From: derekonvanness@aol.com
To: Ethics Commission, (ETH)
Cc: Derek Kerr
Subject: Public Comment: Ethics Commission 7/11/25
Date: Monday, July 7, 2025 10:51:31 PM

Greetings,

Here is my 150-word Public Comment on Agenda item 6: "Proposed Amendments to the Enforcement Regulations" for the July 11th, 2025 Ethics Commission meeting minutes;

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Since 1995, the Ethics Commission has been assessing whistleblower retaliation claims. Over those 30 years, NOT ONE retaliation claim was sustained out of hundreds submitted! Compare with NAVEX Global's "Whistleblowing Benchmark Report" covering 4,000 whistleblower programs handling 2 million complaints worldwide. Retaliation claims were sustained 18% of the time in 2024. In prior years, rates varied from 16% to 23%. Here in SF, we get zero year after year. Now staff want to hide that miserable record by scrapping the standalone summary of retaliation investigations.

In 2020, the Budget & Legislative Analyst issued a Performance Audit of the Ethics Commission. Of 34 retaliation claims received over 3 years; none were sustained, investigations took 32 months, and reasons for dismissals were hidden. The B&LA recommended to "*enhance transparency of these investigations".*

Whistleblowers face retaliation. Ethics investigations conceal this reality. A standalone summary prevents dead-end retaliation investigations from being buried.

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Respectfully,
Derek Kerr, MD - Whistleblower

From: Matt Yankee
To: Ethics Commission, (ETH)
Cc: SOTF (BOS)
Subject: Sunshine Ordinance Task Force Communication on Proposed Amendments to Ethics Enforcement Regulations
Date: Wednesday, July 9, 2025 5:10:57 PM

[Please timely distribute this communication to each appointed Ethics Commissioner.]

Dear Ethics Commissioners,

At its July 2, 2025 Regular Meeting, the Sunshine Ordinance Task Force (SOTF) spent a substantial amount of time discussing the proposed amendments to the Ethics Commission's Enforcement Regulations as they relate to enforcement referrals under the Sunshine Ordinance (Item #6 on your July 11, 2025 agenda), and authorized me (Chair Yankee), Member Schmidt, and Member Pilpel to prepare this correspondence outlining our serious concerns. Specifically, the SOTF notes the following issues:

- The proposed amendments effectively remove a portion of Administrative Code Section 67.35(d) as it relates to the Ethics Commission's role in enforcing non-willful violations of the Sunshine Ordinance, essentially ignoring a portion of a voter-approved initiative. While the Charter does not explicitly extend the Ethics Commission jurisdiction over Sunshine Ordinance matters, it also does not explicitly prohibit it. Moreover, because Administrative Code Section 67.35(d) was approved by the voters at the November 2, 1999 General Election – six years after the approval of the Ethics Commission Charter Amendment (Proposition K) – it should be interpreted as an **additional duty** of the Ethics Commission beyond the prescribed duties established in the Charter by Proposition K.

- The definition of "willful failure" as used in Administrative Code Section 67.34 remains undefined in the proposed amendments. The SOTF has, on numerous occasions, requested that the Ethics Commission establish a working definition of that term to eliminate ambiguity. The law in California includes several instances where the term "willful" is used, often in the context of enhanced penalties for statutory violations, and appellate courts have developed a workable definition. "Willful" does imply a certain level of intent, but there is not a requirement of specific intent to violate the law. The Court of Appeal, for instance, in *May v. New York Motion Picture Corp.*, 45 Cal.App. 396, 404, held the term willful "in its ordinary use**, merely means that one intentionally fails or refuses to perform an act which is required to be done.**" *Davis v. Morris*, 37 Cal.App.2d 269, 274-275 (1940). "In civil cases the word

'willful' does not necessarily imply anything blamable, or any malice or wrong toward the other party, or perverseness or moral delinquency, **but merely that the thing done or omitted to be done, was done or omitted intentionally.**" *Id.*

- While the proposed amendments preserve the Ethics Commission's role in enforcing "willful failures" of the Sunshine Ordinance, they continue to delegate primary responsibility of that role to Ethics Commission staff. The SOTF considers potential "willful failure" violations to be among the most egregious violations of the Sunshine Ordinance, and we often spend an extraordinary amount of time attempting to resolve these violations prior to, or without, referring them to the Ethics Commission. The SOTF has also demonstrated considerable restraint in making enforcement referrals to the Ethics Commission. Indeed, over the past two years, the SOTF has only made two such referrals out of well over 100 complaint files it has heard. Thus, the SOTF strongly believes that any enforcement referrals for "willful failure" violations deserve **the full attention of the appointed Ethics Commissioners, and they should be decided in a transparent manner as part of a public hearing**.

