



Approved April 19, 2018
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Timestamps from [Commission Meeting 03/22/2018 Part 1](#) [Part 2](#)
Thursday, March 22, 2018

Under Government Code section 11123(a), all meetings of a state body are open and public, and all persons are permitted to attend any meeting of a state body, except as otherwise provided in that article. The section further states that the portion of the teleconferenced meeting that is required to be open to the public must be audible to the public at the location specified in the notice of the meeting. The Commission may take action on any item listed on this agenda.

CALL TO ORDER

Chair Remke called the meeting to order at 10:02 am on March 22, 2018, at the Fair Political Practices Commission, 1102 Q Street, Suite 3800, Sacramento, CA 95811. Chair Remke and Commissioners Audero, Cardenas, Hatch, and Hayward were present.

Welcome

Chair Remke: Okay, good morning. Sasha, please take the roll.

Sasha: Commissioner Audero?

Commissioner Audero: Here.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Here.

Sasha: Commissioner Hatch?

Commissioner Hatch: Here.

Sasha: Commissioner Hayward?

Commissioner Hayward: Here.

Sasha: Chair Remke?

Chair Remke: Here. Okay, welcome we have a full agenda as noted on the agenda depending on how things are moving. It's anticipated we will take a lunch break today for an hour approximately 12:30 depending on where we are in the schedule so we'll just try to be flexible to get through things.

Public Comment

- 1. Public Comment for Items not on Agenda.** During this comment period, any person is invited to speak on any topic that is not listed on this agenda. Action may not be taken on any matter raised during this public comment period until the matter is specifically listed on a future agenda. Those who wish to comment on an item that has been listed on this agenda may comment when that item has been opened for consideration by the Commission and before any action is taken.

Chair Remke: any public comment for an item not on the agenda today all right hearing or seeing none we'll go right into the matters.

Approval of Commission Minutes

- 2. Approval of February 2018 Commission Hearing Minutes.**

Chair Remke: Item two is the approval of Commission minutes from February 2018. Any questions or comments from the Commissioners

Commissioner Audero: I have

Chair Remke: Commissioner Audero

Commissioner Audero: So, I think there are three typos that have to be corrected. On page 81, at the top, where it shows an exchange between Miss West and myself that was between the Chair and myself, so I think that has to be changed. On page and on page 92, the last paragraph where Miss West is speaking the first sentence, it says so that is a check imbalance that was put in place, that's supposed to be a check and balance. And then on page 117, there's a phonetic spelling of Dan Schnur that probably should be corrected, so his name is Dan and then his last name is S-c-h-n-u-r. And that's it.

Chair Remke: Any other questions or comments from the Commissioners. Is there a motion.

Chair Hatch: I move adoption of the minimums with those corrections.

Commissioner Audero: Second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes

Sasha: Motion passes.

Enforcement Consent Calendar 3-15

Items on the consent calendar will be taken up and voted on as a group. A Commissioner may request that an item be removed from consent, in which case it will be discussed separately in the meeting.

Chair Remke: Okay we'll move to the enforcement consent calendar Miss West. Did you have an item you needed to pull did I hear that?

Ms. West: I did. I just don't have a cord. Enforcement will be pulling items 7 & 8.

Chair Remke: 7 is the defaults or one of the defaults.

Ms. West: Yes.

Chair Remke: Okay, do the Commissioners have any items they would like removed from the consent calendar?

Commissioner Audero: I just have a question.

Chair Remke: Commissioner Audero.

Commissioner Audero: Can you tell us why you're pulling 7 & 8?

Ms. West: Sure number 7 was Mr. Navarro has said that he will come up to date with all of his filings on the 28th and we are giving him one last chance as we have also modified the default from the last time you saw it to reduce the charges so we're working to resolve that matter. And number 8 you may recall was the default and we accepted a personal check on the day she appeared which we haven't received full funds on.

Commissioner Audero: That was a long time ago.

Ms. West: It was.

Commissioner Audero: Okay thank you.

Chair Remke: So, any items to be removed? Okay.

Commissioner Hatch: Yes.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Item 5 Madame Chair.

Chair Remke: Okay any others? All right as for those remaining on the consent calendar, any questions for Miss West from the Commissioners?

Commissioner Hatch: I move adoption.

Chair Remke: Any public comment for the remaining items on consent. Okay, seeing or hearing none there's a motion to approve the consent calendar. Correct?

Commissioner Hatch: Yes

Chair Remke: So, that would be 3 through 15 minus 5, 7, & 8. Is there a second?

Commissioner Hayward: Second.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes

Sasha: The Motion passes.

Chair Remke: Okay, item five. Commissioner Hatch, you want to start?

Commissioner Hatch: Actually, I'm kind of mindful of the clock. We've got a full house, so people would like to be here on other issues. I would ask your permission to take this item and delay it towards the end of the agenda, so that we can move on with the agenda. I anticipate it's going to take a while to go through this item five.

Chair Remke: I would just encourage you to go ahead and bring it up now. We have lots of things that are gonna take a long time, so let's probably should finish up with the enforcement while we're on it.

Commissioner Hatch: Well, I think you're doing a disservice to some of the folks that have come here for other things, so this is something that's probably only I care about. So please beg your.

