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Date: November 30, 2010

To: Chairpersons, FPPC Political Reform Act Task Force

From: John St. Croix, Executive Director
By: Shaista Shaikh, Assistant Deputy Director
Steven Massey, Information Technology Officer

Re: Comments regarding proposed reform topics

The San Francisco Ethics Commission supports the efforts of the FPPC Task Force to improve upon the Political Reform Act (PRA) and increase transparency and efficiency. The Ethics Commission has significant experience with implementing the PRA and local law on a large scale. We have also been a strong advocate of improving electronic filing and on-line public access to records. We welcome the opportunity to provide input on the changes proposed by the Task Force, some of which expand upon the remarks our staff made at the meeting of the FPPC PRA Task Force on November 17, 2010. Our comments first address concerns related to electronic filing, followed by concerns related to thresholds and filing deadlines. We make our recommendations in the interest of disclosure and simplification for filers, the public and filing officers; and look forward to working with interested parties in advancing reforms in the PRA and local law.

I. Electronic Filing

The Ethics Commission has run a web-based electronic filing system since 1999 and has experience with in-house developed software (1999-2007) and off-the-shelf solutions from a third-party vendor that has been tailored to San Francisco's needs (2007-present). This same off-the-shelf system is shared by 18 local jurisdictions in California. The electronic filing systems developed in San Francisco have received praise and awards over the years for innovation and accessibility. Today, the Ethics Commission runs three electronic filing systems for campaign finance FPPC forms, Statements of Economic Interests Form 700 forms, and Lobbyists disclosure forms.

More campaign finance filings are processed through San Francisco's electronic systems than any other local jurisdiction. San Francisco averages almost 800 electronic filings per year. A majority of the electronic filings are accompanied by duplicate paper copies which are processed, filed and made available to the public. Staff manually scans each state and local paper filing into an electronic PDF document to make it equally as available as an electronic document on-line. At the same time, when

electronic filings are received, committees make paper copies of them and staff must retain them in such format because the paper filed document is still the official document of record. San Francisco plans to move all of its local forms into electronic-only formats as soon as practical and feasible.

Ethics Commission staff has reviewed the proposals of the electronic filing and form simplification sub-committees. We strongly support the development of a data-driven filing system/electronic filing network in which local jurisdictions can maintain their autonomy and the Phase 1 recommendation to require all state committees to file electronically regardless of the amount of money raised or spent. However, given the current state budget climate, we believe the data-driven filing system/electronic filing network is unlikely to come to fruition in the foreseeable future; moreover, it will require an overhaul of CAL-ACCESS and the CAL data format. Significant appropriations from the state legislature will be required to move it forward. In addition, local jurisdictions will be required to obtain appropriations to upgrade their current infrastructures to network with the state. While this is a positive long-term goal that should be given significant attention, the opportunity for short-term cost savings and efficiencies can be achieved today using the existing electronic filing infrastructure; and this reality should be given equal attention.

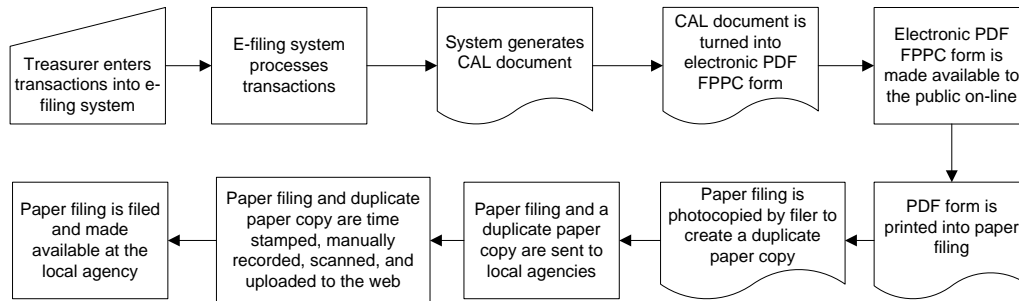
As a significant short-term goal, San Francisco strongly **supports eliminating the paper filing requirement and making the electronic document the official document of record.** This needs to be the first step and a high priority in the electronic filing recommendations. Eliminating the paper filing requirement has long been requested by the campaign treasurers, law firms supporting candidates for local office, local agencies, and the regulated community. It would also accomplish the following:

A. Saves cash-strapped agencies significant money

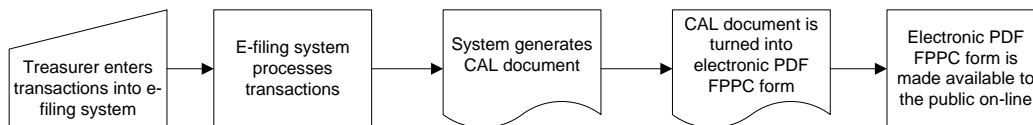
The Ethics Commission spends a significant portion of its operating budget on permanent and seasonal staff costs for processing forms, scanning and copier equipment, and storage for paper filings. In 2007, the Ethics Commission expanded into an additional office space for the sole purpose of storing the growing number of paper filings. If electronic filing were mandated, these funds could alternatively be devoted towards increased assistance to filers and the public, additional audits, and increased enforcement.

FPPC forms are electronically filed in two formats, CAL electronic data files and PDF representations of the forms. The CAL electronic data file contains all of the information that is represented on the PDF FPPC form and is the source from which the PDF FPPC form is generated. The PDF document is then printed in paper form. **Therefore, the PDF representation of the FPPC form is identical to the paper printed copy.** The public does not obtain any additional information by viewing the paper filed copies. As a result, ever since San Francisco began making all of its records accessible on-line, the paper filed archives accessible to the public are rarely accessed. At this point, duplicative paper records of the same on-line financial report serve only to create confusion for members of the public doing campaign finance research.

FPPC campaign filings go through the following filing process:



The process could be significantly shortened without any loss of access to the public by adopting the following:



B. Saves committees time and money processing paper statements and delivering them to agencies

Campaign committees spend significant amounts of money printing large filing reports, obtaining the necessary signatures, and delivering the reports by each filing deadline. For committees that file electronically, this work is not only wasteful but serves no public purpose, as the report is already made available to the public on-line within seconds of submitting the electronic copy. In addition, committees required to file electronically that fail to file on-time are subject to a form of double jeopardy, receiving two late fines for both the electronic and paper copy.

The Ethics Commission has received numerous requests from treasurers to eliminate the paper filing requirement but we cannot ignore the state’s requirement for paper filings. Thus, we have no ability to address their concerns. Meanwhile, staff at local agencies are unable to provide enough assistance to filers because staff must devote their efforts towards processing the paper forms when filing deadlines approach.

C. Moves the state towards a shared goal of building a data-driven filing system

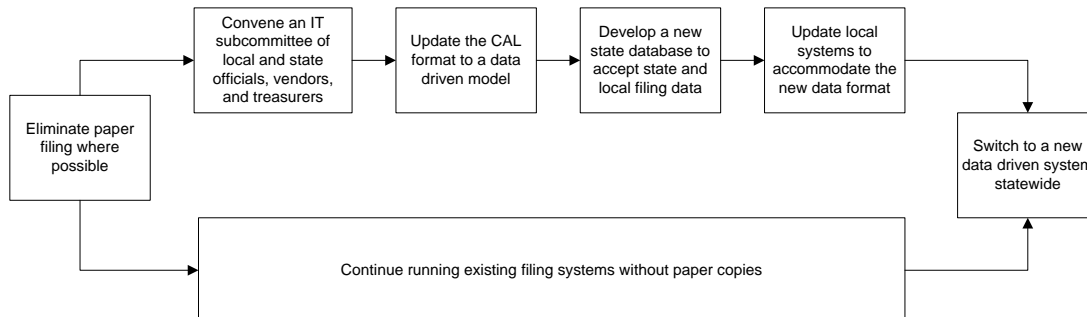
The CAL 2.01 data format, supported by the Secretary of State’s office, is primarily designed to record values that are required to be input into paper forms. Because transactions are often represented on multiple FPPC forms, from sometimes the same or different sources, the same transaction is often represented multiple times electronically, which is a problematic data-model. To move to a data-driven filing system, the CAL data format needs to be revised to move away from ties to paper and towards data that can be better presented electronically. Currently, other than verifying that the paper statement has been properly filed, all audits in San Francisco are conducted using the electronic data records instead of the paper-filed reports. Thus, currently,

paper reporting serves no beneficial function. It is critical that the FPPC divorce the CAL format from paper forms in order to make significant progress on the electronic data format.

