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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

ROSS JOHNSON, Case No. 03AS04931

Plaintiff,
v.

CRUZ M. BUSTAMANTE; LIEUTENANT RULING ON SUBMITTED
GOVERNOR BUSTAMANTE 2002 COMMITTEE, MATTER; ORDER
PRELIMINARY GRANTING
a state candidate election committee; INJUNCTION
YES ON BUSTAMANTE, a state candidate
election committee; and THE CRUZ
BUSTAMANTE COMMITTEE AGAINST PROP. 54,
a ballot measure committee,

Defendant.

The amended motion of plaintiff, Ross Johnson ("Plaintiff"), for a preliminary injunction against defendants Cruz M. Bustamante ("Mr. Bustamante"), Lieutenant Governor Bustamante 2002 Committee ("2002 Committee"), Yes On Bustamante ("Yes Committee"), and The Cruz Bustamante Committee Against Prop. 54 (Measure Committee) (collectively "Defendant"), is GRANTED in part and DENIED in part, as set forth below.

1 Plaintiff seeks an injunction against Defendants
2 based upon four separate asserted theories of violation of
3 the California Political Reform Act of 1974, Government
4 Code sections 8100, et seq. (the "PRA"), AS AMENDED BY
5 Proposition 34. (Further statutory references are to the
6 Government Code unless or otherwise indicated). Plaintiff
7 alleges: (1) Mr. Bustamante and the 2002 Committee
8 accepted contributions into the committee in amounts that
9 exceed its net debts outstanding from the statewide
10 general election of November 5, 2002, in violation of
11 section 85316 of the PRA; (2) Mr. Bustamante and the 2002
12 Committee transferred funds raised in violation of section
13 85316 to the Yes Committee which funds exceeded the
14 contribution limits under section 85301(c); (3) Mr.
15 Bustamante, the 2002 Committee, and the Yes Committee
16 violated section 85301(c) by the two former defendants
17 transferring to, and the Yes Committee accepting,
18 contributions from any one person totaling more than
19 \$21,200; and (4) the Defendants each violated section
20 85310(c) by transferring to, and the Measure Committee
21 accepting, payments for the purpose of making and
22 disseminating communications that clearly identify Mr.
23 Bustamante "at his behest" in amounts in excess of the
24 limit provided under section 85303.

25 Based upon these asserted theories, and pursuant to
26 section 91003 and Code of Civil Procedure section 526(a),
27 plaintiff seeks to enjoin further similar violations and
28 to compel compliance with the PRA in the form of a

1 preliminary injunction prohibiting Defendants from: (1)
2 accepting contributions to the 2002 Committee in excess of
3 the committee's net debts as of November 5, 2002; (2)
4 transferring to the Yes Committee, or any other committee,
5 funds accepted into the 2002 Committee in violation of
6 sections 85316 and 85301(c); (3) transferring to, or
7 accepting into, the Yes Committee, contributions from any
8 one person totaling more than \$21,200; (4) transferring
9 to, or accepting into, the Measure Committee, or any other
10 committee, payments for the purpose of making and
11 disseminating communications that clearly identify Mr.
12 Bustamante "at his behest" in excess of the applicable
13 limit. Plaintiff further seeks an order commanding
14 Defendants to annul and reverse any transactions
15 previously undertaken in violation of the foregoing
16 restrictions.

17 The core issue at this juncture in this action is
18 whether, under the PRA as amended by Proposition 34, the
19 2002 Committee could accept contributions after November
20 5, 2002, and the lawful use of such contributions if they
21 could be lawfully accepted. The answer to this question
22 is controlled by the proper interpretation of Government
23 Code section 85316, which begins with the plain language
24 of the section itself. Section 85316 provides:
25 "A **contribution** for an election **may be accepted** by a
26 candidate for elective state office **after the date of the**
27 **election only to the extent** that the contribution **does not**
28 **exceed net debts outstanding from the election**, and the

1 contribution does not otherwise exceed the applicable
2 contribution limit for that election." (Bold added.)