Chair Remke: Okay, we'll move it to the end of the calendar.

Commissioner Hatch: Thank you.

Campaign Bank Account

- 3. In the Matter of Christensen, Serkin, and Waller for School Board 2017, Michael Christensen, Brad Serkin, and Brad Waller; FPPC No. 17/00098.** Staff: Commission Counsel Theresa Gilbertson and Special Investigator Marshall Miller. Christensen, Serkin, and Waller for School Board 2017 was a jointly controlled committee formed to support the successful re-election of Michael Christensen, Brad Serkin, and Brad Waller to the Redondo Beach Unified School District Board of Education in the March 7, 2017 Special Election. Waller also served as the Committee's treasurer. The Committee, Christensen, Serkin, and Waller failed to pay campaign expenditures from the designated campaign bank account, in violation of Government Code Section 85201 (1 count). **Total Proposed Penalty: \$2,000.**

Mass Mailing

- 4. In the Matter of Dan Roundtree for Thousand Oaks City Council 2015, Dan Roundtree, and Darby Levin; FPPC No. 15/701.** Staff: Commission Counsel Theresa Gilbertson and Special Investigator Jeffrey Kamigaki. Dan Roundtree was an unsuccessful candidate for the City Council of Thousand Oaks in the June 2, 2015 Primary Election. Dan Roundtree for Thousand Oaks City Council 2015 was his candidate-controlled committee. Darby Levin served as a paid campaign consultant. The Committee, Roundtree, and Levin failed to disclose identifying information on a mass mailing, in violation of Government Code Section 84305, subdivision (a) and Regulation 18435, subdivision (d) (1 count). **Total Proposed Penalty: \$3,500.**

Campaign Reporting

- 5. In the Matter of Gloria Olmos, Re-Elect Gloria Olmos for School Board 2013, and Committee to Elect Gloria Olmos for South El Monte City Council Member 2015; FPPC No. 14/1263 (Default Decision).** Staff: Commission Counsel Michael W. Hamilton and Staff Services Analyst Dominika Wojenska. Gloria Olmos was a successful candidate for the Valle School Board in the November 5, 2013 General Election and a successful candidate for the South El Monte City Council in the November 3, 2015 General Election. Re-Elect Gloria Olmos for School Board 2013 (“School Board Committee”) and Committee to Elect Gloria Olmos for South El Monte City Council Member 2015 (“City Council Committee”) were her candidate-controlled committees. Olmos and the School Board Committee failed to timely file three semiannual campaign statements for the reporting periods of January 1, 2014 through June 30, 2015, in violation of Government Code Section 84200, subdivision (a) (3 counts). Olmos and the City Council Committee failed to timely report expenditures made on one pre-election statement covering the reporting period of September 20, 2015 through October 17, 2015; and failed to accurately report expenditures and accrued expenses on the semiannual statement covering the reporting period of October 18, 2015 through December 31, 2015, in violation of Government Code Section 84211, subdivisions (j) and (k) (2 counts). **Total Proposed Penalty: \$18,000.**
- 6. In the Matter of Committee for Quality Schools – Yes on Measure T, Randy Freeman, and Xochitl Tafolla-Molina; FPPC No. 16/330.** Staff: Commission Counsel Christopher Burton and Program Specialist Luz Bonetti. Committee for Quality Schools – Yes on Measure T was a committee primarily formed to support Perris Union High School District Measure T, a local school bond tax measure on the ballot in the November 6, 2012 General Election. Randy Freeman was the Committee’s principal officer. Xochitl Tafolla-Molina was the Committee’s treasurer. The Committee, Freeman, and Tafolla-Molina failed to timely file one semiannual campaign statement, in violation of Government Code Section 84200, subdivision (a) (1 count); failed to timely report certain subvendor payments, in violation of Government Code Sections 84303 and 84211, subdivision (k)(6) (1 count); and failed to timely file 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$9,000.**

Campaign Non-Filer

- 7. In the Matter of Gil Navarro Legal Defense Fund, Navarro for 47th Assembly 2014, and Gilbert “Gil” Navarro; FPPC No. 16/137 (Default Decision).** Staff: Commission Counsel Ruth Yang and Staff Services Analyst Dominika Wojenska. Gil Navarro formerly served as a member of the San Bernardino County Board of Education from 2006 to 2013. Navarro was elected to the San Bernardino Valley Municipal Water District Board of Directors in the November 6, 2012 General Election and attempted to simultaneously hold both offices. Gil Navarro Legal Defense Fund (“Defense Committee”) is Navarro’s recipient committee formed to defend against his removal from the Board of Education. The Defense Committee and Navarro failed to timely file

campaign statements covering the reporting period of July 1, 2013 through June 30, 2014, in violation of Government Code Section 84200 (2 counts); and failed to timely file a Statement of Organization marked for termination to terminate the Defense Committee, in violation of Government Code Section 85304.5 and Regulation 18530.45, subdivision (k) (1 count). Navarro was an unsuccessful candidate for the 47th District of the California State Assembly in the November 4, 2014 General Election. Navarro for 47th Assembly 2014 (“Assembly Committee”) was his candidate-controlled committee. The Assembly Committee and Navarro failed to timely file two pre-election campaign statements covering the reporting periods of July 1, 2014 through October 18, 2014, in violation of Government Code Section 84200.7, subdivision (b) (2 counts); and failed to timely file four semiannual campaign statements covering the reporting periods of January 1, 2015 through June 30, 2016, in violation of Government Code Section 84200 (4 counts). **Total Proposed Penalty: \$36,500.**

