

CITY OF LOS ANGELES

CALIFORNIA

CITY ETHICS COMMISSION

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CITY ETHICS COMMISSION
200 N. SPRING STREET
CITY HALL - 24TH FLOOR
LOS ANGELES, CA 90012

October 13, 2010

The Honorable City Council
c/o June Lagmay, City Clerk
200 North Spring Street
City Hall – 3rd Floor
Los Angeles CA 90012

**Re: Council File Number 10-1012
Repeal of Three Charter Sections Regarding Campaign Financing**

FOR COUNCIL CONSIDERATION

Dear Councilmembers:

On September 27, 2010, the City Attorney recommended a ballot measure for the City's March 2011 election that would repeal Los Angeles City Charter (Charter) sections 470(c)(5), 470(c)(10), and 803(b)(4). *See* City Attorney Report No. R10-0334. At its regular monthly meeting on October 12, the Ethics Commission voted unanimously to support the City Attorney's request.

Charter sections 470(c)(5) and 803(b)(4) currently impose limits on contributions to committees that make independent expenditures in City and Los Angeles Unified School District Board of Education (LAUSD) elections. Contributions are limited to \$500 per person per calendar year in City elections and to \$1,000 per person per calendar year in LAUSD elections. Section 470(c)(10) prohibits candidates for City office from spending more than \$30,000 in personal funds on their own campaigns unless they notify the Ethics Commission of their intent to do so and deposit all such funds into their campaign contribution checking accounts at least 30 days before the election. The section also authorizes an opponent of these so-called "wealthy candidates" to solicit and receive contributions that exceed the otherwise applicable contribution limits until the opponent has raised contributions that equal the amount of personal funds deposited into the wealthy candidate's campaign account.

Contribution limits to committees that make independent expenditures and the wealthy candidate provision are longstanding City laws that were first adopted by Los Angeles voters in 1990. However, because of decisions by the United States Supreme Court that have struck down similar provisions in federal law as violations of the First Amendment, the Ethics Commission adopted resolutions stating that it will no longer enforce these Charter sections. *See* CEC Special Bulletins 9/12/08, 6/23/10 (attached). *See, also, Davis v. Federal Election Commission*, 554 U.S. ___, 128 S. Ct. 2659 (2008); *Citizens United v. Federal Election Commission*, 558 U.S. ___, 130 S. Ct. 876 (2010). Also as a result of the Supreme Court decisions, Los Angeles



Municipal Code section 49.7.24, a provision in the Campaign Finance Ordinance that echoed the committee contribution limits in Charter section 470(c)(5), was repealed effective August 18, 2010. See Ordinance No. 181213.

The City Attorney's office has advised that sections 470(c)(5), 470(c)(10), and 803(b)(4) should be removed from the Charter, even though the Ethics Commission will not enforce them. As long as the laws remain on the books, City law in this area may be considered unclear. As a result, the City could face potential litigation that might be brought by persons who believe their First Amendment rights are being violated, as well as by persons who want to require the City to enforce these provisions. The Ethics Commission supports the repeal of Charter sections 470(c)(5), 470(c)(10), and 803(b)(4), to ensure that the public has accurate notice of which campaign finance laws apply in City and LAUSD elections.

We would be happy to answer any questions you might have about the requested ballot measure and will be available to respond to questions during the City Council meeting on October 15. Please feel free to contact me or Heather Holt, our Director of Policy and Legislation, at (213) 978-1960 if we can provide additional information.

Sincerely,



LeeAnn M. Pelham
Executive Director

Attachments (CEC Special Bulletins 9/12/08 and 6/23/10)

cc: Renee Stadel, Deputy City Attorney

Duplicate original to:

The Honorable Eric Garcetti
Chair of the Rules & Elections Committee

SPECIAL BULLETIN

Los Angeles City Ethics Commission

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U.S. SUPREME COURT DECISION IN *DAVIS V. FEC* HAS IMPACT ON CITY'S "WEALTHY CANDIDATE" PROVISION

CEC advises Charter Sec. 470(c)10 no longer enforceable

At its September 5, 2008 meeting, and in accordance with the advice and recommendation of the City Attorney's Office, the City Ethics Commission announced that Los Angeles Charter section 470(c)10 – often referred to as the City's "wealthy candidate provision" – should no longer be enforced based on a recent 5-4 U.S. Supreme Court decision in *Davis v. FEC*, a case testing a similar provision of federal law known as the "Millionaires' Amendment." Enacted as Sec. 319(a) of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), that provision enabled Congressional candidates to raise contributions higher than the normal limits when an opponent in their race uses personal funds above certain thresholds.

In an August 26, 2008, letter responding to an advice request from the Commission's Executive Director, the City Attorney's Office stated that the Supreme Court has "treated the 'asymmetrical' contribution limits as a spending limit on the self-financed candidate because by providing advantages to the non-self-financed candidate, the self-financed candidate's spending and speech are burdened." Consequently, the Court struck down Sec. 319(a) as unconstitutional. The City Attorney's Office advised that the *Davis* case constituted "compelling legal authority to conclude that a challenge to the City's provisions on constitutional grounds could not be successfully defended." In response, the City Ethics Commission adopted a resolution (copy enclosed) in which it concluded that in light of that compelling legal precedent, Sec. 470(c)10 should not be enforced.