- In her July 7, 2025 memorandum to the Ethics Commission, Olabisi Matthews, Director of Enforcement, describes Sunshine Ordinance, Brown Act, and California Public Records Act violations as "… minor or unintentional open government infractions …" which "… dilutes the limited staff and legal resources and diverts attention from matters with systemic impact or greater public harm." While that may be the personal opinion of Director Matthews, it is a subjective characterization that exists nowhere in the law – there is nothing in San Francisco's Charter or ordinances which establishes such a hierarchy of infractions. In fact, in adopting the Sunshine Ordinance, San Francisco voters reinforced the belief that, "**Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public's interest in open government.**" [Administrative Code Section 67.1(e)] The SOTF does see some violations of an inadvertent nature, but there are also many others that are not inadvertent. Likewise, one might think of some claims as "minor" while others are far more serious. Any recommendations to alter the existing Ethics Commission Enforcement Regulations should not hinge upon these faulty mischaracterizations.

The Ethics Commission last explored the topic of enforcing Sunshine Ordinance violations at its December 16, 2014 meeting, after extensive consultation with the SOTF. For a more comprehensive perspective, we recommend the current Ethics Commissioners review the related memorandum and meeting minutes, available online at:

https://sfethics.org/wp-content/uploads/2015/04/binder1-1.pdf

https://sfethics.org/ethics/2015/01/minutes-december-16-2014.html

While we agree that the time has come to revisit this issue, the SOTF is disappointed that the latest revisions do not include the feedback provided to Ethics Commission staff on multiple occasions. Furthermore, Ethics Commission staff have been unwilling to meet with the entire SOTF at one of our public meetings despite several invitations to do so. **Therefore, the SOTF respectfully requests that the Ethics Commission reject the current proposed revisions to its Enforcement Regulations related to existing Section 10 and to carefully consider the issues noted above.** In addition, the SOTF recognizes certain limitations on enforcement mechanisms under both the Charter and the Sunshine Ordinance. We urge the Ethics Commission to explore all enforcement opportunities available under current law, and if they are insufficient, to collaborate with the SOTF on a legislative proposal to provide meaningful enforcement of the Sunshine Ordinance, Brown Act, and California Public Records Act violations.

Sincerely,

Matt Yankee
Chair, Sunshine Ordinance Task Force

Dean Schmidt
Member, Sunshine Ordinance Task Force

David Pilpel
Member, Sunshine Ordinance Task Force

July 10, 2025

Chair Argemira Flórez Feng
Vice-Chair Yaman Salahi
Commissioners Tsai, Francois, and Yeh
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RE: Ethics Commission Agenda, July 11, 2025, Item 6 – Discussion and Possible Action on Proposed Amendments to the Ethics Commission's Enforcement Regulations

Dear Chair Flórez Feng and Commissioners:

We write the Commission as experienced practitioners in the field of government ethics and political law with experience in local ethics enforcement matters in jurisdictions throughout California and the United States. We write to bring the Commission's attention to a reform of the Commission's Enforcement Regulations that we believe would enhance transparency, fairness, and efficiency in the enforcement process, without sacrificing the discretion or effectiveness of investigators.

INTRODUCTION

Under current practice, Commission investigators do not share copies of complaints or allegations with respondents or subjects of investigations based on the premise that the complaint is confidential. As discussed below, we do not believe that privacy restrictions in local law dictate that respondents be deprived of the opportunity to view and confront allegations levied against them. The Commission has sufficient authority to clarify in its Enforcement Regulations that the initial stages of an investigation contain a step for investigators to transmit a copy of the complaint to named respondents.

Such a reform would enhance the basic fairness of the investigative process and is consistent with constitutional principles of due process and confrontation. These principles are particularly weighty in the context of investigations into core

First Amendment activities, such as advocating for candidates and issues and seeking redress from public officials.[1]

It would also streamline and add efficiency to the enforcement process. Providing a copy of the complaint to respondents would allow respondents and their counsel to work cooperatively with investigators on an appropriate scope for document requests and, if necessary, subpoenas, and would enable respondents to provide relevant records and legal arguments early in the process that would help clarify whether a legal violation occurred.