- 8. In the Matter of Pam Bertani for Solano County Supervisor 2014 and Pam Bertani; FPPC No. 14/1112.** Staff: Senior Commission Counsel Bridgette Castillo and Staff Services Analyst Dominika Wojenska. Pam Bertani was a successful candidate for Fairfield City Council in the November 8, 2011 General Election. Bertani was a successful candidate for the Solano County Board of Supervisors in the June 3, 2014 Primary Election and an unsuccessful candidate in the November 4, 2014 General Election. Pam Bertani for Solano County Supervisor 2014 was her candidate-controlled committee. The Committee and Bertani failed to timely disclose contributions, expenditures, and contributor information on two pre-election and one semiannual campaign statements for the reporting periods of January 1, 2014 through June 30, 2014, in violation of Government Code Section 84211, subdivisions (a)-(f) (2 counts); and failed to timely file three 24-Hour Reports, in violation of Government Code Sections 84203 and 84203.3 (1 count). **Total Proposed Penalty: \$7,500.**
- 9. In the Matter of Dr. Weber for Assembly 2014, Dr. Shirley Weber and Xavier Martinez; FPPC No. 16/038.** Staff: Senior Commission Counsel Bridgette Castillo and Program Specialist Soni Mangat. This matter arose from an audit performed by the Franchise Tax Board’s Political Reform Audit Program. Dr. Shirley Weber was a successful candidate in the November 4, 2014 General Election. Dr. Weber for Assembly 2014 was her candidate-controlled committee. Xavier Martinez was the Committee’s treasurer. The Committee, Weber, and Martinez failed to timely file one \$5,000 Report, in violation of Government Code Section 85309, subdivision (c) (1 count); and failed to timely file five 24-Hour Reports, in violation of Government Code Sections 84203 and 85309, subdivision (a) (1 count). **Total Proposed Penalty: \$4,000.**
- 10. In the Matter of Robert G. Jones, Robert G. Jones for Los Rios Trustee 2010, and Julianne C. Jones; FPPC No. 16/339.** Staff: Senior Commission Counsel Angela Brereton and Special Investigator Roone Peterson. Robert G. Jones was a successful incumbent candidate for Trustee for the Los Rios Community College District in the November 4, 2014 General Election and has held this office since 2006. Robert G. Jones For Los Rios Trustee 2010 was his candidate-controlled committee for the 2010 and 2014

General Elections. Julianne C. Jones was the Committee's treasurer. The Committee, Jones, and Jones failed to timely file two pre-election campaign statements for the reporting periods of July 1, 2014 through October 18, 2014, in violation of Government Code Sections 84200.5 and 84200.7; failed to timely file one semiannual campaign statement for the reporting period of October 19, 2014 through December 31, 2014, in violation of Government Code Section 84200 (1 count); and failed to timely file two 24-Hour Reports, in violation of Government Code Section 84203, subdivision (a) (1 count). **Total Proposed Penalty: \$3,500.**

11. In the Matter of Lighting Efficiency & Design, Inc.; FPPC No. 18/00028 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Intake Manager Tara Stock. Lighting Efficiency & Design, Inc. is a state major donor committee. The Committee failed to timely file major donor statements for the reporting periods of January 1, 2016 through June 30, 2017, in violation of Government Code Section 84200, subdivision (b) (3 counts); and failed to timely file four 24-Hour Reports, in violation of Government Code Section 84203, subdivisions (a) and (b) (4 counts). **Total Proposed Penalty: \$1,834.**

12. In the Matter of Independent Women's Voice (Support Steve Glazer / Oppose Susan Bonilla - Senate 2015) (Nonprofit 501(c)(4) Organization); FPPC No. 15/279 (Streamline Settlement). Staff: Senior Commission Counsel Neal Bucknell and Special Investigator George Aradi. In 2015, Independent Women's Voice (a nonprofit multipurpose organization, which was primarily formed to Support Steve Glazer and oppose Susan Bonilla in a special election for California State Senate, 7th District) failed to timely file six 24-Hour Reports, in violation of Government Code Section 84204 (6 counts). **Total Proposed Penalty: \$1,332.**

13. In the Matter of Steve Tye for Diamond Bar City Council 2013, Steven Tye, and Patricia A. Tye; FPPC No. 17/00074 (Streamline Settlement). Staff: Chief of Enforcement Galena West and Staff Services Analyst Hayley Porter. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Steven Tye was a successful incumbent candidate for Diamond Bar City Council in the November 5, 2013 General Election. Steve Tye for Diamond Bar City Council 2013 was his candidate-controlled committee. Patricia A. Tye was the Committee's treasurer. The Committee, Tye, and Tye failed to timely file three 24-Hour Reports, in violation of Government Code Section 84203 (3 counts). **Total Proposed Penalty: \$640.**

