



Help achieve an open and accountable government

August 8, 2018

The Honorable Henry Stern
Chair, Elections and Constitutional Amendments
State Capitol, Room 3191
Sacramento, CA 95814

Cc: The Honorable Kevin Mullin and Members of the California State Elections and Constitutional Amendments Committee

RE: AB 84 (Mullin) – Oppose Unless Amended

Dear Chairman Stern,

It is with great reluctance but even greater necessity that the California Clean Money Campaign strongly opposes AB 84, the bill to allow the creation of four new legislative caucus committees as political party committees that are “directed” by legislative caucus leaders, and to also create additional monthly reporting requirements for political parties, unless amended as described below.

We appreciate that AB 84 intends to (i) expand transparency and accountability of contributions solicited by, and expenditures directed by, legislative leaders, and (ii) to expand reporting requirements for political party committees in general. Both are important goals that we support.

We also appreciate that the author has accepted amendments requiring monthly reporting by political party committees, including the proposed legislative caucus committees, during any election cycle in which the political party committee received or spent \$50,000 or more and also in the subsequent election cycle. This amendment eliminates cases where political party committees could have avoided AB 84’s new monthly reporting requirements.

But we still have grave concerns that AB 84 provides for a staggering increase in the amounts of special interest money that leadership can raise and direct to caucus incumbents, and is therefore a likely violation of the purposes of the *Political Reform Act* that “*Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly*”.

Here we address in detail the issues raised by AB 84.

WE AGREE THERE ARE MAJOR PROBLEMS WITH TRANSPARENCY OF POLITICAL PARTY FUNDRAISING.

We definitely agree with the author that the status quo regarding political party contributions and reporting is a major problem. Currently, state and county political party committees routinely receive contributions of up to \$36,500 from which they can in turn lawfully give unlimited amounts to state candidates. Award-winning columnist Thomas Elias described it as “money laundering, plain, simple and also legal”¹. On top of that, political party committees currently can lawfully receive unlimited contributions to use for independent expenditures or even outrageously lavish fundraisers with lobbyists at (for example) Pebble Beach and Torrey Pines.

¹ “No limit to California parties’ campaign money laundering”, Thomas Elias, The Press Enterprise, June 6, 2017.

Moreover, a large portion of those special interest contributions to political party committees are made at the behest of legislative leaders en route through the parties to the candidates those leaders support. The public is not informed about which contributions to political party committees are solicited by which legislative leaders. Political accountability is at best diffused and at worst non-existent.

None of this is good government. All of it needs to be reformed.

For these reasons, we appreciate the argument that to the extent AB 84 would allow legislative leaders to raise and spend money in a more concentrated and open fashion, and directly and transparently, under AB 84 accountability of who they raise money from and how it is spent could be improved compared to the status quo.

Despite these points of conceptual agreement, we still have grave concerns about AB 84 as currently drafted.

1. AB 84's NEW MONTHLY REPORTING REQUIREMENTS PROVIDE ONLY VERY MODEST IMPROVEMENTS.

Though it is true that political party committees are currently required to file only 6 full campaign reports in election years, they must file extra reports if there are special elections — which there almost always are. In 2010 active political party committees had to file 12 reports, in 2012 they had to file 8, in 2014 they had to file 9, in 2016 they had to file 8, and in 2018 they will have to file 9. So, in practice, AB 84 will usually increase the number of campaign reports by only a third or a half, not double them. Also, the bill adds reports in months farthest away from elections, when fewer people will be paying attention.

More importantly, political party and candidate committees must already report any contributions of \$5,000 or more within 10 days of receipt, so the new monthly reporting requirements will provide relatively little additional important information. The current \$5,000 reporting requirements already reveal when a special interest makes large contributions to political party committees and when a candidate has received large contributions from a political party committee.

Thus, although we would support a bill that included the proposed monthly reporting requirements for political party committees without creating entirely new political party committees, the proposed monthly reporting requirements represent only a very modest disclosure improvement over current law.

2. AB 84 DRAMATICALLY INCREASES WHAT SPECIAL INTERESTS CAN GIVE TO COMMITTEES DIRECTED BY LEADERS.

The increase in the contribution limits to committees controlled by legislative leaders (*"directed"* in the parlance of AB 84) is staggering. Current law doesn't allow legislative leaders to establish leadership committees, so the only committees they control that can accept contributions for state candidates are their own candidate committees which have contribution limits of \$4,400 and which can contribute at most \$4,400 to any legislative candidate.

With the creation of legislative caucus committees as political party committees as proposed by AB 84, special interests will be able to contribute \$36,500 — over 8 times what they can currently — to committees directed by legislative leaders for the purposes of making contributions to state candidates. And rather than being able to contribute just \$4,400 to legislative candidates, they will be able to give unlimited amounts.

