California Moves Closer to Allowing Candidates to Use Campaign Funds on Childcare Expenses

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On Tuesday, July 2nd, the California Senate Elections and Constitutional Amendments Committee passed Assembly Bill 220 (AB 220, Rob Bonta, D - Oakland). AB 220 authorizes candidates to use campaign funds for childcare expenses while engaged in campaign activity. The bill clarifies and codifies longstanding advice by the Fair Political Practices Commission (FPPC) that allows candidates to use campaign funds for childcare when the need is directly related to a political purpose. AB 220 now heads to a full vote by the Senate. If approved by the Senate and signed into law by Governor Gavin Newsom, California will be among at least 13 states that have approved the use of campaign funds for childcare expenses incurred as a result of campaign activity, marking a national trend towards allowing such expenses.

The majority of states that now allow candidates to use campaign funds for childcare have not proactively legislated the matter. Instead, in many states (such as Louisiana, Alabama, Texas and Kansas), candidates must rely on advisory opinions published by the state agency that regulates that state's campaign finance rules. These interpretations generally find that childcare is a campaign expense, and not a violation of the prohibition on personal use of campaign funds, so long as the childcare would not have been needed but for the candidate's campaign activity. They are also written in response to specific requests from candidates, so that the advice might not cover the unique circumstances of all candidates or even apply to candidates other than the individual who requested the advice.

Therefore, while these advisory opinions are helpful to a candidate seeking to understand their obligations under the law, they are vulnerable to the shifting opinions of new commissioners who serve on the governing boards of state campaign finance agencies. Louisiana offered the most recent example of this vulnerability. Although the Louisiana Board of Ethics advised a candidate in 2000 that campaign funds could

be used for childcare when the candidate was attending fundraisers or appearing at community events (see Ethics Board Docket No. 2000-437), the Board denied a similar request made by a candidate in 2018, concluding that The use of campaign funds to pay for childcare expenses you would incur as a result of your participation in campaign events and activities is not an allowable expenditure. Although the subsequent decision was reversed and the Board returned to its original 2000 position, this type of ambiguity in the law can be cured with a legislative fix.

AB 220 provides that legislative fix for California's campaign finance law. The Political Reform Act (PRA) provides that campaign funds are held in trust for expenses associated with holding office. (Cal. Gov. Code Section 89510(b).) In 1994, the FPPC advised that up to $200 could be used for childcare expenses if a campaign event was directly related to a political purpose. FPPC advice letters are not precedential, meaning that a candidate who relies on the 1994 advice letter could be prosecuted by the FPPC of 2019 for following its prior guidance. AB 220 codifies and clarifies the 1994 advice by removing the $200 per-event limit, and adopting a definition of qualifying childcare expenses. Permissible expenses would include professional daycare, nannying services, babysitting, and related transportation costs. Private tuition and payments to certain close family members for babysitting would be prohibited. Any such expenditures must be reported and itemized on a candidate's campaign finance reports in the same manner as any other expense, so the public will know whether and how much a candidate spends on childcare while campaigning.

To date, AB 220 has received bipartisan support and zero no votes, and is expected to pass in the Senate.