

# KAUFMAN LEGAL GROUP

A PROFESSIONAL CORPORATION

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## VIA EMAIL

Mr. Adam Silver, Chair  
Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
E-Mail: CommAsst@fppc.ca.gov

**Re: Comment on FPPC Agenda Item 6.  
Our File No.: JLH6217.001**

Dear Mr. Silver:

We offer these comments on behalf of our client, Palo Alto City Council Member Julie Lythcott-Haims. Ms. Lythcott-Haims is the local official who was at issue in the *Winuk* Advice Letter (I-23-009) that was the subject of the April 2023 FPPC Hearing Agenda Item 4, which reviewed the honorarium regulations and advice letters regarding Ms. Lythcott-Haims' specific factual circumstances. At the April 2023 hearing, the Commission correctly recognized that changes needed to be made to the Regulations to address the absurd results that resulted from staff's recommended interpretation and directed staff to return to the Commission with options for addressing the situation.

While we appreciate staff returning with a proposed solution, we respectfully request the Commission reject the staff's recommendation and instead adopt one of two options proposed in this letter. Specifically, we request the Commission interpret the Honorarium laws and regulations in way that both preserves the purpose of the rules, but also recognizes that a bona-fide, longstanding book writing and promoting business that receives income unrelated to any issues before the public official's duties should be excluded from its purview. This can be accomplished by either amending the definition of "speech given" or by extending the exception under the definition of "earned income" for speeches "customarily given" as part of a bona-fide business. These exceptions are consistent with prior FPPC advice letters. Although staff stated its desire at the April 2023 hearing to no longer apply these previous advice letters, the Commission should reject this approach and adopt these common-sense rules in its Regulations.

Staff's recommendation does nothing but adopt a longer, but still arbitrary, time standard to the Honorarium rules, rather than addressing the underlying issue. The real issue is whether the type of talks being given by Ms. Lythcott-Haims (and others similarly situated), which are part of a long-standing, bona-fide business that predates her election to local office, should be included within the honorarium prohibitions, when they are completely unrelated to her service on the

City Council, are not performed within the City's jurisdictional boundaries, and are not paid for by any person or entity doing business in the City. Were she a State officeholder, any payments from outside her jurisdiction would not be considered an honorarium and this would not even be an issue. (*See* FPPC Staff Memo, Footnote 9.)

As a long-time, accomplished author, providing talks and workshops regarding her published works is indisputably a part of her business. However, staff's proposed Regulation places an arbitrary time frame on when an author would have to publish a new book to stay within the rules, excluding the possibility that an author who has a very successful work may continue to speak about it for a longer period of time than 36 months. The nature of the speech would not change, just the characterization of it by an arbitrary timeframe. This does nothing to prevent the harms that the Honorarium rules are designed to protect – allowing public officials to be influenced by payments from those seeking influence with the public official.

As a reminder of the underlying facts that gave rise to the initial Advice letter, Julie Lythcott-Haims is an international and nationally prominent author, writer, thought leader, and educator. She holds degrees from Stanford University, Harvard Law School and a Master's Degree in Fine Arts (Writing) from the California College of the Arts. She is a former Dean at Stanford University. In 2013, she received her first contract for the development of a book with Henry Holt and Company ("Holt"), a division of Macmillan Publishers which is one of the "big six" book publishers in the United States. Throughout 2013-2014 she researched and drafted her first book.

In 2015 her first book, *How to Raise an Adult*, was published in the United States and internationally. The book provides child-rearing advice to parents based on Ms. Lythcott-Haims' experience as a Stanford Dean. This book quickly became very successful, reaching the New York Times bestseller list. Contractually, Ms. Lythcott-Haims was (and is) required to cooperate with Holt to promote the book. As a result, she went on an initially unpaid tour to promote the book and help develop a strong reputation as a subject matter expert and for her presentation skills. She quickly became in high demand as a "parenting expert" who provides guidance to parents seeking to improve their parenting. As a result, she was paid to conduct 25 book talks and workshops to promote the book in between June and December 2015. This helped promote sales to the point where the book became a New York Times bestseller in November 2015. Based on these promotions and subsequent additional sales, Ms. Lythcott-Haims' book exceeded her advance payments and, thus, resulted in her receiving additional compensation for the sales of her book in the form of royalty payments. These promotions and additional sales also provided other ancillary benefits that assisted with her career as an author, including being invited by the New York Times to review another author's parenting book, for compensation.

