California Political Attorneys Association
c/o Olson Remcho LLP
555 Capitol Mall, Suite 400
Sacramento, CA 95814
Telephone: (916) 442-2952
eandrews@olsonremcho.com

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VIA EMAIL

Chair Flórez Feng, Vice-Chair Salahi, and Commissioners Francois, Tsai, and Yeh
San Francisco Ethics Commission
25 Van Ness Ave, Suite 220
San Francisco, CA 94102

Re: Ethics Commission Agenda, July 10, 2026, Item 12 – Discussion & Possible Action on Proposed Campaign Finance Reforms

Dear Chair Flórez Feng and Commissioners:

On behalf of the California Political Attorneys Association ("CPAA"), we respectfully submit this comment regarding the San Francisco Ethics Commission's proposed draft legislation and corresponding draft regulations, imposing contribution limits on candidate-controlled ballot measure committees, and new restrictions on republication of candidate campaign materials.

We appreciate the extensive work conducted by Ethics Commission staff in drafting the April 10 report (the "Report"), as well as the Commission's careful consideration of the legal questions discussed therein. However, CPAA is concerned about both the constitutionality and the practical consequences of the proposed legislation and regulations, including their apparent conflict with not only the Political Reform Act but also existing provisions of the San Francisco Campaign and Governmental Conduct Code. Based on our decades of experience advising clients on these issues in jurisdictions across the state and country (including before the Commission), we provide below some constructive feedback, and suggest revisions to the draft legislation and corresponding regulations that would allow the Commission to address the concerns raised in the report while avoiding potential constitutional and practical pitfalls. Given that the Commission anticipates these new legislative and regulatory provisions going into effect no earlier than January 1, 2027 – i.e., six months from now – we respectfully request that the Commission take our feedback and revisions into consideration before proceeding.

I. Contribution Limits for Candidate-Controlled Ballot Measure Committees

The Commission's proposed amendments to Section 1.114(a) of the Campaign and Governmental Conduct Code would impose a $500 per election limit on contributions to ballot measure committees controlled by candidates actively seeking City office.

Our concern is that, as the Report acknowledges, limits on contributions to ballot measure committees have been deemed unconstitutional by the Supreme Court. In reaching this conclusion, the Court explained that "[t]he risk of corruption perceived in cases involving candidate elections…simply is not present in a popular vote on a public issue… [i]n *Buckley*, this Court upheld limitations on contributions to candidates as necessary to prevent contributors from corrupting the representatives to whom the people have delegated political decisions. But curtailment of speech and association in a ballot measure campaign, where the people themselves render the ultimate political decision, cannot be justified on this basis." *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 298-302 (1981) (internal citations and quotation marks omitted). This rationale would be equally applicable to candidate-controlled ballot measure committee, which as a matter of law cannot be used for contributions or expenditures supporting candidates.

Furthermore, both federal and state courts have upheld this principle as applied to state campaign finance statutes. *See, e.g.*, *Family PAC v. McKenna*, 685 F.3d 800, 803 (9th Cir. 2012) (striking down a Washington statute limiting contributions to state ballot measure committees); *Citizens to Save Cal. v. Cal. Fair Political Practices Com*., 145 Cal. App. 4th 736, 739 (2006) (striking down a Fair Political Practices Commission regulation limiting contributions to candidate-controlled ballot measure committees). In the latter case, the court noted that the Supreme Court "did not expressly address whether contributions to candidate-controlled ballot measure committees could be construed as contributions to the candidates who controlled the committees and hence be limited without violating the Constitution" but concluded that "[u]ndoubtedly a contribution to a candidate's campaign committee is a contribution to the candidate since the sole purpose of the committee is the election or reelection of the candidate. Large contributions to the candidate for this purpose are more likely to result in the appearance of corruption. But a contribution to a ballot measure committee, *even if controlled by a candidate*, typically is a contribution for the passage or defeat of the initiative. The general appearance is that of support for or opposition to the initiative, not for the candidate." *Citizens to Save Cal*., 145 Cal. App. 4th 736, 753 (emphasis added).

State law and Fair Political Practices Commission ("FPPC") guidance also recognize this constitutional limitation. Section § 85303(c) of the Political Reform Act provides that "nothing in this chapter shall limit a person's contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office." Notably, the Act allows local jurisdictions to impose their own limits on contributions to *candidates*, but not to committees. *See* Cal. Gov't Code § 85301. Similarly, the FPPC has acknowledged that "[c]ontributions to ballot measure committees, even if the committee is controlled by a candidate or officeholder, are not limited." Bagetelos Advice Letter, I-88-475.