14. In the Matter of Keehn for Judge 2014; FPPC No. 16/472 (Streamline Settlement). Staff: Senior Commission Counsel Bridgette Castillo and Program Specialist Bob Perna. This matter arose from an audit performed by the Franchise Tax Board's Political Reform Audit Program. Carla Keehn was an unsuccessful candidate for Superior Court Judge in San Diego County in the June 3, 2014 Primary Election. Keehn for Judge 2014 was her candidate-controlled committee. Larry Conway was the Committee's treasurer. The Committee, Keehn, and Conway failed to timely file two 24-Hour Reports, in violation of Government Code Section 84203 (2 counts). **Total Proposed Penalty: \$500.**

Statement of Economic Interests Non-Reporting

15. In the Matter of Whitney Benzian; FPPC No. 17/01463 (Streamline Settlement).

Staff: Chief of Enforcement Galena West and Political Reform Consultant Teri Rindahl. Whitney Benzian, City Council Member for the City of Coronado, failed to timely disclose his investment interest in and income from Benzian Brothers on his Assuming Office Statement of Economic Interests, in violation of Government Code Sections 87206 and 87207 (1 count). **Total Proposed Penalty: \$100.**

General Items 16-24

16. Adoption of Amendments to Regulation 18401. Required Recordkeeping. Staff:

Sukhi Brar, Senior Commission Counsel, Legal Division. The Commission will consider proposed amendments to Regulation 18401 to implement provisions of AB 249, including recordkeeping requirements for electronic mass mailings and earmarked funds, as well as other minor amendments.

Staff Memo

Proposed Amendments to Regulation 18401

Chair Remke: Okay starting with item 16 adoption of amendments to regulation 18 401.

Ms. Brar: Good morning Chair Ramsey and Commissioners, Sukhi Brar: Senior Counsel Legal Division. I'm here to present proposed amendments to regulation 18 401 required record-keeping which cover record keeping for earmarking electronic mailings, as well as other minor amendments. This regulation was before the Commission at its January meeting as part of phase 2 of the AB249 regulations. At that time, the Commission decided to put this reg over in order to give staff more time to seek feedback from interested persons and provide more information on record-keeping requirements. Staff conducted an interested persons meeting on February 13th, the second interested persons meeting for this regulation, and sought input from California Clean Money Campaign as well as others from the regulated community those comments are reflected in the staff memo for this item. Staff recommends the Commission adopt the proposed amendments to regulation 180 401

Chair Remke: Thank you. Any questions from the Commissioners?

Commissioner Audero: I do.

Chair Remke: Commissioner Audero.

Commissioner Audero: So we kind of went back and forth on the LIFO issue and you did put in using a reasonable accounting method such as but not limited to last-in first-out accounting method and I think that that's helpful, but I want to make sure that there isn't going to be a practice of creating any kind of presumption for LIFO, so I would like to put some language in to

make sure that that doesn't happen, so what I would suggest is hmm. I should have printed it out. I'm sorry, I'll send it to you printed afterward. But I would suggest that we that the sentence that starts this determination be revised as followed: "This determination must be done using a reasonable accounting method such as but not limited to the last-in first-out accounting method where you have a comma, then I would insert but no accounting method will be given more credence over another and no rebuttable presumption. Let's take our presumption and no presumption of any kind of compliance is hereby created by the use of LIFO period. Notwithstanding anything else in this section comma then get rid of your however earmark funds must be I'm not sure I would say counted I would say disclosed because that's what the issue is right so I would change counted to disclosed your mark funds must be disclosed first before non earmarked funds does that make sense?

Ms. Brar: It does. I prefer to leave it counted just because that they're determining how to count the funds that's why I put counted. Disclosed is more so like what's your gonna be putting on your report or what you're putting on an ad and this is sort of a little bit of both of keeping records, counting it, and disclosing it all together so

Commissioner Audero: But isn't the sentence in front of that before that talked about must retain documentation showing how a determination of which top contributors to disclose on its advertisement was made?

10:00 Ms. Brar: Right so that that disclosure happens after they've made the determination.

Commissioner Audero: Right so there's, you're referencing a determination of who to disclose and then you say this determination which I assume means the determination to disclose.

Ms. Brar: Correct.

Commissioner Audero: So why do we then change it to count instead of disclose?

Ms. Brar: I was just saying that because that's talking about when the counting part is when they're trying to determine what to disclose

Commissioner Audero: Well then, I don't think it should be saying this determination. You're changing the determination is all I'm saying and that's fine. If you want to have a sentence in there about how to count that's fine have a sentence about how to count, but I don't think this makes sense the way the way it's written and I guess that's what we're here to do is to kind of words method

Chair Remke: Well could you read it again because I don't understand what you're proposing.

Commissioner Audero: Sure. This determination must be done using a reasonable accounting method such as but not limited to the last-in first-out accounting method but no accounting method will be given more credence over another and no presumption of any kind of compliance

is hereby created by the use of LIFO, notwithstanding anything else in this section your mark funds must be disclosed first before non earmarked funds.

Commissioner Hatch: Sukhi, am I correct that all of these have to be disclosed?

Ms. Brar: Right.

Commissioner Hatch: This is an issue of who has to be—

Ms. Brar: right which one they're counting

Commissioner Hatch: —on the ad and if you can manipulate how it's counted then you can avoid earmarked funds from the funder being disclosed at or at least taken into consideration, in determining whose name or what organization's name is going to be on the discipline.