3 Many words employed in section 85316 are specifically
4 defined by other statutes or applicable regulations to aid
5 in its interpretation, e.g., candidate (sections 82007 and
6 84214, Cal. Code Regs., tit. 2, section 18404),
7 contribution (section 82015), election (82022), elective
8 state office (82024), net debts outstanding (Cal. Code
9 Regs., tit. 2, section 18531.6, subd. (d).) The rules
10 guiding this Court as it interprets section 85316 and
11 determines whether it applies to the given facts are well-
12 known and shall not be repeated at length. It shall
13 suffice to say that the court must endeavor to ascertain
14 the legislative intent behind the statute, and to
15 interpret it reasonably and practically within the context
16 of the PRA so as to give it validity, operability, and to
17 avoid absurdity.

18 In this light, the Court interprets section 85316 as
19 preventing the 2002 committee from accepting contributions
20 after November 5, 2002, which exceed its net debts
21 outstanding from the 2002 election. Since there were no
22 contribution limits applicable to that election, the 2002
23 committee could accept contributions without single
24 contribution limits so long as the aggregate amount of
25 post-election contributions did not exceed the 2002
26 committee's net debts outstanding as of November 6, 2002.

27 While this interpretation is compelled by the plain
28 and unambiguous language of the statute alone, giving due

1 consideration to the delayed effective date provision
2 under uncodified Section 83, it is further bolstered by
3 the fact that to interpret the statute otherwise would run
4 directly contrary to the important purpose of the PRA,
5 render it essentially inoperable as to a select class of
6 candidates, and would result in a patent absurdity. For
7 example, if the 2002 committee was immune from the
8 reasonable prospective restrictions of section 85316, it
9 could continue to amass hundreds of thousands of dollars
10 in contributions after the 2002 election for which it was
11 formed although the committee had no outstanding debts and
12 could not lawfully expend the funds beyond the defined
13 limits for expenses associated with holding office
14 provided under section 89510, et seq.

15 In particular, under section 85201, and Title 2
16 California Code of Regulations sections 18521, 18524, and
17 18525, subdivision (b) (laws and regulations that, with
18 the exception of minor amendments, predate the amendments
19 embodied in Proposition 34), the 2002 Committee was
20 restricted in the use of the funds held in its statutory
21 contribution account to only those expenses associated
22 with Mr. Bustamante's 2002 election to the office of
23 Lieutenant Governor and perhaps the expenses associated
24 with his holding that office as defined by statute. In
25 fact, since at least October 2002, the FPPC had opined in
26 an advice letter that account rules barred a committee
27 formed prior to November 5, 2002, from accepting
28 contributions for use in a subsequent "election"

1 regardless of whether the "net debts" limit in section
2 85316 applied to the old committee. (Fishburn Advice
3 Letter, No. A-02-271, fn. 6, 10/25/02).

4 On the other hand, the interpretation of section
5 85316 adopted in this ruling works no conceivable
6 prejudice or injury to committees existing prior to
7 November 5, 2002, and is faithful to the purpose and
8 intent of the PRA. Under the Court's interpretation, if a
9 pre-November 2002 committee had a million dollars of
10 outstanding net debt as of November 6, 2002, that
11 committee could continue to accept contributions, subject
12 to no per person contribution limits, in order to retire
13 the net debt. Further, if the pre-November 2002 committee
14 held excess campaign funds the day after the 2002
15 election, it could transfer those funds to another
16 committee for another election, without attribution. (See
17 section 85306.) The committee could also use those excess
18 funds for lawful officeholder expenses. The
19 interpretation is entirely prospective.