San Francisco made the conversion from paper-filed lobbyist disclosure reports to data-driven electronic filing with no paper forms or electronic representations of a form. The data is presented to the public by grouping relevant information and making it accessible from multiple perspectives, rather than static individual reports. San Francisco has operated this system for a year and has not received any complaints regarding the lack of paper records. Instead, members both of the public and media have applauded the move to electronic-only filing. Moving to a data-driven model allows an agency to go beyond solely providing a search engine or financial reports for individual committees. Charts, financial summaries, and comparative analyses built with electronic data allow the public to quickly and easily digest the volumes of information. The San Francisco lobbyist disclosure web site can be accessed at: <http://system.netfile.com/Sunlight/sf/>.

Ethics Commission staff believe that a switch to a data-driven model of electronic filing needs careful consideration and planning. San Francisco has completed data migrations when the CAL format has been upgraded in the past, and transitioned to completely new electronic filing systems entailing massive data migrations, both of which require significant cost and expertise. We strongly agree with the recommendation to form a technology subcommittee because it will require a wide body of experts to accomplish the migration of electronic data the currently exists, as well as to design a new data-driven system. The subcommittee should be a balanced composition of not only qualified IT staff from state and local agencies that have previous experience with the current CAL data format, but also certified CAL vendors and professional political treasurers. Certified CAL vendors account for almost all of the filings to the state and would be an excellent source of information. Agencies and professional political treasurers depend on certified CAL vendors to create software products to file campaign statements and they will need to plan early to revise their products along with agency system upgrades. In addition, professional political treasurers can provide valuable feedback regarding developing a sensible electronic accounting system and real-world experience using the existing filing system. Failure to tap these sources could deny the subcommittee critical knowledge and expertise.

Because this is a large undertaking, whatever efficiencies can be achieved today -- while allowing the long-term planning process to proceed -- should be undertaken. We propose the following timeline, which takes an incremental approach where a new system is developed while paper filing is eliminated using the existing infrastructure.



This will allow the FPPC and local agencies to address a significant and longstanding complaint from the filing community, while carefully designing a new data-driven model.

D. Provides environmental benefits

This communication will not address specific environmental benefits and energy savings other than a reminder that all-electronic filing provides a host of “green advantages,” including a massive reduction in the use of paper, toner and electricity and a great reduction in the need for interested parties to travel to filing offices to view and retrieve documents.

Below, staff addresses some of the common arguments against an *immediate* move to electronic filing:

- **The Secretary of State’s CAL-ACCESS system is antiquated and should be replaced before paper filing is eliminated.**

Response: Twenty-one local jurisdictions already have in place proven and efficient electronic filing systems today. Many of these agencies could move to paperless e-filing without any system modifications. Local agencies should be allowed to eliminate the paper filing requirement as soon as the agency believes it has a sufficient electronic system in place. CAL-ACCESS could be updated in the future without holding back local agencies that are ready to make the transition today. San Francisco has been running simultaneous electronic and paper filing for eleven years and believes no further testing of electronic filing is necessary. Waiting until the state and all local jurisdictions are simultaneously capable of paperless filing is a recipe for maintenance of the status-quo.

- **Paper is a safer and more secure official record than electronic records.**

Response: Paper, while tangible, provides a false sense of security. As paper is the current filing of record, it is critical that the paper filings are preserved. San Francisco stores recent filings on-site and older filings in off-site storage. Original paper filings stored in a single location are at risk to fire, natural disaster, theft or being misplaced. San Francisco’s electronic records, along with the 18 other jurisdictions using the same e-filing system, are backed up every day in multiple locations hundreds of miles from each other. Should an electronic system fail, it could be restored without data-loss.

- **Not all members of the public have Internet access.**

Response: This is likely to be the case for the foreseeable future and will always be a potential excuse to keep paper filing. However, agencies can provide a public-access computer in place of growing rows of filing cabinets. The Ethics Commission, for example, offers a bank of computers in a public access room to view disclosure statements on-line. Disclosure statements can be printed on demand. Additionally, many

public libraries offer computer access. Electronic documents with searchable text provide better access to people with disabilities. Each jurisdiction should make a determination if sufficient computer access is locally available and if there is a continued demand for access to paper records to warrant the continuation of paper filings.

