

Date of Hearing: May 1, 2019

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

AB 220 (Bonta) – As Amended April 24, 2019

SUBJECT: Political Reform Act of 1974: campaign funds: childcare costs.

SUMMARY: Permits candidates and officeholders to use campaign funds for childcare expenses incurred while the candidate or officeholder is engaging in campaign activities or performing official duties. Specifically, **this bill:**

- 1) Permits campaign funds to be used to pay or reimburse a candidate or officeholder for childcare expenses for a dependent child resulting from the candidate or officeholder engaging in campaign activities or performing official duties.
- 2) Provides, for the purposes of this bill, that the term “childcare expenses” includes the reasonable costs of professional daycare services, babysitting, nanny services, food and beverages, transportation to and from the location of a childcare services provider, before and after-school programs, and preschool.
- 3) Provides that the term “childcare expenses” does not include private school tuition, medical expenses, tutoring services, or payments to a relative within the third degree of consanguinity of a child, unless the relative owns or operates a professional daycare or babysitting service and the cost of the service is no greater than the relative would otherwise charge.
- 4) Makes technical changes.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC), and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires an expenditure of campaign funds to reasonably related to a political, legislative or governmental purpose, as specified. Requires an expenditure of campaign funds that confers a substantial personal benefit on anyone with authority to approve the expenditure to be directly related to a political, legislative, or governmental purpose. Defines “substantial personal benefit,” for the purposes of this provision, as an expenditure of campaign funds that results in a direct personal benefit with a value of more than \$200 to a candidate, elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Candidates with young children, men and women, often face the practical reality of paying for increased child care to campaign and network when running for office. In 2018, the Federal Election Commission took action to allow campaign

funds to be used for child care expenses for federal candidates running for office. However, the vast majority of candidates in California seek municipal, local, county, or state offices and the action taken by the FEC does not apply to these non-federal candidates. AB 220 would help create greater gender parity among elected officials in California and more broadly help all parents with young children seek public office by allowing the use of campaign funds for child care expenses.

- 2) **Existing Policy on the Use of Campaign Funds for Childcare Expenses:** California law recognizes that ethical concerns may arise when a candidate receives a personal financial benefit from contributions received by the candidate's campaign, and accordingly limits a candidate's use of campaign funds on expenditures that provide a personal financial benefit to the candidate. In general, the PRA requires most campaign expenditures to be *reasonably* related to a political, legislative, or governmental purpose. Expenditures of a candidate's or officer's campaign funds that confer a substantial personal benefit on that candidate or officer, however, must meet a higher standard, and be *directly* related to a political, legislative, or governmental purpose.

Although the PRA does not expressly specify whether campaign funds may be used for childcare expenses, the FPPC has advised since at least 1990 that campaign funds may permissibly be used for babysitting services under certain circumstances and subject to certain restrictions. Specifically, in 1990, the FPPC issued an advice letter in which it confirmed previously provided oral advice that a state Senator could use campaign funds to pay for babysitting services for his minor children when the Senator and his wife were attending campaign-related activities (*Olson* Advice Letter, No. A-90-204). Because this advice letter merely confirmed previously provided oral advice, it did not contain a detailed analysis of how the FPPC reached its conclusion, but the letter did note that the FPPC had concluded that the expenditure of campaign funds for babysitting services was "*directly* related to a political, legislative, or governmental purpose" (emphasis added).

In 1994, the FPPC again issued an advice letter concluding that campaign funds could be used for babysitting expenses in certain circumstances (*Mahoney* Advice Letter, No. A-94-285). In that advice letter, the FPPC concluded that babysitting expenses incurred by a candidate while engaging in campaign-related activities were *reasonably* related to a political purposes, but stated that it "cannot say" that "baby-sitting expenses incurred during campaign activities are *directly* related to a political purpose" (emphasis added). As noted above, any expenditure of campaign funds that confers a substantial personal benefit on anyone with authority to approve the expenditure must be directly related to a political, legislative, or governmental purpose. At the time that the advice letter was issued, an expenditure of campaign funds was deemed to have a substantial personal benefit to a candidate if the expenditure resulted in a direct personal benefit of more than \$100 to the candidate. (That \$100 threshold subsequently was raised to \$200.) Accordingly, the advice letter concluded that expenses incurred in providing a babysitter for a candidate's children while the candidate is campaigning for office is permissible "as long as each payment is less than \$100."

In light of the FPPC's 1994 advice regarding expenses for babysitting services, and the subsequent adjustment to state law of the dollar threshold at which an expenditure is deemed to have a substantial personal benefit, educational materials produced by the FPPC in the last

several years regularly have advised that candidates may use campaign funds to pay a babysitter when they are out campaigning, but only up to \$200 per event.