A significant number of large jurisdictions with sophisticated ethics agencies share copies of complaints with respondents. Currently, the Federal Election Commission, Office of Congressional Conduct, the Fair Political Practices Commission, and the State of New York's Commission on Ethics and Lobbying in Government, as well as many other ethics enforcement bodies, grant respondents the opportunity to review complaints before subjecting them to a complete investigations process.[2] This widespread practice recognizes that sharing a copy of allegations with respondents is a vital safeguard that helps to ensure that investigations and enforcement activities are efficient and proceed in a fair and just manner that avoids unnecessary expenditure of agency or respondent resources.

I. Withholding Complaint Information Denies Respondents Fair Hearings and Harms Efficiency.

A person's right to be informed of the nature of accusations against them is so essential to the fair enforcement of the law and proper administration of justice

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[1] *Buckley v. Valeo* 424 U.S. 1, 14 (1976) (recognizing that "[d]iscussions of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution" and are afforded "the broadest protection" under the First Amendment).

[2] *See* 11 CFR § 111.5(a) (General Counsel of FEC shall notify respondents of receipt of complaint "and enclose a copy of the complaint"); Cal. Code Regs., tit. 2, § 18360(b)(1) (requiring FPPC Enforcement Division to in most circumstances provide a copy of the complaint to each person alleged to have violated the law within "three business days of receipt"); N.Y. Comp. Codes R. & Regs., tit. 19 § 941.3(a) (written notice shall provide "the possible or alleged violation or violations of law and a description of the allegations against the respondent and the evidence" gathered, if any); 5 Ill. Comp. Stat. Ann. 430/20-50(d) (requiring a "copy of the complaint [to] be served on all respondents named in the complaint").

that it sits alongside our constitutional guarantees of free speech and the right to legal representation in the Bill of Rights.[3] The wisdom of these principles is obvious: for a party to fairly defend themselves against allegations of wrongdoing, they must be made aware of the specifics of the allegations and allowed adequate opportunity to prepare their response.[4] The right to be informed of allegations is critical to the equitable administration of the law, and its absence is the absence of justice.[5]

The Commission's Enforcement Regulations are insufficient to protect these critical constitutional principles. The Regulations do not provide respondents a fair chance to be made aware of the allegations against them, despite obligating respondents to comply with document requests, interview requests, and other investigative demands. Respondents should not be left in the dark as to the nature of the allegations against them while still being compelled to produce information to investigators with enforcement powers. Further, investigations can be long-running and can place significant financial and other burdens on respondents. These burdens could be lessened by providing respondents with the opportunity to review the substance of the complaint, thus enabling them to produce evidence and supply legal arguments disproving allegations and preventing needless use of resources by both parties.

Further, this deficiency in the Enforcement Regulations would only be exacerbated by several of the changes in the proposed amendments that would strengthen investigative authorities without establishing commensurate safeguards or protections for respondents, such as the proposal to authorize the Commission to bring a charge for withholding records sought by subpoena (proposed Section 5(C)(4)); the proposal to authorize Staff to re-open closed matters (proposed Section 4(F)); the proposal to reduce confidentiality protections of evidence obtained prior to a probable cause determination (proposed amendment to Section 5(D); and the proposal to delegate to the Executive Director the power to make final determinations of probable cause (proposed amendment to Section 7).

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[3] *See* U.S. Const., amend. VI.
[4] *See Lankford v. Idaho*, 500 U.S. 110, 126 (1991) ("Notice of issues to be resolved by the adversary process is a fundamental characteristic of fair procedure").
[5] *See Cole v. Arkansas*, 333 U.S. 196, 202 (1948) (Stating that a conviction on a charge which defendants were not informed of denied safeguards "essential to liberty in a government dedicated to justice under law").

II. Local Law Does Not Require the Withholding of Allegations.

Neither the San Francisco City Charter nor the Campaign and Governmental Conduct Code bar the Commission from sharing copies of allegations with respondents. The most relevant provision, cited in the past by investigators, provides merely that Commission investigations "shall be conducted in a confidential manner" and that "[r]ecords of any investigation shall be considered confidential information to the extent permitted by state law."[6] This provision does not bar the Commission from adopting a regulation that specifies that complaints must be shared with respondents at the initial stage of the enforcement process. Further, the animating purpose of the confidentiality provision in the Charter—protecting respondents and other third parties from premature disclosure of investigative materials—is not served by depriving respondents of the opportunity to confront complaints filed against them.

