

February 15, 2023

Fair Political Practices Commission
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Sacramento, CA 95811

Sent Via Email: CommAsst@fppc.ca.gov



California

Common
Cause

**RE: Comment letter on February 16, 2023, Agenda Item 5 - Pre-notice Discussion
of Levine Act Regulations**

Dear Chair Miadich and Commissioners Baker, Wilson, and Wood:

California Common Cause would like to thank the Fair Political Practices Commission's (FPPC) staff for preparing the proposed regulations for California Government Code Section 84308 in light of SB 1439's passage. We agree with much of what FPPC staff is proposing, but we have some concerns that we hope to see addressed, as well as recommendations that we hope the Commission and Commission staff will consider.

As the primary supporter of SB 1439 (Glazer), California Common Cause is keenly aware of the intent and purpose of SB 1439's amendments to the Levine Act. We support regulations that provide clarity to the law without diminishing the law's intent and purpose, which is to improve public trust in government through checks on big-dollar donations from special interests to the government officials those interests seek favorable votes from.

With that in mind, we recommend the following.

Proposed Amendments to Reg. 18438.2. Proceedings Under Section 84308.

Under the currently proposed regulation, it appears that an officer of a governing body would be able to accept a contribution from a special interest entity if that interest has a matter pending before some part of the officer's agency but not the officer directly. For example, a special interest entity seeking a waste management contract could make a contribution over \$250 to a city council member after submitting a proposal to the city's public works department, knowing that the city's processes are such that it will be over one year before the proposal gets to the city council.

We seek clarity that an officer is prohibited from participating in or voting on a matter if they received, and did not return, contributions in excess of \$250 from parties, participants, and their agents at least 12 months prior to a vote on the matter OR while the matter is pending before an agency (i.e., pending before a jurisdiction, not just an officer). We strongly believe this is the intent and purpose of the law.

Regarding the matter of an officer not knowing about an application until it is actually before them, we believe that the law's multiple curing provisions sufficiently account for this by allowing an officer to return excess contributions upon their discovery. These curing provisions mitigate the likelihood of recusal without releasing an officer and parties from their due diligence under the law.

[Proposed Amendments to Reg. 18438.6. Solicitation, Direction, and Receipt of Contributions Under Section 84308.](#)

We have concerns about the portion of this regulation which appears to release an officer or party from liability under the law if an officer or candidate (or their agents) does not “personally request” a contribution from a party “either orally or in writing.” A personally requested campaign contribution, orally or in writing, obviously represents only a portion of campaign contributions given. This approach presents the possibility that a party and their agents who know that their application will soon come before an official can contribute substantially over \$250 to that officer unsolicited, and, because the officer (or his agent) did not directly solicit the contribution orally or in writing to the party, both the party and the officer are no longer liable. This is a significant loophole that should be remedied in the regulations. Such easy circumvention is clearly not the intent and purpose of the law and we hope the regulation will be amended to address this loophole.

[Proposed Amendments to Reg. 18438.7. Prohibitions and Disqualification Under Government Code Section 84308.](#)

We believe that there should be an attempt to define “actual knowledge of a contribution” within the context of the law (clause (e)(2) in the proposed reg. and clause (c)(2) in the current reg.) in order to prevent a difficult-to-disprove ignorance defense. The regulations currently provide guidance on when an officer “knows or should know” about a proceeding as well as a person's financial interest, but it does not provide guidance on when an officer “knows or should know” about a contribution they received. For example, the regulations could state that an officer “knows or should know” about (or has “actual knowledge of”) a prohibited contribution received or accepted if the officer knows or has reason to know of the interested parties (and their agents) and the contribution is in their campaign bank account or reported in their campaign finance reports.

For context, an officer is not released of liability if they claim ignorance for not accruing multiple contributions from the same person in their campaign finance reports, as is mandated in the PRA. Why should they be allowed such a defense here? This is potentially a significant and unaddressed loophole in the current regulation that is counter to the intent and purpose of the law.

[Proposed Amendment to Reg. 18438.8. Disclosure Under Government Code Section 84308.](#)

We believe that the regulation should define when a “proceeding” is commenced and clarify the difference between “pending” and “commenced.” For example, is a “proceeding” any meeting or discussion about an applicable matter or only when the matter is before officials for a vote? Similarly, does a proceeding commence upon submission of an application to the agency (which suggests the matter is also pending), upon application to a department, or once the matter is officially assigned a hearing date? Knowing this is important for proper compliance and accurate interpretation of the law and its multiple regulations.

In conclusion, we thank the Commission and its staff for their hard work on these important regulations and for their consideration of our recommendations. If something we are proposing is unclear to the Commission or its staff, or if we are misinterpreting any portion of the regulations, we are happy to engage further on the matter. California Common Cause, as the primary supporter of SB 1439, is committed to working with Commission staff and all interested parties to ensure that updates to the regulations for Government Code Section 84308 are clear and uphold the intent and purpose of the law.

Sincerely,

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