Further, special interests will be able to give legislative caucus committees unlimited contributions that can be used for independent expenditures for *"election of members of the Legislature."* Caucus leaders might have to be careful how they make independent expenditures to avoid coordination concerns, but nothing in AB 84 would ban them from doing so. In fact, although the four Congressional leadership campaign committees face similar coordination concerns, they still spent over \$290 million on independent expenditures in the 2016 election, according to OpenSecrets.org.

Moreover, nothing in AB 84 would prevent the new leadership caucus committees from avoiding their own coordination concerns by giving the unlimited contributions they raise and direct from special interests to other independent expenditure committees to support election of members of the Legislature.

3. AB 84 INCREASES POWER OVER CAUCUS MEMBERS WHILE UNFAIRLY FAVORING CAUCUS INCUMBENTS.

AB 84's dramatic expansions of the amounts that special interests can contribute to the leaders who head the lawmaking branches of government will concentrate leaders' fundraising and hence power over their caucus members. This power can be used for public interest purposes or special interest purposes, and there is no text in the bill beyond the modest disclosure improvements seeking to ensure the former and not the latter. This is the biggest problem with the bill: There simply isn't enough reform in it to warrant such a vast increase in special interest election contributions to new committees directed by the lawmakers they seek to access and influence.

For example, nothing in AB 84 would stop caucus leaders from withholding support from caucus members who refused to vote *"to advance the interests of the legislative caucus"* once too often. Caucus members are likely to feel extraordinary pressure to vote as leaders demand — even at the expense of voting against the interests of their constituents.

To the extent that leaders would seek to impose discipline on renegade members for a common good, this would be welcome. But to the extent that a leader seeks to impose discipline on a member of conscience taking a stand against special interests or representing their constituents, it is bad. AB 84, respectfully, does not do nearly enough to promote better government proportional to the likely increase in special interest contributions overall — nor the certain increase in their contributions to committees directed by leaders.

AB 84 could also make it significantly harder for primary challengers to compete against caucus incumbents who can receive unlimited contributions from the new legislative caucus committees regardless of party endorsements or anything else. Caucus leaders will almost certainly use the unlimited contributions they direct to favor caucus incumbents at the expense of challengers and fair elections. This is one of the main reasons we support public financing of campaigns — to ensure that elections are about competing ideas and not about who has the most money.

Now, it is certainly true that under California's currently broken political party contribution system, legislative leaders already can and do raise massive contributions from special interests to existing political party committees and then exert enormous influence over who the party committees give them to. And the candidate committees that receive such unlimited monies funneled through the party committees don't disclose who the true funders were. This is a major problem and one we would welcome addressing. But, AB 84 does nothing to address it beyond changing the name that shows up on candidates' contribution reports from a state or county party committee to a legislative caucus committee — while providing the opportunity for much larger amounts of special interest money to be directed by leaders.

4. AB 84 IS LIKELY TO INCREASE THE CONTRIBUTIONS THAT ARE WELL OVER THE NORMAL \$4,400 LIMIT.

Theoretically, under current law, campaign contributors could give \$36,500 for state candidates to each of the 59 different political party committees in each party (the state party committee and each of the 58 party county central committees). It is true that contributors rarely if ever "max out" like this but 11 contributors gave an average of over \$25,000 to between 10 and 28 counties for the 2016 election. Therefore it's reasonable to argue that such contributors are already giving as much as they're willing to give for state candidates and won't give any more if AB 84 were to pass. If that's true, then AB 84 might not increase the amounts that these very largest contributors give, but would instead simply redirect some of their contributions from county central committees to the new legislative caucus committees.

But, we emphasize the "might."

History shows that contributors who give that much to multiple county party committees aren't the only kind of large contributor to be concerned about. In 2016, there were 199 contributors who gave \$10,000 or more to the California Democratic Party and to nobody else, with 57 giving the then-maximum amount of \$35,200. Although these 199 contributors gave to only the state party committee, under AB 84 they would almost certainly be urgently requested by the Assembly Speaker to contribute similar amounts to the Assembly Democratic Leadership Caucus, and by the Senate President pro Tem to contribute similar

amounts to the Senate Democratic Leadership Caucus, while continuing to face pressure to contribute to the state party. California Republican Party donors would face the same pressure to also contribute to each of the new Republican leadership caucus committees.

Given the tremendous power that legislative leaders have, it is, respectfully, incredible to assert that none or no significant number of such contributors will increase their contributions to match the greater state-level contribution opportunities and requests. It is almost certain that many of these Big Money contributors will feel compelled to make additional \$10,000+ contributions to the new legislative caucus committees — significantly increasing the amount of special interest contributions that will be funneled to candidates without any indication on the candidate’s contribution reports of who the true funders were.

5. NATIONAL POLITICAL PARTY AND LEADERSHIP COMMITTEES HAVE MUCH STRICTER LIMITS THAN CALIFORNIA’S. The Federal Elections Campaign Act allows national legislative leaders to establish national political party committees that file monthly reports, similar to what AB 84 proposes.

