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To: Chair Miadich, Commissioners Baker, Gómez, Wilson, and Wood

From: Dave Bainbridge, General Counsel
Erika M. Boyd, Senior Commission Counsel

Subject: Prenotice Discussion of Proposed Amendments to: Regulation 18531.5, Recall Elections

Date: August 8, 2022

Executive Summary

Staff recommends amending Regulation 18531.5, Recall Elections, to codify advice concerning recalls which arose during the 2021 Gubernatorial recall, as well as local recalls during the same year.

In regard to Regulation 18531.5, Recall Elections, recommended amendments make the following clarifications:

- The voluntary expenditure ceiling limit for a "general election" applies to state recall replacement candidates;
- The target officer of a recall is not required to file a candidate statement of economic interests;
- Preelection reports and late contribution reports are not required for a target officer's other controlled committees by virtue of the recall being on the ballot;
- The timing of termination requirements for target officer recall committees; and
- Which disclosures are required on recall and replacement candidate related advertisements.

Regulation 18540, Voluntary Expenditure Ceilings, currently *excludes* costs for the preparation and filing of campaign reports from the expenditures which count toward the ceiling. However, the regulatory language is at odds with the current statutory provisions of Section 85400. Staff believes this tension arose due to an oversight in the drafting process for statutory amendments, not an intentional act. We therefore recommend a legislative proposal addressing the inconsistency.

Reason for Proposed Actions

Under the Act,[1] a somewhat different set of rules applies to ballot measure elections than to candidate elections. Because recall elections include both a ballot measure and a candidate

[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices

election, they have given rise to numerous questions of interpretation for the FPPC. During 2021 staff was presented with a number of recall election advice requests, which prompted the regulatory proposals described in this memorandum.

Background

Recall is the power of the voters to remove a sitting elected officer.[2] Recall elections are unique because they have characteristics of both a ballot measure and a candidate election. In a recall election, there are two separate questions being presented to the voters. The first is "should the elected official be removed from office?" Thus, the recall measure qualifies for the ballot through a signature gathering process like an initiative measure and is defined as a "measure" under the Act. If the recall succeeds, the second question is selecting a replacement candidate in what is akin to a special election to fill a vacancy.

Notably, the subject of a recall[3] is not permitted to be a candidate in the race to succeed themself should a recall measure pass.[4] (Cal. Elec. Code, Sec. 11381(c) ["No person whose recall is being sought may be a candidate to succeed himself or herself at a recall election nor to succeed any other member of the same governing board whose recall is being sought at the same election."]; *see also* Cal. Const., art. II, § 15 [state officers subject to recall may not be a candidate in the race to elect a successor should the recall pass].) While under Section 82007(a)(3), an elected officer – including one who is the subject of a recall – is a "candidate" for broader purposes of the Act, a target officeholder is not a candidate seeking office in a recall election. Regulation 18531.5 therefore separately defines "target officer" (the subject of a recall) and "replacement candidate" (a candidate running to replace a target officer in the event a recall is successful) to codify this statutory interpretation. Nevertheless, many questions have been raised regarding duties under the Act that variously apply to target officeholders and replacement candidates as described in more detail below.

Voluntary Expenditure Ceiling Limit for State Replacement Candidates

During the 2021 Gubernatorial recall election, a replacement candidate sought advice on which voluntary expenditure ceiling limit applied, the general election limit or the primary election limit. Staff advised the general election limit would apply.

Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

[2] Cal. Const. art. II, sections 13-19, and Elections Code sections 11000 et seq.

[3] Alternately referred to as the "officer," "officeholder," "target officer" and "target officeholder" throughout various provisions of California law and regulations.

[4] Local jurisdictions may have differing recall processes as established in a City or County Charter. The City and County of San Francisco, for example, does not hold an election for a replacement candidate at the same time a recall question is on the ballot. (San Francisco Charter, Sec. 14.103.) Should an officer be recalled, a special election to fill the vacancy is held at a later date. (San Francisco Charter, Sec. 13.101.5.) There is also no prohibition on a successfully recalled officer running for the same seat at the subsequent special election.

Section 85400 provides the voluntary expenditure ceilings for state candidates. These include a lower limit for primary/special primary elections, and a higher limit for general/special general elections. For example, the limits for a gubernatorial race are as follows:

> (5) For a candidate for Governor, six million dollars ($6,000,000) in the primary election and ten million dollars ($10,000,000) in the general election.