Ms. Brar: Yes. Yeah.

Commissioner Hatch: So is there like a third way you do that or do you think counted and I asked that because I'm not sure disclosed is the right word either so?

Ms. Brar: Yeah.

Chair Remke: So, if I understand Sukhi so is the first sentence about this that you have to disclose X. you have the second part is about the accounting method to figure out who you count to disclose X

Ms. Brar: Well it's really talking about how you account for what you're disclosing.

Chair Remke: Yeah that's what I was trying to say yeah yeah.

Commisisoner Hatch: This is not about whether who gets disclosed they all have to be disclosed the question is whose name is gonna appear. It would be required to appear on the ad and how you count the money to get there

Ms. Brar: Right so I think counted works I'm not sure I can't think of another word right at this moment for it but I don't think disclose does the right term for that.

Commissioner Hatch: How do people feel about identified.

Chair Remke: Sukhi did that work for you: identified.

Ms. Brar: I guess that could work to identified. I'm not sure if that would mean that they have to count that person or just identify them. I'm open to suggestions though if the Commission likes identified, I'm fine with that.

Chair Remke: Well I'm fine with counted.

Commissioner Hayward: For my part, yeah I understood counted as being something that's done internally to the organization before disclosure.

Ms. Brar: Exactly yes.

Commissioner Hayward: And sunlight and disinfectants and all that yeah. Anybody else?

Commissioner Hatch: But maybe with the phrase taken into account.

Ms. Brar: That works for me.

Commissioner Audero: Yeah that's fine.

Chair Remke: Did you get the rest of it?

Ms. Brar: I got most of it. Okay

Chair Remke: a little bit slower

Ms. Brar: I'm sure will have it on our minutes as well so I can get it from there.

Commissioner Audero: I'll send it to you in writing. Just in the interest of making everybody happy. Okay, so the sentence would say: "This determination must be done using a reasonable accounting method such as but not limited to the last-in-first-out accounting method". That's exactly what you had comma, here's what I'm discerning, but no accounting method will be given more credence over another and no presumption of any kind regarding compliance is hereby created, by the use of LIFO period. Notwithstanding anything else in this section comma and then now we pick up your language: earmarked funds must be and then we'll take it and we'll take out counted and we'll put in taken into account first before nonearmarked funds. Does that?

Ms. Brar: Yeah that works.

Commissioner Audero: If you got that okay?

Commissioner Hatch: Move is amended.

Commissioner Hayward: First question.

Chair Remke: Yeah other questions and then we'll have to have public comment as well.
Commissioner Hayward?

Commissioner Hayward: So, I'm just wondering about record-keeping in this day and age and it's not clear from the language of this reg though maybe because I don't understand that there are

other regs that comport on this so you know help me on this. Can a committee or a filer scan original documents and keep them in electronic form or do they have to keep the actual material piece of paper?

Ms. Brar: I'm not sure on that actually I think it depends on what the record is. It's like a big statement could probably be kept in electronic form but something that needs a signature maybe. I'm not. Enforcement would probably know more I guess I'm thinking.

Commissioner Hayward: More and more all my stuff done by scanning paper documents because the paper can be lost in the scan you know once it's in Dropbox lips forever and you would want people to have a more secure you know you'd want to encourage people to have a more secure routine rather than a less secure routine but I didn't know if we accepted scans is documents or is originals and maybe we don't.

Brian Lau: Sorry, Brian Lau, now assistant general counsel. I think if you do go into the next paragraph where it talks about what the original source documentation requires it does refer to copies just to the extent that they have a copy. I can't imagine we would ask for this there's a question about this.

Commissioner Hayward: I want to air that question in case there was doubt or in case you had in your mind that no in fact you have to have that little worn receipt you couldn't possibly scan it that would be wrong.

Ms. Brar: Yeah, I think it just depends on the nature of the record

Commissioner Hayward: Sure, yeah.

Ms. Brar: Everyone needs to be verified on paper and maybe that would have to be.

Commissioner Hayward: Okay, thanks.

Commissioner Hatch: Do we have a written rule or policy on those kinds of things?

Ms. Brar: I think like Brian noted that it would be in our regulations, so we would follow what our regulations say, so if it says it allows for copies then we would allow for copies. If it says it has to be an original with the signature and on paper like a paper copy, there are sections in the Act that required paper copies of certain things that we would follow that. They are as far as I know.

Chair Remke: All right any other questions for Commissioners? All right public comment.

Trent Lange: Hello, Trent Lange, president of the California Clean Money Campaign, the sponsor of AB249. We'd like to thank staff for its excellent work on this regulation. We think the additions to track the new earmarking rules are very appropriate. The Commission's friendly amendments to clarify that seem, seem fine by fine by me, so we request that you approve this

this regulation. Want just a related comment I probably should have done this on general comment but still on AB 249 since we're speaking of different language issues as many of you are aware. Assemblymember Mullin has a bill AB2155, which is a cleanup. We're using as a cleanup bill for potentially for any issues that the Commission identifies with the code for AB249. It's currently been referred to the assembly elections committee on the April 11th hearing. We would be very eager to hear any, see any suggested cleanup improvements to AB249 that you guys might have and eagerly await them. Thank you.