20 The Court is aware that the FPPC's published comments
21 regarding the effective scope of section 85316 are
22 contrary to the views expressed herein. The Court is also
23 mindful that it is a cardinal principle of statutory
24 interpretation that the contemporaneous construction of a
25 statute by the agency charged with its enforcement is
26 given great weight, particularly if the statute were
27 construed around the time of its enactment. (*Western Oil*
28 *and Gas Association v. Monterey Bay Unified Air Pollution*

1 *Control Dist.* (1989) 49 Cal.3d 408, 425.) However, in
2 order to be entitled to such deference, the interpretation
3 must be consistent with legislative intent. (*Id.*)

4 The Court determines that any interpretation of
5 Proposition 34 that would permit continued unlimited
6 contributions to a committee established for an election
7 held prior to November 6, 2002, would be contrary to the
8 express intent of the People when they enacted Proposition
9 34. Section 83 of that Proposition provides that section
10 85316 applies "to candidates for statewide elective office
11 beginning on and after November 6, 2002." It is clear
12 from a review of the ballot measure materials that the
13 intent of the People in enacting this measure was to limit
14 the effect of large contributions to candidates for public
15 office. A construction of the statute that would permit a
16 candidate for statewide office to evade the restriction
17 solely because he or she had established a committee for a
18 pre-2002 election would, at the very least, violate the
19 intent and spirit of the Proposition. Such construction
20 would also result in giving an advantage to candidates who
21 had established a pre-2002 committee.

22 The Court is also aware that, even after Proposition
23 34, the playing field remains uneven. While candidates
24 are limited to soliciting and accepting contributions that
25 do not exceed \$21,200, that limit does not apply to a
26 candidate's own contributions to his/her campaign. It is
27 obvious that wealthy candidates enjoy an advantage over
28 candidates of modest means. However, that fact is not a

1 basis to interpret Proposition 34 in such a manner that
2 circumvents the expressed intent of the voters.

3 FPPC has opined that committees established for a
4 2002 election may continue to raise unlimited funds. Over
5 the past year or so, FPPC, through advice letters, fact
6 sheets, and other public statements has provided often
7 conflicting advice on the subjects that are before the
8 court in this case. There has been no clear and
9 straightforward interpretation of the provisions at issue
10 by either the FPPC or the courts prior to the commencement
11 of this action. Given such state of affairs, Defendants
12 no doubt acted in good faith to comport their actions to
13 the FPPC's pronouncements. There is no evidence before
14 the Court to the contrary. The Court neither finds nor
15 concludes that Defendants have intentionally violated the
16 law. Nonetheless, and notwithstanding the prior expressed
17 views of the FPPC, the Court must interpret the law true
18 to its language, intent, and purpose.

19 The 2002 Committee had no net debt outstanding
20 following the 2002 election. To the contrary, Defendants'
21 counsel represents that the committee had in excess of
22 \$180,000 in net cash after the election. Thus, pursuant
23 to section 85316, it was not lawful to accept
24 contributions of any amount to the 2002 committee after
25 November 6, 2002. The excess funds improperly accepted
26 after November 6, 2002, could not be transferred to any
27 other person or committee, save and except for purposes of
28 returning the monies to the original responsible

1 contributor. (See e.g., Cal. Code Regs., tit. 2, section
2 18531, regarding return of contributions in excess of
3 contribution limits of Government Code sections 85301,
4 85302 and 85303.) In this respect, even if it were
5 determined that some of these post-election funds could be
6 transferred, such a transfer to the Yes Committee would
7 still necessarily be subject to the \$21,200 limitation
8 pursuant to section 85301(c) and 85306(a). Similarly, it
9 would not be lawful for the 2002 Committee to transfer
10 those improperly collected excess funds to the Measure
11 Committee.

12 It is important to reiterate that there is no similar
13 restriction on the transfer of campaign funds possessed by
14 the 2002 Committee on November 6, 2002, from the 2002
15 Committee to the Yes Committee. Further, nothing
16 prohibits the 2002 Committee from returning the improper
17 excess post-election contributions to the original donors
18 for their use as they see fit within the confines of the
19 law. (See section 85319.)