The expenditure ceilings are adjusted biennially through Regulation 18545, with the current 2021-2022 limit for a gubernatorial primary election set at $9,728,000, and gubernatorial general election set at $16,212,000.

In regard to a state recall, however, there are not separate primary and general elections, only one election to select the replacement candidate. Given this single election, the question was raised during the 2021 recall as to whether the primary or general voluntary expenditure ceiling was the applicable limit.

While Regulation 18531.5(b)(2) does specify that replacement candidates in a state recall election are subject to the contribution and voluntary expenditure limits of the Act, which expenditure limit ceiling is applicable – the primary or general – is not specified in statute or regulation. This issue was also not addressed at the initial adoption of Regulation 18531.5 in 2003.[5]

Reasoning that a recall election for a state candidate is more akin to a general election in that there is no runoff, and the results of the election are final, we advised in 2021 that the general election limit was applicable to the voluntary expenditure ceiling. In conferring with our colleagues at the Secretary of State's office, they were in support of this interpretation as well.

Preelection Reports & Late Contribution Reports

We received a question from a recall target officer as to whether the officer's other non-recall controlled committees had to file preelection reports and late contribution reports on the same timeline as the target officer's ballot measure committee formed in opposition to the recall. We advised that because the recall target officer was not a candidate appearing on the ballot, the target officer's other controlled committees did not have to file preelection reports and late contribution reports on the same timeline as the target officer's recall committee formed to oppose the recall.

When a candidate is up for election, all of the candidate's controlled committees must file preelection reports on the same timeline as the candidate's campaign committee.[6] For example, a

[5] FPPC Memorandum, Adoption of Regulation 18531.5 – Recall Elections, June 25, 2003.

[6] Regulation 18405(a) ["Multiple Controlled Committees. If a candidate or elected officer controls more than one committee for the purpose of election to office, including committees established for different terms of the same elective office or for a different elective office, the candidate or elected officer shall, in addition to any other requirements related to the filing of campaign statements, file campaign statements for each of these committees on the dates the candidate or elected officer is required to file preelection statements under Sections 84200.5 and 84200.8 in connection with election to office. Further, a candidate or elected officer shall, in addition to any other

state candidate on the November 2022 ballot who has a campaign committee, ballot measure committee, and officeholder committee, would file campaign statements for each of these committees on the preelection schedule for filing the candidate's campaign reports regardless of the level of activity of the other controlled committees. The first preelection report covers activity through 45 days prior to the election and is due 40 days before the election; and the second preelection report covers activity through 17 days before the election and is due 12 days before the election. (Sections 84200.5, 84200.8.) In this instance, the candidate would file reports for each of the three committees on these timelines.

As discussed, however, a target officer is not a candidate on the ballot at a recall, and thus is not up for election. Accordingly, even though a state target officer's ballot measure committee in opposition to the recall must file preelection reports as a primarily formed ballot measure committee (84200.5(a)(1)), the target officer's remaining controlled committees need not file preelection reports when the ballot measure committee has triggered them.

Staff therefore recommends clarifying this point via regulation.

In a similar vein, a contribution aggregating $1,000 or more made to a candidate appearing on the ballot during the 90 days prior to an election triggers a Form 497, 24-hour report. (Section 82036.) As its name suggests, this report must be filed within 24-hours both by the party making the contribution, and the committee receiving the contribution. The 24-hour report is required not only for contributions to the candidate's campaign committee, but also for contributions to other committees controlled by that candidate. For example, Candidate D will be appearing on the November 2022 ballot. A $1,000 contribution to Candidate D's ballot measure committee on October 1, 2022 will trigger a 24-hour report, as this is within the 90 days prior to the candidate appearing on the ballot.

However, for a target officer with a primarily formed ballot measure committee in opposition to a recall, contributions to another one of the candidate's controlled committees should not trigger a 24-hour report, even if the recall election is within 90 days. This is because the target officer will not be a candidate on the ballot at the recall. To illustrate, Candidate E is being recalled in November of 2022, but would not otherwise be up for re-election until November of 2024. A contribution of $1,000 or more to Candidate E's 2024 campaign committee on October 1, 2022 will not trigger a 24-hour report, even though Candidate E has a ballot measure committee primarily formed for a measure appearing on the ballot in less than 90 days.