The current draft of the proposed regulations pending before the Commission also underscore the flexibility available to the Commission to provide copies of complaints to respondents. The draft proposes to eliminate text specifying that investigative documents received prior to a probable cause determination "will remain confidential," thus permitting investigators to use documents supplied by respondents in response to document requests and subpoenas as exhibits in support of a probable cause determination or a hearing on the merits.[7] If the Commission possesses authority to make public these types of records, which are supplied by respondents, it also possesses authority to provide respondents with copies of complaints and allegations levied against them.

Further, the Commission has mechanisms available to it to ensure that privacy considerations are balanced against the constitutional rights of respondents and that the Commission has sufficient tools available to allow it to act effectively. The Commission could continue to allow for the receipt of anonymous complaints. It could also redact from complaints sensitive personally identifiable information of complainants prior to sharing complaints with respondents.

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[6] City of San Francisco Charter, Appx. C, § C3.669-13(a).
[7] *See* Proposed Regulation, Section 5(D).

IN CLOSING

For the reasons stated above, any amendments to the Enforcement Regulations should include an express clarification requiring the Commission to provide respondents with a copy of the complaint at the inception of the enforcement process. Allowing pre-investigation review of complaints would meaningfully improve and streamline investigative procedures and enhance fairness and transparency for respondents, without sacrificing the investigative tools and authority of investigators.

Thank you for this initial opportunity to provide comment.

Sincerely,

David J. Lazarus
Silvio Renna

July 10, 2025

Chair Argemira Flórez Feng
Vice-Chair Yaman Salahi
Commissioners Tsai, Francois, and Yeh
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RE: Ethics Commission Agenda, July 11, 2025, Item 6 – Discussion and Possible Action on Proposed Amendments to the Ethics Commission's Enforcement Regulations

Dear Chair Flórez Feng and Commissioners:

We write the Commission as experienced practitioners in the field of government ethics and political law with a professional interest in ensuring effective, fair and responsible enforcement procedures. Drawing on our expertise in local ethics enforcement throughout California and across the United States, we respectfully request that the Commission adopt procedural safeguards in its Enforcement Regulations that protect the rights of respondents and foster efficient, transparent resolution of complaints.

I. The Status of Enforcement Proceedings.

Currently, enforcement proceedings begin with a preliminary investigation by the Director of Enforcement. If the Director determines there is a credible violation, then the Director opens an investigation into the allegations contained in the complaint. The investigation immediately moves forward with document requests, subpoenas and probable cause proceedings. The Commission does not offer an initial opportunity for responsive filing prior to the commencement of what can be a lengthy and expensive investigatory process.

We believe that the enforcement process could be meaningfully improved in various respects by adopting a new stage in enforcement proceedings where a respondent has a meaningful opportunity to explain their conduct and make a legal

argument as to why the proceeding should not move forward. Such a step would allow respondents to confront evidence and allegations. It would afford investigators the opportunity to pressure-test their legal theories and evidence against the arguments and evidence of respondents. It would improve efficiency by helping to winnow out un-meritorious or weak cases early in the process, thus preserving resources of both respondents and the Commission. And, it would enable the Commission to establish a body of precedent-setting decisions that would provide a road map and certainty to the public on questions related to the interpretation and application of City campaign finance, lobbying law, and other requirements.

The many advantages of this approach are underscored by the fact that this type of procedure is commonplace among a wide variety of campaign finance and ethics oversight bodies. For example, the rules governing Federal Election Commission ("FEC") investigations provide:

> Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint.[1]

Further, the Commission's procedures diverge from those of countless state and local ethics enforcement bodies, including those of the State of California's Fair Political Practices Commission ("FPPC"). In enforcement matters before the FPPC, state regulations require the FPPC to provide the respondent with a copy of the complaint and notice that the respondent may respond to the complaint within three business days of receipt of a sworn complaint.[2] This occurs prior to the formal opening of a case or any other action by the FPPC.

Various other state and local commissions follow the FPPC's approach. If the New York State Commission on Ethics and Lobbying in Government determines after a preliminary investigation that there is reason to move forward with the complaint, the Commission notifies the respondent and allows 15 days to respond.[3] In proceedings before the Texas Ethics Commission, a respondent is required to respond to a notice of alleged violation, and this response may include challenges to the Commission's jurisdiction, denial of the allegations with

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[1] 52 U.S.C. § 30109(a)(1).
[2] Cal. Code Regs., tit. 2, § 18360(b)(1).
[3] N.Y. Comp. Codes R. & Regs., tit. 19 § 941.3(a).

supporting evidence, or acknowledgment of the violation.[4] Under Illinois Ethics Commission regulations, "A respondent may file objections to the complaint within 30 days after notice of the petition has been served on the respondent."[5] A preliminary response mechanism is both practical and common across jurisdictions.