In 2016, Ms. Lythcott-Haims was given a contract for two more books by Holt. Again, the contract required the promotion of the new books. Additionally, her first book was published in nearly a dozen additional countries. Demand for book promotion talks and workshops continued, and Ms. Lythcott-Haims conducted over 70 additional sessions across the United States and in several other countries. The sessions were (and are) largely conducted at high schools, where

Ms. Lythcott-Haims interacts with parents regarding the subjects in her book. She also gives sessions to high school students in an assembly format, and speaks with teachers and staff as part of their professional development activities. When she visits schools, her books are always featured and prominently available for sale. She additionally began a pro-bono practice where she offered unpaid sessions to select schools and other non-profit organizations. Due to her public appearances and other promotional activities such as being the subject of interviews on podcasts, she continued to receive foreign and domestic royalties from her first book. Also during 2016, she completed her Masters of Fine Arts in Writing from California College of the Arts. Her Master's Thesis for this degree served as the subject of her second published book.

Ms. Lythcott-Haims published her second book in 2017, *Real American: A Memoir*. She continued to receive royalties from her first book. She also continued promotion of the first book and began promotion of the second book that year. She conducted 56 promotional book talks and workshops on the parenting topics in the first book, over a quarter of which are unpaid, and 3 paid promotional book talks or workshops on the topic of race, the subject of her second book.

In 2018, Ms. Lythcott-Haims gave 54 promotional book talks and workshops regarding her two published books. Over a quarter of these promotional workshops were unpaid. She also continued to receive foreign and domestic royalties from sales of her first book. As part of her continuing book writing and publishing work, she wrote a book review for the London Times Literary Supplement and was awarded the Josephine Miles Literary Award for her second book by PEN Oakland.

Ms. Lythcott-Haims began to develop, research and write her third book in 2019 and continued doing so in 2020, while still receiving additional royalties for sales of her previously published works. She also continued to conduct promotional book talks and workshops – conducting 61 in 2019 (roughly a third of which were unpaid) and 58 in 2020 (roughly a quarter of which were unpaid). In 2020, many of the promotional book talks and workshops were conducted online due to the pandemic. The book talks and workshops were specifically on the topics covered in her published works: parenting, race relations or sometimes both. Her work as an author during this period also included writing another book review for the New York Times, writing a book review for the Washington Post, and publishing a foreword in the writing guide *Writing Memoir*.

In 2021, Ms. Lythcott-Haims published her third book, *Your Turn: How to Be an Adult*. In support of the promotion of her book, and in furtherance of her contractual obligations to cooperate with Holt in the promotion of her books, she conducted 52 promotional workshops, almost entirely on Zoom (19% of the events were pro bono). Each of the events promoted sales of her published works. Shortly after the book's publication she was interviewed on the prestigious National Public Radio Show "Fresh Air" about her personal life journey, with a focus on both her second and third books, resulting in substantial sales of both books. She continued throughout the year to receive foreign and domestic royalties for book sales. Additionally, she entered into a contractor (paid) relationship with Meta to write four articles per month, and again was paid to review a book for the New York Times and the Washington Post, respectively. She

also wrote a forward for a book on parenting, entitled *Raising Kids*, and entered into a (paid) contract with TED to develop an online course based on her book *Your Turn: How to Be an Adult*. Last, she also served as a teacher at BayPath University for a semester-long online course on writing a memoir.

During 2021 she also established a California corporation, Love Over Time LLC (“LLC”). The purpose of the LLC was to limit her liability for her public presentations and online writing. To further this purpose, the LLC obtained Errors and Omissions Liability Insurance. As you may be aware, this insurance is used generally by authors to protect them from liability for their public appearances and published works. Ms. Lythcott-Haims, as reflected in her LLC, considers herself a writer and author, and all activities, paid or otherwise, are done in furtherance of this business activity.