However, AB 84 can’t cherry-pick the parts of federal law that give caucus leaders more power and omit the counterbalancing parts of federal law that at least partially constrain that power. The reason that legislative caucus committees are somewhat acceptable in federal law is that they have contribution limits that stop them from laundering large special interest contributions directly to candidates, and from accepting unlimited contributions to use for independent expenditures to favor incumbents. Such compensating and balancing limits are absent from AB 84. In fact, the bill moves aggressively in the opposite direction.

Federal political parties have much more stringent contribution limits than California political parties. California political party committees are allowed to receive contributions of \$36,500 for purposes of giving to candidates, and can receive unlimited contributions for other purposes including independent expenditures. But federal political party committees, including leadership committees, are limited to contributions of \$33,900 for any purpose other than convention, building, or recount accounts. And although federal political party committees can give a maximum of \$5,000 to candidates (except that the national party committee and its Senatorial campaign committee can contribute an extra \$47,400 to Senate candidates in an election year), California political party committees can give unlimited amounts to state candidates.

If AB 84 is to use federal law as a model, then, respectfully, it should be amended to match the federal political parties’ lower contribution limits, and not adopt only the parts that give caucus leaders more power.

FOR THESE REASONS, CALIFORNIA CLEAN MONEY CAMPAIGN MUST REGRETABLY OPPOSE AB 84 UNLESS AMENDED. Though the stated goal of AB 84 to increase transparency in political party committees is laudable and one that we absolutely share, the cure in AB 84 is worse even than the disease.

As detailed above, the measure as currently drafted offers no significant public interest reforms comparable to and in exchange for the dramatic expansion of leadership power or the possible increase of monied interest influence. The bill as currently drafted:

- Offers nothing to curtail fundraising events where special interests and legislators mingle (sometimes for days), and such interests obtain coveted “access” and relationship-building with legislators — advantages unavailable to sometimes competing public interest groups.
- Does almost nothing that reliably and significantly increases existing transparency or that establishes transparency over the new, proposed caucus committees. For example, it does not expand AB 249’s earmarking rules to cover contributions that were earmarked to support or oppose party candidates (specifically identified or not). This means that voters who look at candidate committee reports won’t see the true funders; they will see only the names of the party committees or the new legislative caucus party committees that funneled the contributions.
- Fails to match federal law’s political party contribution limits.

Because of all of the above, AB 84 is likely not a lawful, furthering amendment to the Political Reform Act. In fact, by providing for a staggering increase in the amounts of special interest money that leadership can raise and direct to incumbents, it likely violates the Political Reform Act's purpose that *"Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly."*

WAYS THAT AB 84 COULD BE AMENDED TO REMOVE OUR OPPOSITION.

There are multiple ways that AB 84 could be amended that we would support to implement its stated goals without creating additional political party committees that have no limits on contributions to candidates:

- Removing Section 4 so that AB 84 only requires monthly reporting requirements for political party committees without also creating any new political party committees. This would provide a welcome, if modest, increase in disclosure requirements.
- Replacing Section 4 with a section requiring that contributions to political party committees report who behested a contribution, and a corresponding requirement that political party contribution reports disclose that information. This would be much better than AB 84, because not only would we know which caucus raised the contributions, we'd know which specific legislators raised them.
- Amending current law Section 85704 to match the June 30, 2016 in-print version of AB 700, the *California DISCLOSE Act*, to expand the definition of "earmarking" to include that *"The contribution was made subject to a condition, agreement, or understanding with the contributor that all or a portion of the contribution would be used to make a contribution to another committee or candidate, including any circumstance in which the contributor identifies the committee or candidate as a potential recipient of the contribution and the committee or candidate in fact receives all or a portion of the contributor's contribution"*. With that amendment, legislative caucus committees could be created while ensuring that candidate campaign committees would be required to show their true funders, even if monies were funneled through political party committees.
- Lastly, if the goal is to make California political parties comport with national political parties, then AB 84 should be amended to match national political party committees in all aspects. That would mean (i) also lowering contribution limits to California political party committees to the federal across-the-board contribution limit of \$33,900 (except for convention, building, and recount accounts), and (ii) limiting contributions from political party committees to candidates to \$5,000, as is the limit for federal political parties, with a possible exception to allow the state party and Senate legislative caucus committee to contribute an extra \$47,400 combined to Senate candidates in an election year, as in federal law.

Unless AB 84 is amended to achieve a far better balance of reform versus the likely expansion of special interest and leadership power, as described above or in similarly significant ways, we regret that the California Clean Money Campaign must strongly oppose AB 84 and respectfully request your "NO" vote.

Respectfully,



Trent Lange
President and Executive Director
California Clean Money Campaign