Chair Remke: Thank you. Any other public comment?

Jack Blattner: Jack Blattner with California Common Cause. We'd just like to echo Trent say we're fully in support of this regulation. Thank you.

Chair Remke: Thank you. Any further public comment? Okay, seeing or hearing none is there a motion?

Commissioner Hayward: I'll move to approve as amended.

Commissioner Hatch: Second

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

20:00 Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: Yes.

Sasha: Chair Remke?

Chair Remke: Yes

Sasha: The motion passes.

Chair Remke: Thank you Sukhi.

17. Adoption of Amendments to Regulation 18450.1. Definitions. Advertisement Disclosure. Staff: Karen Harrison, Commission Counsel, Legal Division. The

Commission will consider proposed amendments to Regulation 18450.1, to conform the regulation to recent changes under AB 249, and select from three options regarding threshold definitions of “advertisement” for disclosure purposes, including an option to strike all bright-line quantity thresholds to define advertisement.

Staff Memo

Proposed Amendments to Regulation 18450.1 Option 1 and Option 2

Proposed Amendments to Regulation 18450.1 Option 3

Lange – 01/16/2018

Mullin – 12/20/2017

Clean Money Campaign - 12/20/2017

Chair Remke: All right next up is adoption of amendments to regulation 18450.1

Ms. Harrison: Good morning, Karen Harrison: Commission Council. Good morning Commissioners, Chair Remke. I'm here to present the proposed amendments to regulation 18450.1. This is the regulation which interprets section 84501 which provides the definition of advertisement, for the purposes of determining when a campaign disclosure is required. This matter was brought before the Commission at the December hearing. At that time, options 1 and 2 were presented and option 3, as we refer to it, was proposed right before the hearing and at the December hearing the Commission requested that we prepare what and the option 3 would look like as a regulation and we held an interested persons meeting regarding that version in January. The comments from the interested persons meeting are recorded in the memorandum that you received. At this time, we recommend options 1 and 2 and we request that the Commission deliberate between the two options and approve the proposed amendments to the regulation. I would note that just prior to the hearing today, we received another proposed option. This is referred to by Mr. Lange as option 4. This option appears to supersede the option 3 and is much closer to the options 1 and 2 that were previously presented. I know that two of the Commissioners that are present today were not present at the December hearing, so there may be some need to go back over some issues we discussed at the December hearing, but I would just like to address briefly the option 4, if I may, but first to summarize your option 2 and, excuse me, option one and option 2 conforms regulation 18450.1 to AB249. It also provides clean up to the existing language in the regulations and most importantly it continues the bright-line threshold quantities that have been in place for determining when particular types of communications rise to the level of a general or public communication. As the term for advertisement is defined under Section 84501: campaign disclosure requirements are a burden on free speech and must meet the exacting scrutiny standard as discussed in the memorandum. For that reason, we promote options 1 and 2 and option 4 appears to also recognize the need for thresholds. One difference between options 1 & 2 & 4, there's several differences, one is that option 4 is requesting to alter the threshold from the 200 level that's been in place since 2002, to a level of 50 which is certainly within the Commission's discretion and this would be for purposes of telephone, emails, direct mail, but not for print materials designed to be individually distributed. This type of communication would still require a case-by-case analysis which is detailed in the memorandum, raises exacting scrutiny issues but...but there's a simpler way to describe the problem with exempting that one type of material, so imagine that I am a major donor committee and I type up

a bullet point of why I'm supporting a particular campaign and I print it out and I hand it to an individual. Under the proposal 4, that may or may not be an advertisement at that moment, it would be a print material and under that proposal there's no thresholds that are being recommended, but under option 4, if that same information were printed out and folded up and put into direct mail. then it would be subject to the thresholds. If that same document were emailed under proposal 4, it would be subject to thresholds, so for consistency print materials that are to be individually distributed should also include the thresholds and I think proposal for option four recognizes the need for thresholds and I think that that perhaps the tension is the number the quantity and I would just like to comment the \$200, to \$200, excuse me the 200 quantity threshold it's a bright-line rule that's been in place since 2002. The regulated community is familiar with it at the time that it was proposed back in 2001, the Commission was given the option of two hundred, five hundred, or a thousand and they chose the the lowest option. The understanding is that two hundred level matched the mass mailing definition, which is defined as over two hundred substantially similar pieces of mail and so that two hundred had that kind of consistency. It is within the Commission's discretion to consider that that quantity, but that consistency both with the long-standing policy and another definition of when something hits a certain benchmark that it's requiring, the particular requirements under the Act should be considered. With that said, the other items raised an option for I'm happy to discuss and any other questions about options one, two, and three and I and I understand that it's a little bit confusing so when we talk about versions: its version with option one and two and then there's some mild variation between the option one and two. The option three I think probably is not something that needs to be discussed much now and the focus would be on the option 4.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: A couple of questions. One is about the strict scrutiny that's led you to having a threshold in the first place, correct?

Karen Harrison: Could I just correct you? It's exacting scrutiny, which is it's a different standard than strict scrutiny, which we're more familiar with. Strict scrutiny requires a narrow tailoring and and those are in cases where free speech is being limited and in this case, the the courts have said it's a burden on free speech when you have campaign disclosure and so therefore it's it's this exacting scrutiny which is described as moderate tailoring and so I'm sorry your question?