- **The current campaign finance forms are too complicated and should be simplified as a viable short-term improvement.**

Response: As described above, paper filed FPPC forms that have been electronically filed are produced from the electronic CAL data format. Any changes to the paper forms will require a revision to the CAL data format, including even seemingly simple changes to a form cover page. This will additionally require each jurisdiction to revise its current filing system and database, including the Secretary of State's CAL-ACCESS system. These required modifications have previously been ignored. For instance, the last two revisions to the FPPC 497 late contributions statement added additional loan disclosure requirements. Since the CAL data format was not revised along with the form, it is impossible to electronically complete the loan portion of the form. This not only defeats the intent of the form revision, but creates false information because a loan will now appear to the public as a contribution.

The most viable short-term solution is to eliminate the paper filing requirement. Should the FPPC undertake a simplification of the forms, the CAL data format and associated costs and implications will need to be taken into consideration. Time spent revising the existing forms could be spent more productively towards developing a data-driven overhaul of the forms.

- **Paper documents are necessary because wet signatures provide proof that the candidate/treasurer has reviewed the documents, whereas electronic documents do not.**

Most local agency systems currently provide a login and password to file electronic statements that is only provided to the candidate/treasurer who opens the filer account. Furthermore, each electronic statement requires the filer to complete an electronic verification statement before submission. San Francisco staff believes this process to be no more or less secure than paper, which provides equal opportunity to forge signatures or mail in false statements. If an electronic statement were to be submitted without consent of the responsible officers, an investigation would ensue by enforcement staff in the same manner as a similar claim concerning a statement signed with a false wet signature. Since San Francisco began electronic filing in 1999, it has never experienced a case where a committee has denied the submission of a statement.

Many documents of significant importance can now be electronically filed on-line, including Federal Election Commission filings, federal and California state tax statements, bank transactions, and credit card transactions. Even California state lobbyist disclosure filings, which follow a very similar electronic filing procedure to campaign

filings, no longer require wet signatures. On the other hand, campaign statements follow a very different process than electronic voting, which has been a controversial electronic submission process in the past decade because it is difficult to provide a verifiable backup. With electronic voting the submission process is inherently private from unidentifiable sources, whereas disclosure statements are public records and the submission source can be more easily traced and content verified with a thorough audit of bank records, invoices, and receipts.

II. Thresholds and Filing Deadlines

A. State/Local Consistency

We strongly agree with the recommendation of the State/Local Consistency and Campaign Finance Thresholds subcommittees regarding campaign finance disclosure thresholds that “while having two tiers of thresholds for different sizes of local jurisdictions might have some benefits, the benefits would likely be outweighed by the complexity and inconsistency such an approach would create.” There should not be a two-tiered threshold and reporting system for state and local committees. It is already difficult enough for committees to understand state laws and to determine which ones apply and which do not. A two-tiered system would be difficult to decipher not only for filers but also for filing officers and the public. Furthermore, committees are often fluid, changing from state to local committees and vice-versa. A two-tiered system of rules would only add frustration to an understanding of the rules in both general and particular circumstances. Finally, as the state and local jurisdictions within the state move towards an electronic filing system, the disclosure thresholds should become more uniform.

B. Committee Qualification

We recommend that the FPPC not change the recipient committee qualification threshold from \$1,000 to \$2,500 or the independent expenditure committee threshold from \$1,000 to \$2,500. These committee qualification thresholds should remain at \$1,000. Raising thresholds would result in the loss of significant disclosure, particularly at the local level. If thresholds were raised at the state level, many local jurisdictions may impose lower thresholds for local committees, thereby adding to the layers of complexity in campaign finance laws and resulting in more confusion for filers, members of the public and filing officers. Consistency in qualification thresholds is especially important when the long-term goal is to achieve a data-driven filing system that is uniform throughout the state.