Notwithstanding this FPPC advice, the ability of candidates and officeholders to use campaign funds for childcare expenses incurred while engaging in campaign activities or performing official duties is limited, and the applicability of that advice is unclear in certain situations. For example, while FPPC advice directly addresses the question of whether candidates can use campaign funds for babysitting services when the candidate is engaged in campaigning, it does not appear to have formally advised on the question of whether *officeholders* can use campaign funds for childcare expenses incurred when the officeholder is performing official duties. Furthermore, it is unclear whether the FPPC would distinguish between one-time expenses for babysitting services and ongoing expenses for professional daycare services. Finally, because the FPPC's current advice limits the amount of campaign funds that can be spent for babysitting services on a "per event" basis, there may be ambiguity about how those rules would be applied in certain situations where a candidate or officeholder is engaged in campaign activities or official duties for an extended period of time. By expressly permitting campaign funds to be used for childcare expenses under specified circumstances, this bill should eliminate some of the ambiguity that exists in the FPPC's current advice. Furthermore, this bill would eliminate the cap on the amount of campaign funds that a candidate could use for childcare expenses for any single event.

- 3) **Federal Election Commission (FEC) Advice Letter:** As noted in the author's statement above, last year, the FEC issued an advisory opinion in which it concluded that a candidate for Congress was permitted to use campaign funds held by her campaign committee to pay for childcare expenses that she incurred as the result of her candidacy. Much like the PRA's restrictions on the use of campaign funds on expenditures that provide a personal financial benefit to the candidate, federal campaign finance law prohibits the use of campaign funds for a candidate's personal expenses.

The candidate who requested the advisory opinion from the FEC noted that prior to becoming a candidate for federal office, she worked from home as a consultant and cared for her children full time. Once she became a candidate, she hired a part-time caregiver so that she was able to fulfill her campaign responsibilities. In the advisory opinion, the FEC noted that the relevant question under federal law was whether the childcare expenses would exist irrespective of the candidate's campaign or officeholder duties. The FEC concluded that "the childcare expenses described in [the] request, to the extent such expenses are incurred as a direct result of campaign activity, would not exist irrespective of [the candidate's] election campaign, and thus may be permissibly paid with campaign funds." (Advisory Opinion 2018-06 (Hunter).)

The policy proposed by this bill is somewhat broader than the circumstances under which the FEC concluded that it was allowable for candidates to use campaign funds for childcare expenses. Notably, this bill applies not only to childcare expenses that a candidate incurs when engaging in campaign activities, but it also applies to childcare expenses incurred by an officeholder when performing official duties.

- 4) **When Do Childcare Expenses Result From Campaign or Official Duties?** The FEC's advisory opinion described above limits the use of campaign funds for childcare expenses to situations where the childcare expenses "would not exist irrespective of [the candidate's]

candidacy for office.” By contrast, this bill allows the use of campaign funds for childcare expenses in any circumstance where the expenses “result[] from the candidate or officeholder engaging in campaign activities or performing official duties.” In certain circumstances, it is unclear how it would be determined whether childcare expenses *resulted from* a candidate or officeholder’s campaign activities or official duties.

For instance, if a person pays for childcare for their young children while the person works at a full-time job, and that person subsequently is elected to an office with full-time duties, like the Legislature, would those same childcare expenses now be considered to have *resulted from* the officeholder’s official duties? If this bill is to move forward, the author should further clarify the circumstances under which childcare expenses will be deemed to have resulted from a candidate or officeholder’s campaign activities or official duties.

- 5) **Arguments in Support:** In support of a prior version of this bill, the California Special Districts Association (CSDA) wrote:

CSDA supports increasing diversity of elected officials at all levels, whether it is age, race, religion, or socio economic diversity. AB 220 promotes greater diversity by reducing a potential barrier to an individual seeking public office. Too often, individuals are forced to choose whether to serve the public, which may require them to take time from their work or home, or to not serve in public office in order to provide personally or financially for the childcare needed to allow them to attend campaign events and activities. AB 220 helps reduce this barrier in California, just as the Federal Elections Commission did in 2018, by allowing candidates to utilize campaign funds to pay for necessary childcare costs resulting from engaging in campaign activities.

- 6) **Amendments Sought:** In a letter submitted to the committee on a prior version of this bill, the FPPC took a “support if amended” position and sought amendments to clarify ambiguous language “to promote the proper implementation and administration of this policy and prevent potential abuse.” Specifically, the FPPC letter noted that the bill did not describe the type or value of childcare expenses that would be permitted to be paid for with campaign funds under this bill, and stated that the bill did not “place any clear limit on who may benefit from the expenditures of funds.”

Since that time, this bill has been amended to include some, but not all of the amendments that the FPPC sought. Specifically, recent amendments clarify that campaign funds may only be used to provide childcare services for a candidate’s or official’s dependent child, and define the term “childcare expenses” in a way that is generally consistent with the amendments requested by the FPPC. The recent amendments do not, however, include language requested by the FPPC that would clarify the circumstances under which childcare expenses would be considered to have resulted from a candidate’s or officeholder’s campaign activities or official duties.

- 7) **Related Legislation:** AB 225 (Brough), which is pending in this committee, permits campaign funds to be used to pay for child care expenses incurred by a candidate who is engaging in campaign activities.

- 8) **Political Reform Act of 1974:** California voters passed an initiative, Proposition 9, in 1974 that created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. That initiative is commonly known as the PRA. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the initiative and require a two-thirds vote of both houses of the Legislature.

REGISTERED SUPPORT / OPPOSITION:

Support

California Alternative Payment Program Association (prior version)

California School Employees Association (prior version)

California Special Districts Association (prior version)

Fair Political Practices Commission (if amended, prior version)

SEIU California (prior version)

Opposition

None on file.

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