II. The Need for a Response Stage: Expense, Representation, and Constitutional Considerations.

In light of these widespread practices, as well as a variety of legal and policy considerations, the Commission should implement a comparable response stage in its enforcement process.

Currently, the Commission is at risk of unnecessary investigations, wasted resources, and undue burdens upon the Commission and all parties involved. A formal response opportunity early in the process could help investigators detect mischaracterizations or factual or legal misunderstandings in complaints and prevent needless or protracted investigations based on insufficient evidence. In turn, the Commission would be able to better focus its resources on genuine misconduct, reinforce public confidence in a balanced process, and filter out meritless complaints.

This move would also provide a benefit in the form of generating a more extensive record of the Commission's interpretation of laws within its jurisdiction, which would provide more sign-posts and advance notice to the regulated community. This would create a clearer public record of enforcement standards, which in turn could help reduce future violations through improved guidance and predictability.

Here, the Commission may contend that the preliminary review of the complaint by the Director of Enforcement fills the role of filtering out meritless complaints. However, this does not allow the respondent to adequately represent their interests in the case before it moves into the full investigation stage. As noted in *Crossroads Grassroots Policy Strategies v. FEC*, courts "look skeptically on government entities serving as adequate advocates for private parties."[6]

Furthermore, due process principles instruct that notice and an opportunity to be heard, prior to the imposition of significant burdens (e.g., investigative demands), promotes fairness, improves the credibility and transparency of investigative procedures, reduces the likelihood of errors and increases the

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[4] Tex. Gov't Code § 571.1242.
[5] 5 Ill. Comp. Stat. Ann. 430/20-50.
[6] *Crossroads Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 321 (D.C. Cir. 2015).

likelihood of early detection of errors, narrows the focus on issues where reasonable grounds exist to believe a violation has occurred, and improves efficiency and legitimacy.[7] Here, the lack of a response stage prior to commencement of a full investigation deprives the respondent of adequate representation. The respondent should be allowed to represent their interests, present evidence and file objections and arguments as to why a costly and burdensome investigation should not proceed.

Next, without early adversarial participation, the process risks becoming arbitrary or disproportionately punitive. Enforcement actions often bring immediate harm such as reputational damage, financial strain, and substantial diversion of resources. The burdens of responding to investigative demands are especially acute in the election context, where campaigns are often short-lived, staff may be dispersed or unavailable, and recordkeeping systems are decentralized or no longer accessible.

In the civil litigation context, courts have recognized that the discovery process itself can be coercive and burdensome. This concern led the Supreme Court in *Iqbal* and *Twombly* to adopt a more stringent pleading standard precisely to prevent costly discovery in weak or speculative cases.[8] By contrast, the Commission's investigative framework lacks comparable safeguards. Without a mechanism for early challenge or meaningful response, respondents face potentially intrusive demands without the procedural protections afforded in various administrative proceedings, as well as in civil litigation.

Finally, these considerations are particularly weighty in the field that the Commission is responsible for regulating. Individuals and organizations that seek to influence local candidate elections, ballot measures, and legislation operate within the core of protected First Amendment speech and associational activity.[9] Their tactics, strategies, and communications enjoy substantial constitutional protection, and investigations into these activities must adequately balance investigative prerogatives—the undeniably important governmental interest in enforcement of government ethics laws—against privacy and associational interests

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[7] *See generally Mathews v. Eldridge*, 424 U.S. 319 (1976); Friendly, Henry J., *Some Kind of Hearing*, 123 U. Pa. L. Rev. 1267 (1975).

[8] *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007).

[9] *Buckley v. Valeo* 424 U.S. 1, 14 (1976) (recognizing that "[d]iscussions of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution" and are afforded "the broadest protection" under the First Amendment); *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988) (circulation and advocacy of ballot measures is "core political speech"); *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 138 (1961) (recognizing that "[t]he right of petition is one of the freedoms protected by the Bill of Rights").

that cannot be chilled by invasive investigations that do not contain an opportunity for an effective response.[10] The introduction of a response stage during preliminary review would help safeguard against constitutional harms and give the respondent a meaningful opportunity to be heard.