Staff recommends clarifying this via regulation as well.

<u>Statements of Economic Interests</u>

We received an inquiry during the recent recall as to whether the officeholder being recalled is required to file a candidate Statement of Economic Interests (SEI) under Section

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requirements related to the filing of campaign statements, file campaign statements for any other committee the candidate or elected officer control, including an officeholder account committee, a legal defense fund committee, or a ballot measure committee, on the dates the candidate or elected officer is required to file preelection statements under Sections 84200.5 and 84200.8 in connection with election to office."]

87201.[7] The question was the result of confusion about the application of the term "candidate" to the target of a recall. Specifically, the ambiguity was caused by the fact that "candidate" is defined in Section 82007(a)(3) to include "an elected officer, including any elected officer who is the subject of a recall.", and Section 87201 provides that a candidate SEI must be filed no later than the filing date of a declaration of candidacy. But the target officer does not file a declaration of candidacy and cannot be a candidate in the recall election.

Under the Act, a "candidate" is anyone: 1) who is listed on the ballot or is qualified to have write-in votes cast on their behalf; 2) who receives a contribution or makes an expenditure in order to bring about nomination or election to office; or 3) who is an elected officer, including any subject of a recall. (Section 82007(a).) Notably, anyone who becomes a candidate retains that status until it is terminated pursuant to Section 84214. That is, until all their filing requirements under the Act have been terminated, and they have no further activity to disclose. So even if an official has left office and has no intention of running again, should the official have a remaining campaign account open, the official is still a "candidate" pursuant to the Act. In this way, the target of a recall is a "candidate" for the broader reporting purposes of the Act.

The confusion arises where Section 87201 requires every "candidate" to file a SEI – ostensibly including the target of a recall who qualifies as a candidate pursuant to Section 82007(a)(3). However, when the full statutory phrase of "candidate for office" is taken into account, the practicable interpretation is that only candidates up for election for the specific office are required to file a candidate SEI. A target officer appears only on the ballot measure portion of the recall election and is not permitted to appear on the ballot as a candidate in a recall. In this way, the target officer is not a "candidate for office" in the recall but rather a target for removal from office.

Further, requiring a target officer to file a candidate SEI for a recall election provides little to no additional disclosure. A target officer would have filed a candidate SEI pursuant to Section 87201 when on the ballot for the position the officer currently holds, filed an assuming office statement pursuant to Section 87202[8], and filed annual statements as an officeholder thereafter pursuant to Section 87203.[9] In this way the Act ensures that the financial interests of a target officer have been duly disclosed at regular intervals.

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[7] Section 87201 requires candidates for an office specified in Section 87200 (which includes state officers), other than a justice of an appellate court or the Supreme Court, to file no later than the filing deadline for a declaration of candidacy, a statement disclosing the candidate's: 1) investments; 2) interests in real property; and 3) income received during the immediately preceding 12 months.

[8] Section 87202(a) requires those elected to an office specified in Section 87200 to file a statement within 30 days of assuming office disclosing the officer's: 1) investments held at the date of assuming office; 2) interests in real property held on the date of assuming office; and 3) income received during the 12 months before assuming office. Elected state officers who assume office during the month of December or January file an Annual Statement pursuant to Section 87203, except that the period covered for reporting investments and interests in real property begins on the date the person filed the person's declaration of candidacy, and the period covered for income begins 12 months prior to the date the person assumed office.

[9] Section 87203 requires those holding office specified in Section 87200 to disclose annually investments, interests in real property, and income received since the last SEI filed.

Regulation 18531.5(c)(1) currently specifies that a target officer is not required to file a statement of intention to be a candidate for elective office, staff recommends adding language in this same provision to clarify that a target officer is also not required to file a candidate SEI.

Target Officer Recall Committee Termination

A target officer of a recall sought advice on issues related to termination of the recall committee. The recall committee knew of large refunds it was set to receive from a vendor and from government entities coming in more than 30 days after the recall election. Additionally, the committee was expecting to incur further costs more than 30 days after the recall as it would be subject to a mandatory audit and had tax filings that it needed to complete. We advised that the committee may remain open for more than 30 days after the recall in order to receive refunds and to pay costs related to tax filings and the audit.