In addition, we recommend that filings required of major donor committees be eliminated. Contributions made by major donor committees are reported by recipient committees on the Form 460 (and if the contribution is made during the 16-day period before the election, also on the Form 497). Filings by major donor committees do not provide any additional benefit for researchers or filing officers.

C. Supplemental and Late Period Reporting

We recommend that the \$1,000 activity thresholds that trigger reporting in the late reporting period not be raised to \$2,500. We also recommend that the same threshold apply to both state and local committees. The disclosure requirements of the late reporting period, which currently covers the 16-day period before an election, provides the public access to critical information that otherwise is not available until almost three months after the election (at the semi-annual filing deadline).

We disagree with the proposal to extend the current 24-hour reporting requirement during the 16-day late reporting period to a 90-day or 45-day reporting period. Requiring 24-hour reports during such a lengthy period of time is unnecessary and burdensome for filers and filing officers (since filers report pre-election activity on semi-annual, quarterly and pre-election statements). We recommend that the FPPC keep the current 16-day late reporting period and the current thresholds for late reports (Forms 496 and 497). We do not recommend combining forms since this would require funds and time to update electronic filing systems. We agree with the proposal to apply a next business day exception for reporting activity during a weekend that is not the last weekend before the election.

With respect to the Form 465, we recommend that this form be required only if the filing officer for this form is different from the committee's regular filing officer (i.e., state committee filing a Form 465 in a local jurisdiction or vice-versa). This would eliminate duplicative filings because committees are required to disclose independent expenditure information on the 460 or 461 campaign statements.

We agree that the Form 495, Paid Spokesperson Report, \$5,000 Ballot Measure Report, and Odd-Year Reports be eliminated. These forms are rarely filed in San Francisco.

D. Itemization Thresholds

We recommend that the threshold for itemizing contributions remain at \$100. For the purposes of tracking contribution limits, it is important not to raise this threshold to \$250. In San Francisco, since January 2010, 64 percent of the itemized contributions have been under \$250. We do not see the benefit of time saved reporting this information outweighing the significant loss of information for the public. While the FPPC Task Force notes that "local ordinances could always lower this amount," we also strongly recommend against establishing different threshold amounts for state and local committees. Filers have consistently expressed frustration over the "layers of laws" that apply to them and have expressed a desire to have simplified and fewer laws. Having separate thresholds for state and local committees or adding additional requirements to local laws will further frustrate filers, filings officers who are beseeched for explanations of filing requirements, and members of the public who may become confused as to whether committees are complying with the rules.

We recommend that the sub-vendor reporting threshold remain at \$500 and not be lowered to \$250. Lowering this threshold would create more confusion for smaller committees that currently may not need to worry about sub-vendor reporting. The proposal to reduce this threshold appears to be a compromise to make this threshold consistent with the \$100 for credit

card payments. With respect to credit card expenses, committees could simply list in the description field of Schedule E or Schedule F that a payment was made via credit card. In the CAL data format, it is very difficult for a researcher to connect credit card transactions on Schedule E or Schedule F with the Schedule G sub-vendor entries. Consolidating this information on Schedule E or Schedule F would simplify reporting and research.

E. Consolidation of Reports

The FPPC Task Force Sub-Committee on Filing Deadlines proposes consolidation of reports so that the Form 460 is the major report. We assume the sub-committee is proposing to consolidate Forms 425, 450, 460, 461 and 470 by eliminating the Forms 425, 450, 461 and 470, and keeping only the Form 460. We agree with this proposal but request that the Form 460 not be changed. While elimination of forms requires minimal follow-up and cost, changes to a form require resources and time to update the paper and electronic formats, which in cash-strapped times is not feasible.

F. Quarterly Reports and Pre-Election Statements

We recommend that the same rules apply to state and local committees.

III. Conclusion

We strongly recommend that the FPPC consider the immediate elimination of the paper filing requirement, recognize electronic filing as the official document of record, and eliminate duplicative reporting requirements. Reporting requirements can be simplified and streamlined without revisions to forms. Short-term simplifications to filing requirements including consistency in qualification thresholds, reporting thresholds, and filing deadlines and forms, are crucial because the long-term goal is to achieve a data-driven system that is uniform throughout the state. Such consistency is necessary to achieve a simplified and easy-to-understand process, which addresses the concerns of the regulated community and public.

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