Effective September 5, 2008, the City Ethics Commission now:

- advises that City candidates may now spend more than \$30,000 in personal funds without abiding by the requirements of 470(c)10,
- advises that City candidates whose opponent(s) use more than \$30,000 in personal funds in any election may no longer solicit or receive contributions in excess of the limits established in Charter Section 470(c)3 or (c)4 in response, and
- advises that contributors may no longer make contributions in excess of the limits established in Charter Section 470(c)3 and (c)4 to the opponent of any candidate who uses more than \$30,000 in personal funds in his or her election, and
- will not enforce the deposit or notice requirements of 470(c)10 against any candidate, and
- directs Commission staff, with assistance from the Office of the City Attorney, to develop an alternative policy approach for the Commission's consideration that could remedy the imbalance created by the Court's decision.

SPECIAL BULLETIN

CITY ETHICS COMMISSION RESOLUTION ON ENFORCEABILITY OF LOS ANGELES CITY CHARTER SECTION 470(c)10

WHEREAS the United States Supreme Court on a 5-4 vote decided *Davis v. FEC* (554 U.S.____, 128 S. Ct. 2759) on June 26, 2008, striking down as unconstitutional Section 319(a) the Bipartisan Campaign Reform Act of 2002 (BCRA), and

WHEREAS the Los Angeles City Charter, Sec. 470(c)10 is a provision similar to the provision at issue in the *Davis* case, and

WHEREAS the City Attorney's Office has advised that the *Davis* case constitutes compelling legal authority to conclude that a challenge to City Charter Section 470(c)10 on constitutional grounds could not be successfully defended, and

WHEREAS, in light of that compelling legal precedent, Sec. 470(c)10 should not be enforced, and

WHEREAS the City Ethics Commission should ensure that candidates are informed that the provisions of Sec. 470(c)10 will have no operation during the 2009 or subsequent municipal elections based on the *Davis* decision, and

WHEREAS the City Ethics Commission is concerned about the disparate impact of this decision on Los Angeles candidates,

THEREFORE BE IT RESOLVED that the City Ethics Commission will now

- advise that City candidates may now spend more than \$30,000 in personal funds without abiding by the requirements of 470(c)10,
- advise that City candidates whose opponent(s) use more than \$30,000 in personal funds in any election may no longer solicit or receive contributions in excess of the limits established in Charter Section 470(c)3 or (c)4 in response, and
- advise that contributors may no longer make contributions in excess of the limits established in Charter Section 470(c)3 and (c)4 to the opponent of any candidate who uses more than \$30,000 in personal funds in his or her election, and
- not enforce the deposit or notice requirements of 470(c)10 against any candidate, and
- direct Commission staff, with assistance from the Office of the City Attorney, to develop an alternative policy approach for the Commission's consideration that could remedy the imbalance created by the Court's decision.

Adopted September 5, 2008

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CITY COUNCIL VOTES TO REPEAL CITY'S CONTRIBUTION LIMITS TO INDEPENDENT EXPENDITURE COMMITTEES

LAMC § 49.7.24 No Longer Enforceable

in Wake of Long Beach Decision by Ninth Circuit Court of Appeals

On June 22, 2010, the Los Angeles City Council voted to repeal section 49.7.24 of the Los Angeles Municipal Code (LAMC). This section of law prohibits any person or committee who makes independent expenditures supporting or opposing a City candidate from accepting contributions in excess of the \$500 limit set forth in the City Charter. Previously, at its June 8, 2010 meeting, and in accordance with the advice and recommendation of the City Attorney's Office, the City Ethics Commission adopted a resolution stating that it would no longer enforce LAMC section 49.7.24 or Charter sections 470(c)5 and 803(b)4. These actions were based on the recent Ninth Circuit Court of Appeals decision in *Long Beach Chamber of Commerce v. City of Long Beach*, a case testing a provision of Long Beach law that limits contributions to persons making independent expenditures.

The Ninth Circuit ruled that, in light of the recent United States Supreme Court decision in *Citizens United v. Federal Election Commission*, contribution limits for persons or committees that make independent expenditures are unconstitutional, as applied to the Long Beach Chamber of Commerce political action committees, because the City of Long Beach could not demonstrate that independent expenditures lead to quid pro quo corruption or the appearance of such corruption. The court found that persons making independent expenditures are too remotely connected to candidates for such corruption or the appearance of such corruption to exist. The Ninth Circuit stated that the "need for contribution limits to combat corruption or the appearance thereof tends to decrease as the link between the candidate and the regulated entity becomes more attenuated."

In a June 8, 2010 letter to the members of the City Ethics Commission, the City Attorney's Office stated that "the *Long Beach* case together with the other cases on which the Ninth Circuit relied, *Citizens United*, and the current jurisprudence in the campaign finance area, constitute compelling legal authority to conclude that a constitutional challenge to the City's contribution limits on committees making independent expenditures could not be successfully defended." In response to the compelling legal precedent, the City Ethics Commission adopted a resolution (copy attached) stating that it will not enforce LAMC section 49.7.24 or Charter sections 470(c)5 and 803(b)4 regarding independent expenditure contribution limits in City and LAUSD elections.

The City Council yesterday voted to repeal LAMC section 49.7.24. Following a second reading of the ordinance and vote to repeal, the matter will be forwarded to the Mayor's office for signature. Changes to Charter sections 470(c)5 and 803(c)4 require voter approval.