Section 85315 permits a state, county or city officer to establish a separate committee to oppose the qualification of a recall measure, and the recall election. The section also addresses the termination of such a committee:

> (b) After the failure of a recall petition or after the recall election, the committee formed by the elected state, county, or city officer shall wind down its activities and dissolve. Any remaining funds shall be treated as surplus funds and shall be expended within 30 days after the failure of the recall petition or after the recall election for a purpose specified in subdivision (b) of Section 89519. [10]

Section 84214 provides that committees and candidates shall terminate their filing obligation pursuant to regulations adopted by the Commission which ensure that a committee or candidate will have no activity that must be disclosed subsequent to the termination. Regulation 18404(b) provides for the termination of a recipient committee's filing requirements and does not permit recipient committees to terminate unless the committee has met the following criteria:

> (1) Has ceased to receive contributions and make expenditures and does not anticipate receiving contributions or making expenditures in the future;
>
> (2) Has eliminated or has declared that it has no intention or ability to discharge all of its debts, loans received and other obligations;
> (3) Has no surplus funds; and
>
> (4) Has filed all required campaign statements disclosing all reportable transactions.[11]

[10] Permissible uses of surplus funds include payment of outstanding campaign debts; repayment of contributions; donations to specified nonprofits; contributions to a political party so long as the funds are not used to support or oppose candidates; contributions to ballot measures, out of state candidates, and federal candidates; and payment for professional services to assist the committee in the performance of its administrative functions, such as attorney's fees. (Section 89519(b).)

[11] Regulation 18404.1 requires candidate controlled committees for elective state office, and city or county office subject to the state contributions limits, to resolve net debts outstanding and terminate no later than 24 months

One reading of Section 85315 would require any funds remaining on hand to be disposed of within 30 days, while an open timeframe remains for complete closure of the committee. Alternatively, 30 days can be read as the timeframe both for disbursement of any remaining funds *and* complete dissolution of the committee. Section 85315 was added to the Act via Proposition 34 on the November 2000 ballot.[12] However, neither the ballot pamphlet nor the legislative analysis contains any information shedding light on construction of the termination provision. [13] However, the strict reading that a target officer's recall committee must terminate within 30 days of an election runs contrary to Section 84214 and Regulation 18404(b)'s requirements that all transactions and activity be disclosed and no further expected activity is to occur prior to termination.

The 30-day timeline remains a very brief window for the complete disbursement of funds and/or dissolution of a committee. The final weeks of an election can find vendors, consultants, volunteers and staff, among others, with far too much to do in far too little time, such that it is routine for final invoices to come to a committee weeks after an election has passed. Additionally, committees routinely receive refunds from various entities after the conclusion of a campaign – prepaid media fees from media outlets, filing fees from elections officers, overpayment of payroll taxes from EDD, etc. These refunds can trickle in up to months after an election. Committees must also consider costs for the preparation of final tax filings (if any) and costs associated with mandatory audits of the committee – both of which are difficult to estimate prior to the end of a campaign. In its current form, then, the termination provisions of Section 85315(b) are not practicable for these committees if the statute is interpreted more strictly. Therefore, staff recommends allowing a recall target officer's committee to remain open for longer than 30 days, but only to receive refunds for items incurred on or before the recall date and to pay expenses associated with winding down the committee such as tax preparation, audit compliance and to pay debts – all items allowed to be paid with surplus funds under Section 89519. This is consistent with the intent of Section 85315(b) that recall committees disperse remaining funds quickly, but recognizes the reality of the time needed to wind down a committee, while ensuring full disclosure of the committee's activities.

Advertisements by Target and Replacement Candidates

The Legal Division received a question about recall advertisements done by a recall replacement candidate paid for by the candidate's committee for election that were both supporting the candidacy and opposing the recall. The questions centered around whether the advertisements would be treated as candidate advertisements or as ballot measure

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after the earlier of: the candidate being defeated; the candidate leaving office; the term of office for which the committee was formed ending; or for withdrawn candidates, no later than 24 months after the election from which the candidate withdrew. There are currently no statutory or regulatory timelines for the closure of ballot measure committees, other than recall committees addressed through Section 85315.

[12] Added by Stats. 2000, Ch. 102 [Proposition 34 of the November Statewide General Election].