In short, implementing this recommendation would both contradict state law and likely lead to unconstitutional results. This would place candidates who already control ballot measure committees in an untenable position, as they would be *ex post facto* violating a City ordinance despite the fact that they are acting in reliance on, and in compliance with, the decades of precedent described above, and would indeed continue to be in compliance with state law.

If the Commission's concerns stem from the use of candidate-controlled ballot measure committees to pay for communications "showcasing the controlling candidate, the candidate's party affiliation, policy positions, and previous officeholder experience and accomplishments," a more appropriately tailored solution would be to address the ability of ballot measure committees to pay for communications promoting a candidate, rather than the constitutionally protected right of candidates to engage in ballot measure-related activity at all. Indeed, state law already contains a number of mechanisms for accomplishing this, which could serve as a model for the Commission, including Government Code Section 85310 (which limits the ability of ballot measure committees to pay for advertisements supporting the controlling candidate before an election), and FPPC Regulation 18521.5 (which restricts the ability of a candidate-controlled ballot measure committee to make expenditures supporting that candidate). Furthermore, while the Report cites a 2024 enforcement matter as evidence of the necessity of further restrictions on ballot measure activity, the record penalty imposed by the Commission in that matter demonstrates that existing law is already serving to address and appropriately penalize the misuse of ballot measure committee funds by candidates.

II. Republication of Campaign Materials

Similarly, the Commission's proposed republication standard raises constitutional concerns under *Buckley v. Valeo* and subsequent Supreme Court jurisprudence because it restricts independent rather than coordinated political spending. As the Supreme Court explained in *Buckley*, "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as quid pro quo for improper commitments from the candidate." 424 U.S. 1, 47 (1976). As recently as last month, the Court reiterated that "candidates, private individuals, and outside groups...may make unlimited independent expenditures during political campaigns." *National Republican Senatorial Committee et al v. Federal Election Commission et al*., No. 24–621, slip op. at 19 (June 30, 2026).

Here, the Report asserts that "republication of candidate material would confer a direct benefit to the candidate and would increase the likelihood that the candidate and third party coordinated in some fashion." Report at 16. However, this assertion assumes its own premise and is entirely speculative - simply because an expenditure benefits a candidate does not mean that coordination must have previously taken place. That rationale would contradict the Supreme Court precedent precluding limits on independent political spending, regardless of whether that spending benefits candidates. As with the proposed restrictions on candidate-controlled ballot measure committees, this proposed legislation would place candidates in the untenable position of being subject to two directly contradictory sources of law: the Code on one hand, and the entirety of federal and state campaign finance jurisprudence on the other.

Furthermore, the proposed republication standard would also contradict not only state law, but existing provisions of the San Francisco Campaign and Governmental Conduct Code. State law creates an exception to the presumption of coordination when an independent spender "obtain[s] a photograph, biography, position paper or press release from the candidate or the candidate's agents," while the Code provides a similar exception where "[t]he spender has obtained a photograph, biography, position paper, press release, or similar material from the candidate." *See* Cal. Code Regs. Tit. 2, § 18225.7(e)(2); S.F. Campaign and Gov't Conduct Code § 1.115(c)(2). The proposed legislation attempts to resolve this contradiction by making new Section 1.115(d) independent of Sections 1.115(b)-(c), but this still places independent spenders in the inexplicable position of simultaneously being expressly allowed to obtain a photograph from the candidate *and* prohibited from using that photograph.

To the extent that the Commission wishes to add greater clarity to the republication rules, we would suggest incorporating a specific quantitative threshold into the definition of republication. We appreciate the Commission's policy objective of wishing to prevent independent spenders from reproducing candidate communications in their entirety, or even in substantial part. However, for the reasons described above, the proposed rules as currently drafted are impossible for regulated parties to comprehend, let alone comply with, and raise a number of constitutional questions. More specific, quantitative guidance – such as allowing a certain percentage or portion of an independent communication to consist of republished material, or creating a safe-harbor provision for de minimis use (for example one photograph per communication), would still achieve the Commission's policy goals, while creating a clear and constitutionally sound set of rules that regulated parties can understand and comply with.

Thank you for consideration of these comments. We would be happy to provide additional feedback and recommendations regarding the proposed legislation and regulations if helpful.

Respectfully submitted,

KC Jenkins
CPAA Regulatory Committee Chair

Emily Andrews
CPAA Vice-President

Varoon Modak

Varoon Modak
CPAA Member