Commissioner Hatch: Which leads you then to having a threshold at all?

Ms. Harrison: The threshold serve the purpose of--

Comissioner Hatch: Meeting that-

Ms. Harrison: Yes.

Commissioner Hatch: So, if you were we were to say consider proposing one that says there's no free space there's no 200, it's of the hand went out your subject that would be not meeting that test is that what your?

Ms. Harrison: There's concerns that if there were litigation that this would not meet that standard, because you need to show a substantial relationship, the application of the burden on free speech. You need to show a substantial relationship to the state interest, so you would have to be able to show that that, that that interest is related to the burden and as you get to documents that are less public in nature, unless a general in nature, you you lose that relationship. You lose that moderate tailoring and and yes you will miss some documents, that's sort of the nature of moderate tailoring.

Commissioner Hatch: I see and then the example of where we came from 200 that was the the mass mailing definition that was used in a completely different context. I was legislator spending state funds to put what appears to be a campaign statement out of all their constituents, so they passed this 200 thing, that the mailing had to be 200 or less in order to be paid for by state funds. Correct?

Ms. Harrison: Brian, would you like to address mass mailing issues?

Mr. Lau: The 200 would apply to guest governmental mailings of that nature, but it also applies to the mass mailings by a candidate when a candidate doesn't mass mail. They're required to put their name.

Commissioner Hatch: Right you know the genesis was the legislative.

Mr. Lau: It applies in both circumstances and

Commissioner Hatch: The secretary mailings, but the state expense

Mr. Lau: No, but it also applies to the candidate mailing as well where it do—

Commissioner Hatch: Its Genesis where it was born.

Mr. Lau: I'm not sure which one came first?

Commissioner Hatch: I am.

Mr. Lau: Okay.

Commissioner Hatch: Thank you. So the reason why I'm getting there, is that I'm not so sure that we have to stick with 200 in whichever context and at some point I'd like to hear from the sponsors what they think the appropriate thresholds on each of these categories should be, and thank you Chair for your indulgence.

30:00

Chair Remke: Any additional questions?

Commissioner Audero: I have a question.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, the decision between two hundred, five hundred, and a thousand. Did I understand you correctly and I don't know if I did? That they chose that the Commission at that point selected 200 because it was the smallest number.

Ms. Harrison: I don't have background as to why they selected 200, as opposed to 500, as opposed to a thousand.

Commissioner Audero: Oh.

Ms. Harrison: It's possible because the 200 was the smallest number or it's possible that it was because it hit the mass mailing number and I know that there's always discussion about consistency and something like mass mailing, that affects all committees to have that 200 number in mind is an easy threshold.

Commissioner Audero: Sure, thank you. And then, another question and maybe this is for you or maybe this is for what I anticipate will be public comment, but is there a reason that this number can be part of the cleanup AB2155 and then it's taken out of our hands, it becomes legislated and we're done here?

Ms. Harrison: I believe the legislature could further define what it means by public or general communication.

Commissioner Audero: Okay, thank you.

Ms. Harrison: And I would just note that in in doing some research, in other contexts, often it's in the statute, it'll say public or general community and then in the regulation, it will define that Citizens United had a good example where there was a video and they defined in the regulation that it was 50,000 viewers, made it a public or general video and so you know those thresholds can be different in different settings. Of course, that was in a within a primary district, 50,000

Chair Remke: Additional questions?

Commissioner Cardenas: Where does option 4 come from?

Ms. Harrison: Option 4 was presented by Mr. Lange yesterday, just before close of business. did you not receive it?

Commissioner Cardenas: I I don't appear to have it. Tt doesn't appear to be on the internet.

Chair Remke: Where did you post it?

Sasha Linker: It is posted as public comment on the internet, and it was in the packet this morning.

Chair Remke: Just on the notion of leaving this to the legislature. Karen, to resolve the quantity issue, what if anything would we still need to do to make this regulation work in the context of the changes in the law?

Ms. Harrison: As I understand your question, I think you're asking do we, can we wait right now for the legislature to do something or do we need to pass something today. And the answer would be that we need to pass something today. This is the last remaining regulation that needs to be updated for AB249.

Chair Remke: Well I guess then maybe the follow-up question is, what's the path that answers our issues or concerns based on the change in the law but leave some of this open? What path would you recommend?

Ms. Harrison: The path that I would recommend is to continue the practice that we've had in place, and if we're going to allow the legislature to address it then they can address it. It there doesn't seem to be a reason to move from the path that we've been on, the regulated community is familiar with that threshold has been operating under the thresholds. Some, some tailoring that's been recommended, as far as yard signs our campaign buttons, I think we can address those things today.

Chair Remke: So, one or two goes back to your point about one or two or what you are recommending?

Ms. Harrison: Correct.

Chair Remke: And the difference between one and two, they both have the 200 but number 2 lumps yard signs in with billboards and road signs?