[13] Ballot Pamp., General Elec. (Nov. 7, 2000) analysis of Prop. 34 by Legislative Analyst.

advertisements. Staff advised that the advertisements should be treated as candidate advertisements.

The Act contains varying disclosure requirements for advertisements depending on who is paying for an ad and whether the ad relates to a candidate or ballot measure. Given the hybrid nature of a recall election, however, the Act is not precisely clear as to the disclosure required for an ad paid for by a replacement candidate's committee in support of his or her candidacy, which also includes a message pertaining to the recall question.

For example, under the Act a yard sign produced by a candidate for his or her own election would not require a disclaimer. However, a yard sign paid for by a candidate-controlled committee in support or opposition of a ballot measure would require a disclaimer under Section 84504.5(c)(2). It is unclear, though, whether the Act specifically contemplated recall elections, where support of the recall question is more akin to an advertisement against one's opponent.

Given this ambiguity, staff recommends that an advertisement paid for by a replacement candidate's campaign committee which both supports the recall, and his or her own election, is a candidate advertisement for purposes of on advertisement disclosure requirements because in that case supporting the recall along with their candidacy is all in the same vein of supporting their election to office.[14] Conversely, should an ad paid for by a replacement candidate's campaign committee only address the recall question, it will need to include the disclaimers as required by Section 84504.5(c)(2) for ballot measure advertisements. Staff proposes adding specificity on these issues via regulation.

Definition of "Election Related Activities" for Voluntary Expenditure Ceiling

During the 2021 recall election, a recall replacement candidate sought advice regarding whether or not expenditures for "costs associated with preparing and filing campaign finance reports" count against/towards the voluntary expenditure limit. The candidate was advised they do not, as has been our guidance for over 20 years. However, there is a discrepancy between the Act and regulations that needs to be corrected regarding this issue.

The "voluntary expenditure ceiling" is a limit on the "campaign expenditures" by a candidate for elective state office. (Section 85400.) If accepted, statewide candidates may purchase space for a candidate statement to be published in the state ballot pamphlet prepared by the Secretary of State, while state senate and assembly candidates may purchase space for a candidate statement to be published in the sample ballot. (Section 85601.)

Currently, Section 85400(b) specifies that "campaign expenditures," for purposes of calculating those expenditures which count against the voluntary expenditure ceiling, has the

[14] We have previously advised that replacement candidates may pay for ads supporting the recall with their campaign committee, or a primarily formed ballot measure committee. (FPPC Fact Sheet, Frequently Asked Questions: Recall Elections (2019.) They may not, however, pay for ads that support their candidacy from a ballot measure committee. Those funds may only be used to support or oppose the recall measure, they cannot be used to support or oppose candidates.

same meaning as "election-related activities" as defined in Section 82022.5. Section 82022.5(g) provides election related activities include preparing campaign finance disclosure statements.

Regulation 18540(d), however, specifies that the following do not count against the limit: "contributions to other candidates or committees*, costs associated with preparing and filing campaign finance reports required under the Act*, candidate filing fees, and costs of ballot pamphlet statements." (Emphasis added.)

The current tension between the statutory and regulatory language stems from legislative changes made since the adoption of Regulation 18540 in 2001. At its adoption on September 26, 2001, Regulation 18540 addressed expenditures not counting against the ceiling in line with the then applicable statutory framework defining "campaign expenditures" and "election-related activities."[15]

In 2001, Section 85400 included the following definition of "campaign expenditures":

> (b) For purposes of this section, "campaign expenditures" has the same meaning as "election-related activities" as defined in clauses (i) to (vi), inclusive, and clause (viii) of subparagraph (C) of paragraph (2) of subdivision (b) of Section 82015.

Section 82015(b)(2)(C) in 2001, then defined "election-related activities" as:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.
(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.
(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.
(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.
(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.
(vi) Preparing campaign budgets.
(vii) *Preparing campaign finance disclosure statements*.
(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent. (Emphasis added.)

Thus, in 2001, the applicable definition of "campaign expenditures" specifically excluded "[p]reparing campaign finance disclosure statements" found in 82015(b)(2)(C)(vii). Commission Manuals and advice have included this interpretation for the last 20 years.

[15] FPPC Memorandum, Proposition 34 Regulations, Allocating Expenditures Subject to Voluntary Expenditure Ceilings, Section 85400. (Proposed Regulation 18540), Sept. 26, 2001.