III. Conclusion.

For the aforementioned reasons, we respectfully urge the Commission to adopt procedural reform to its enforcement process in the form of a preliminary stage allowing respondents to submit a written explanation and legal argument in response to a complaint prior to the initiation of a formal investigation. After filing the motion to dismiss or response, the Commission staff would have an opportunity to assess the strength of the allegations and information in the public record, against the response, and make a recommendation to the full Commission as to whether to move on to evidentiary proceedings. This modest reform would significantly improve fairness, efficiency, and transparency.

Thank you for your thoughtful attention to this matter.

Sincerely,

David J. Lazarus
Gillian Friend

[10] *See NAACP v. Alabama*, 357 U.S. 449, 462 (1958) (recognizing that "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs" and subjecting effort to compel disclosure of membership lists to balancing analysis requiring a compelling government interest); *see also Americans for Prosperity v. Bonta*, 594 U.S. __ (2021) (invalidating California's requirement that non-profit organizations disclose donors as precondition of soliciting donations in the State); *Gibson v. Fla. Legislative Investigation Comm.* 372 U.S. 539 (1963).

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July 10, 2025

VIA ELECTRONIC MAIL

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RE: Ethics Commission Agenda, July 11, 2025, Item 6 – Discussion and Possible Action on Proposed Amendments to the Ethics Commission's Enforcement Regulations

Dear Chair Flórez Feng, Vice Chair Salahi, and Commissioners:

The Enforcement and Filing Officer Oversight Committee of the California Political Attorneys Association ("CPAA") writes to comment on Ethics Commission ("Commission") Agenda Item 6: Discussion and Possible Action on Proposed Amendments to the Ethics Commission's Enforcement Regulations.

As a starting point, we ask that the Commission **refrain from adopting the proposed Enforcement Regulations at its upcoming meeting on July 11, 2025**. A number of members of the CPAA—providers of legal and treasurer services to a wide range of political committees, donors, and others interested in San Francisco elections—have concerns with several of the changes in the proposed amendments, and we believe additional time for thorough evaluation and public comment would strengthen the proposal and provide the Commission with valuable feedback to guide its consideration of the changes.

Our request to delay a vote on the proposed amendments is consistent with the original plan for deliberation proposed by Commission staff. The agenda for the Commission's June 13, 2025 meeting included presentation and discussion regarding the proposed amendments, with no

action requested so that the Commission "may review and discuss the proposed amendments as drafted" and "provide guidance to Staff regarding the proposed amendments." The agenda clearly stated that the draft regulations would be "presented for discussion only" and that Staff would return the following month to "seek Commission's action and vote on the proposed amendments." As you are aware, the proposed discussion was tabled at the June 2025 public meeting. In order to ensure sufficient deliberation and opportunity for substantive public comment, we believe that the proposed protocol from the June meeting should be followed at the Commission's July meeting. This is particularly warranted given that the July 4th holiday weekend occurred during the 10-day notice period for the upcoming public meeting.

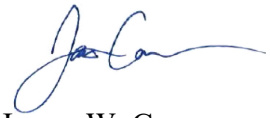
Additional opportunity for public comment and participation is critical given the significance of the proposed changes. In several respects, the changes may fundamentally alter the procedures used during the enforcement process, as well as the balance of procedural protections for respondents. If adopted, the proposed changes would likely constitute the most significant modifications to the Commission's Enforcement Regulations in at least a decade. The weight of the proposed changes, as well as the absence of any stated emergency necessitating expedited action, strongly indicate that additional opportunity for deliberation is warranted.

To that end, we wish to briefly bring your attention to two items of concern. **First, we are concerned with the proposed changes to Section 4 and Section 6 that would allow the Commission to reopen a case after it has been dismissed or closed if newly discovered facts or evidence come to light that would alter the outcome of the case.** CPAA members attended the interested persons meeting held by Enforcement Staff on March 6, 2025 and, as referenced in the Commission Staff Memorandum, specifically raised due process concerns at that time. **We do not believe the proposed amendments provide sufficient guardrails and parameters to protect the due process rights of respondents or serve the goals of finality and certainty when the Commission closes a case.** Further, we believe additional discussion is warranted as to how the proposed power to reopen a case would function in the context of a settlement agreement and stipulated order, and whether the power to reopen a case would have the effect of discouraging respondents from seeking to resolve cases via settlement.

Second, relatedly, we are concerned that the changes to the Enforcement Regulations do not clearly state that the power to reopen a case is **prospective only** and would not apply to cases that have previously been closed, settled, or dismissed.

Thank you for this initial opportunity to provide comments and for Commission staff's work on the proposed amendments.

Respectfully submitted,



James W. Carson
Chair, CPAA Enforcement and
Filing Officer Oversight Committee