Over the past nine years, Ms. Lythcott-Haims has, through her literary talent and hard work, developed herself into a national and international literary figure. Through her experience and her published works, she has become a consultant and expert on topics related to parenting, race, identity, and youth thriving. All the activities in which she engages are for the purpose of developing and promoting her literary career, including: developing, researching and writing her books; promoting her books through book talks and workshops; writing articles; writing book reviews; mentoring other writers, and; teaching. In 2022, Ms. Lythcott-Haims spent well less than fifty percent of her time promoting her books through book talks and workshops, whether paid or unpaid. Over the same time period, more than fifty percent of the income to her LLC came from paid book talks and workshops. Other income includes advances from her publisher for book development, royalty payments on her first book, both foreign and domestic, contractual payments for digital articles, and income from other activities related to her literary business, such as teaching and literary criticism..

Ms. Lythcott-Haims was elected to the Palo Alto City Council in the November, 2022 statewide general election. City Council members only receive a small salary as compensation for serving on the Council. Thus, Ms. Lythcott-Haims must continue to earn income from her literary endeavors as a means of support for her and her family. However, Ms. Lythcott-Haims will not accept any income from any business, person or entity either located in or doing business in the City of Palo Alto. Last, her books, promotional book talks and workshops, articles and other compensated activities are based on topics completely unrelated to her service as a member of the City Council.

As the *Winuk* Advice Letter acknowledges, Ms. Lythcott-Haims’ business is unquestionably a bona fide business. As articulated previously, Ms. Lythcott-Haims has developed her literary business, with all its components, over the past nine years, using each component to increase book sales and her literary profile to secure the publication of additional books, which is the predominant activity of the business.

FPPC Regulations have further defined the term “honorarium,” and the exception for “earned income.” Specifically, FPPC Regulation 18932 states that "honorarium" does not include income earned for personal services if:

- (1) The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession; and
- (2) The services are customarily provided in connection with the business, trade, or profession.

The earned income exception has been considered in several FPPC advice letters. In the *Halderman* Advice Letter (I-08-073), the FPPC found that services that are “customarily provided” in connection with a bona fide business are earned income and, therefore, not subject to the honorarium ban. In the *Donald* Advice Letter (A-00-276), the FPPC found that “the determination of whether any particular speech given or article published is "customarily provided" in connection with your bona fide profession must be made on a case-by-case basis. The *Donald* Advice Letter found that a speech given or article published relating to the areas of medicine in which a doctor practiced or conducted research was earned income not subject to the honorarium ban.

Other FPPC Advice Letters have found the “customarily provided” test met where: payments were received for conducting church activities and speaking as a licensed minister at youth camps, couples retreats, weddings and funerals (*Boatwright* Advice Letter, No. A-93-323); payments received for speeches where a public official owns a business which produces, markets, and distributes educational materials, and occasionally is asked to deliver public speeches on the subjects covered by the materials sold by the business (*Clegg* Advice Letter, No. A-95-185); payments received for lectures given by a physician to health care professionals related to areas of medicine in which he practices and does research (*Phillips* Advice Letter, No. A-91-137) and; payments received by a licensed architect for a speaking engagement at a trade convention regarding architectural services (*Downey* Advice Letter, No. A-13-152).

Here, Ms. Lythcott-Haims’ bona fide business is that of writing, selling and promoting her books. Her books are all non-fiction, and have led to her development as an expert in the subjects of parenting, overcoming the effects of racism, identity formation and youth thriving. The book talks and promotional workshops she conducts are specifically related to the contents of her published works. Each book talk and workshop features opportunities to purchase her books. The promotion of her works is specifically referenced in her contracts with her publisher. This is standard for the publishing industry. Therefore, such services are “customarily” provided by authors and should be included within the “earned income” exception.