However, in 2017 the definition of "election-related activities" was moved from Section 82015 to newly created Section 82022.5. The bill analyses indicate that the intent of this bill was to streamline the definition of "contribution" found in Section 82015 by moving unrelated definitions and reporting requirements to other statutory provisions. AB 867 also amended Section 85400 (Voluntary Expenditure Ceilings) to cross-reference new Section 82022.5 for the definition of "election-related activities."

In amending Section 85400, however, the exclusion for costs pertaining to the preparation of campaign finance disclosure statements was omitted. Current 85400(b) simply provides:

> (b) For purposes of this section, "campaign expenditures" has the same meaning as "election-related activities" as defined in Section 82022.5.

The bill analysis for AB 867 indicates that the bill was not intended to make substantive changes, such that we believe the omittance of the exclusion language to be inadvertent as opposed to a reflection of legislative intent.[16]

As such, staff recommends the Commission consider directing staff to pursue a statutory amendment to Section 85400(b) specifying the exclusion of subdivision 82022.5(g) from the definition of "campaign expenditures."

Proposed Regulations

Amend Regulation 18531.5 Recall Elections

Voluntary Expenditure Ceiling Limit for State Replacement Candidates

Staff proposes amending Regulation 18531.5 to add a reference to the "general election" voluntary expenditure limit language in subdivision (b)(2) of 18531.5 to clarify that the general election voluntary expenditure limit applies to replacement candidates as opposed to the primary election limit.

Preelection Reports & Late Contribution Reports

Staff proposes amending Regulation 18531.5(c)(1) to clarify that a target officer's other controlled committees are not required to file campaign statements pursuant to Regulation 18405(a) though they may otherwise be required to under Section 84200.5. Additionally, staff proposes adding language to specify that contributions to any other controlled committee of the target officer will not incur late contribution reporting requirements pursuant to Sections 82036 and 84203 by virtue of the recall measure pertaining to the target officer appearing on the ballot.

Recall Target Statement of Economic Interests

[16] Assem. Committee on Elections and Redistricting, analysis of Assem. Bill No. 867 (2017-2018) April 3, 2017 ["The organizational changes made by this bill are intended to be technical and clarifying in nature."]

Staff proposes amending Regulation 18531.5(c)(1) to include language clarifying that a recall target officer is not required to file a candidate Statement of Economic Interests (SEI).

Target Officer Recall Committee Termination

Staff proposes amending Regulation 18531.5 to add a new subdivision (d) to specify that after the recall election, the target officer's committee must wind down its activities and dissolve. Any remaining funds shall be treated as surplus funds and shall be expended within 30 days. However, the committee may remain open for more than 30 days only to receive refunds from vendors and government entities for items paid on or prior to the recall date and to pay expenses associated with winding down the committee including expenses associated with tax preparation, audit compliance, and to pay outstanding invoices for items incurred on or before the recall election date.

Advertisements by Target and Replacement Candidates

Staff proposes amending Regulation 18531.5 to add a new subdivision (e) to specify:

(1) Advertisements paid for by a target officer's committee formed to oppose the recall shall include the disclosures required for ballot measure advertisements.
(2) Advertisements paid for by a replacement candidate's committee for election that both support the candidate and pertain to the recall shall include the same disclosures as a candidate's advertisements for the candidate's own campaign.
(3) Advertisements pertaining to the recall paid for from a separate ballot measure committee controlled by the replacement candidate shall include the disclosures required for ballot measure advertisements.
(4) Non-candidate controlled committees primarily formed to support or oppose the recall shall include the disclosures required for ballot measure advertisements paid for by an entity other than a candidate-controlled committee or political party committee.

<u>Regulation 18540 Voluntary Expenditure Ceilings</u>

Staff recommends the Commission retain its current advice as described above and pursue a legislative amendment to Section 85400(b) specifying the exclusion of subdivision 82022.5(g) from the definition of campaign expenditures.

Conclusion

In sum, the characteristics of a recall as both a ballot measure and candidate election continue to create novel questions of interpretation and application. In seeking to codify advice provided by the FPPC during the most recent recall elections, our aim is to make the process simpler and more straightforward for all parties – including candidates, elections officials, and members of the public. Equal access to the rules of the game will help to ensure a level playing field for everyone.