20 If the funds were improperly raised, the only proper
21 disposition of the money is to return it to the
22 contributors. Hence, in the context of ruling on the
23 motion for a preliminary injunction, the court does not
24 reach the issues arising under section 85310.

25 Plaintiff's First Amended Complaint prays for the
26 issuance of an injunction "prohibiting Defendants from
27 violating Government Code section 85310(c) by transferring
28 to, or accepting into, [The Measure Committee], or any

1 other committee, payments for the purpose of making and
2 disseminating communications (including but not limited to
3 television advertisements) that clearly identify Defendant
4 Bustamante." To the extent this prayer for relief is
5 directed at funds collected by the 2002 Committee and
6 transferred to the Measure Committee, preliminary
7 injunctive relief has been granted as set forth herein.
8 To the extent Plaintiff's motion is directed at other
9 contributions or transfers, the request for preliminary
10 relief must be denied because the record before the Court
11 is insufficient to show that such relief is necessary at
12 this point.

13 Apart from a transfer of funds from the 2002
14 Committee to the Measure Committee, there is no admissible
15 evidence before the Court concerning any funds that
16 Defendants are using, or may likely use, in connection
17 with Measure Committee or the campaign against Proposition
18 54, that would arguably violate provisions of section
19 85310(c). Consequently, the Court need not make a
20 determination that any such transfer and use violates
21 section 85310(c). Given the lack of an evidentiary
22 record, the Court must decline to render an advisory
23 opinion in the abstract on this point in the form of a
24 preliminary injunction.

25 In light of the foregoing, the Court finds, with the
26 exception of item (d) in the prayer for relief, that the
27 Plaintiff has demonstrated a likelihood that he will
28 ultimately prevail upon the merits of his action and that

1 the harm to be suffered if an injunction does not issue
2 outweighs any harm to Defendants if they are so enjoined.

3 On proof made to the court's satisfaction, and good
4 cause appearing:

5 IT IS ORDERED that during the pendency of this action
6 the above-named defendants, and each of them, and their
7 officers, agents, employees, representatives, and all
8 persons acting in concert or participating with them, are
9 enjoined and restrained from engaging in, committing, or
10 performing, directly or indirectly, by any means
11 whatsoever, any of the following acts:

- 12 1. Accepting contributions to the 2002 Committee in
13 excess of the committee's outstanding net debts
14 as of November 5, 2002;
- 15 2. Transferring or expending from the 2002
16 Committee any contributions accepted into the
17 2002 Committee in excess of that committee's
18 outstanding net debt as of November 6, 2002,
19 other than to return said funds to those who
20 made the post-election contributions.

21 IT IS FURTHER ORDERED that,

- 22 3. All funds accepted by the 2002 Committee after
23 November 5, 2002, that have been transferred to
24 the Yes Committee and/or the Measure Committee
25 and are possessed by said committees on the date
26 of this order, shall be immediately returned to
27 the 2002 Committee for proper disposition in
28 accordance with the terms of this order.

1 IT IS FURTHER ORDERED that, before this order shall
2 take effect, Plaintiff must file a written undertaking in
3 the sum of \$50,000, as required by Code of Civil Procedure
4 Section 529, for the purpose of indemnifying Defendants,
5 and each of them, for the damages as they may sustain by
6 reason of this preliminary injunction if the court finally
7 decides that Plaintiff is not entitled to it.

8 IT IS FURTHER ORDERED that the preliminary injunction
9 as set forth above shall issue on Plaintiff's filing a
10 written undertaking in the sum specified above.

11 The Court reserves jurisdiction to modify this
12 injunction as the ends of justice may require.

13 The Court will entertain an objection by either party
14 to the amount of the bond set forth in this order. See
15 Code of Civil Procedure section 995.920 et seq.

16 Prevailing party plaintiff shall prepare the formal
17 order.

18 DATED:

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LOREN E. McMASTER
Judge of the Superior Court