The FPPC staff in the *Winuk* Advice Letter did not adopt this interpretation and excluded Ms. Lythcott-Haims’ public appearances from the “customarily provided” test. The FPPC should adopt a Regulation that includes this type of work - providing book talks and other promotional

workshops in support of her bona-fide, long standing book writing business, within this exception.

The FPPC Regulations also define the term “speech given.” Specifically, Regulation 18931.1 defines “speech given” as a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate.” Ms. Lythcott-Haims’ book talks and promotional workshops should not fall within this definition, given previous FPPC Advice Letters. Given the nature of her work and factual circumstances, specifically that her integrated business activities are all in support of her primary activity, publishing books, her book talks and promotional workshops should not be included within the definition of “speech given.” This is particularly true as the topic of the workshops are entirely unrelated to her position on the City Council and, since the earned income received is all from outside of the City’s jurisdiction, and is not even be reportable income on her Statement of Economic Interests (“SEI”).

Excluding Ms. Lythcott-Haims’ work from the definition of the term “speech given” is consistent with FPPC Advice Letters which have addressed the interpretation of the term. The FPPC has advised that the general, dictionary definition of "speech," "any spoken expression or communication," is too broad in relation to the statutory scheme of the honoraria limits. (*Ashburn* Advice Letter No.A-07-119) The *Ashburn* letter confirmed the FPPC’s prior position in the *Tribe* Advice Letter (No, A-95-310), where an FPPC Commissioner hosting a radio show on a topic unrelated to his FPPC position was held not to be a speech.

Further, in the *Kahn* Advice Letter, (No. A-99-296) the FPPC advised that, “while the definition of "speech" in Regulation 18931.1 is broad, not all public speaking is governed by that definition.” The FPPC found that “earned income is based on the market value of services rendered and, therefore, differs from an honorarium which reflects values associated with the status of the speaker. Specifically, we have recognized that compensation in exchange for instructional presentations and training activities offered through a bona fide business and in an area of one's established expertise is earned income.” In *Kahn*, the FPPC found that a candidate who had a long-term, existing, bona fide business before running for office, whose business was serving as a seminar leader based on specialized expertise, was not engaged in giving speeches under the honorarium definitions. The payments for the seminars were characterized in the letter as “income earned as compensation for services of commensurate value, not for a "speech" within the meaning of Regulation 18931.1.” The same finding was made in the FPPC’s *Leach* Advice Letter, where the interpretation was applied to an incumbent public official. (*Leach* Advice Letter, No. A-97-160), The *Leach* advice letter further stated that the elected official could receive compensation only for presentations on subjects in which she had offered compensated instruction prior to election and before becoming subject to provisions of the Act.

Similar to the facts at issue here, this exception to the definition of “speech given” was even extended to a book author and public official who planned to give book presentations on the subject of his published book (*Ricci* Advice Letter, No. A-97-225.) This exception was again restricted to presentations on topics related to the bona fide business operated by the public official.

Here, Ms. Lythcott-Haims has a longstanding, bona fide business that predates her public service. The payments she received for her book talks and workshops are based on the specialized expertise she has developed in the course of her extensive research and publication of three books. These workshops are completely unrelated to her service on the Palo Alto City Council and do not in any way trigger the potential harms against which the Honorarium ban seeks to protect. Thus, her workshops/seminars should not be considered “speeches” and, therefore, the making of “speeches” should not be considered the predominant activity of her business and should not be prohibited under the Honorarium rules.

We request the Commission reject staff’s proposed Regulation and adopt one of the following options:

**Option 1:** Define the “earned income” exception found in FPPC Regulation 18932 to exclude personal services from a business, trade, or profession that involves a proprietary item created, in full or part, by the individual. (consistent with the *Halderman* and *Donald* Advice Letters.)

**Option 2:** Exclude from the definition of “speech given” in FPPC Regulation 18932 presentations or talks given in connection with a bona-fide, pre-existing business, where compensation is received for presentations on subjects in which the public official had offered compensated presentations prior to election to office. (consistent with the *Kahn* and *Ricci* Advice Letters.)

Sincerely,



Gary S. Winuk