contribution limits by prohibiting the diversion of monies from ballot measure committees to city candidate and officeholder committees.

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

New language is underscored.

**3.12.115. Ballot Measure Committees Controlled by Candidates for City Office or City Officeholders.**

(a) A candidate for City office or a City officeholder may control a committee to support or oppose the qualification or passage of a measure only if the committee's funds are not used to support the candidate's election to City office or to support or oppose other candidates for City office.

(b) For purposes of this section "committee" means any committee as defined by California Government Code section 82013. However, the prohibitions of this section shall not apply to a committee to oppose the qualification of a recall measure and the recall election of the controlling candidate for City office or controlling City officeholder.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2014

**PASSED BY THE FOLLOWING VOTE:**

BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN  
YES-  
NOES-  
ABSENT-  
ABSTENTION-

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California