

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

ROSS JOHNSON,

Case No. 03AS04931

Plaintiff,

v.

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

RULING ON SUBMITTED  
MATTER; ORDER  
GRANTING

INJUNCTION

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:

19 \_\_\_\_\_  
20 LOREN E. McMASTER  
21 Judge of the Superior Court  
22  
23  
24  
25  
26  
27  
28