Ms. Harrison: Correct and if you'd like me to speak a little bit more about yard signs I'm happy to do so, that was originally how this regulation came before the Commission back in October. There was a request from the regulated community that we further define what a yard sign is and that was because large signs we dealt with on a case-by-case basis, and the Commission thought we could give a little more clarity to the regulation by defining the size of a yard sign, so we proposed 6 square feet as the definition for yard sign and maintaining as it had been, produced in quantities of more than 200, to make it fit under that definition of general or public. We had a request from Mr. Lange that that we lump yard signs in with large signs, road signs, billboards and and have them require disclosure at 1, and the argument was that a yard sign by its very

nature is public and that is something that the Commission can consider and so that became option 2.

Chair Remke: There's no questions?

Commissioner Hatch: Just an expression that I think we we need I think we should have something in place even though it may be temporary visa v what the legislature may or may not do. So I would like to continue to pursue this.

Chair Remke: Ok any other questions? Because we'll hear from public comment then.

Mr. Lange: Commissioners, Trent Lange, President of California Clean Money Campaign, sponsor of AB249. We of course testified on this issue, opposing the option one and option two back in December. We still have grave concerns that those do not match the intent of AB249 and that it does not serve the public. The letter that I sent in late yesterday that describes those in detail but I'll kind of highlight some of our our concerns with that. So, first of all we believe that essentially what your what this does with direct mailers, fliers that are handed out to the public door hangers, direct mail, emails, texts, robo calls, all these things are covered those are things that campaigns do, is it leaves at a bare minimum up to 200 people in the dark, about who paid for an ad whatsoever. Now for a statewide ballot measure for a statewide campaign, two hundred voters usually most of the time, isn't going to make a difference but there are many times when it does make a difference because AB249 does not just cover state races it covers legislative races that sometimes are much closer and it covers city and county elections and we identified in their tables in in the letter that I sent yesterday, 23 City ballot measures in 2016 alone in California that were decided by fewer than 200 votes, fewer than 200 votes and there are 26 elections that were ballot measures in which two hundred voters represent 10% or more of the electorate, so when you're talking 200 voters in city and county campaigns, that's that's a lot and even in legislative races, you had a there were four, top two primaries last year in assembly races that were decided by fewer than 200 votes who were in the top two, and there was one general election race for assembly that was decided by only a hundred and forty-five votes, so that's why this is such an important policy. 200 may not seem like that much when you look at a statewide ballot measure but in city races, county races and even legislative races it can make a big difference. It also leaves the danger of having a sophisticated committees, use micro-targeting to send out 200 pieces of direct mail targeted, carefully, very different from another 200 pieces of direct mail sent to another 200 voters, and from very different from another piece of direct mail sent to another 200 voters. Many campaigns use that today, that did not use that back in 2002, this is a relatively new development. It's a little bit more on social media fortunately, that is not exclude does not have this 200 loophole, but direct mail does happen under these situations. It's also going to leave voters confused and in the dark, because they will be expecting to see the disc AB249 disclosures and if they get a a mailer or if they get a flyer or a door hanger or any of those pieces of information without disclosure on it, how are they to know that whether or not the mailer is in violation or the flyer is in violation or the door hangers violation or the bumper stickers on violation or they just happen to be number 155, and so it didn't have to have the disclosure, so we wouldn't if this happens and people use this loophole, there will be a number of complaints to the Commission saying: where is the disclosure when the committee may actually

been using this this exemption? The, also it's going to help lead, we're talking to you, talk about
40:00 the idea of reducing burden on committees, we believe and you'll have testimony from other members of the public and other people representing committees that this, having two separate disclosure requirements for these types of communications based off of the number of communications that they have, because under two 200 or fewer you have to have the disclosure more than 200 you do have to have the disclosure, that is a burden on committees especially when they will have to provide records to prove one way or the other that they only printed 200 or fewer and frankly, there's there's virtually no way you're going to be able to enforce that in an age when people have high committees have high speed printers in their offices. We have high speed printer in our office, we can run off ten thousand flyers pretty, pretty quickly and easily and there is no record whatsoever of how many flyers we print it off, so good actors, active communities will have the burden of proving how many they printed or didn't print and they have difficulty actually doing that. Bad actors will be able to completely flout the rules and say: oh we only printed out 155 of these don't worry. Unless you can go out and individually figure out how that they actually printed more than 200 these copies, so you have a huge enforcement burden here with you when you have these sorts of thresholds. You know confusion with voters, you have confusions with fork good acting committees and lastly, we really don't believe that the Commission has the authority to allow committees to leave 200 voters in the dark this way. The we the AB249 was rewritten, we read this section definition for advertisement we looked at that very carefully, we purposely removed the inclusion of person from the from the requirement to address concerns individuals might be caught up in disclosure rules, so that is not an issue in AB249 where it was previously, and the exclusion that we give to the authority that we give to the Commission, is any other communication as determined by the regulations of the Commission. I can tell you that as a sponsor and I can assure you the author's office will be here to testify also, that the intent was to allow other kinds of communications, future things that people were advertising on blimps and they thought that that was impractical bull or whatever 3d advertisements happen, etc. that was the intent of the legislation was to allow you to address those kind of communications.

Chair Remke: Okay, can I just ask you a question about that Mr. Lange though, because I'm having a hard time following the evolution of this proposal because I believe it was in January, similar to the argument you're making now, you said that we didn't have the authority to have any threshold.

Mr. Lange: We still do not believe that you have—

Chair Remke: Is that right though?

Mr. Lange: Yes, and we still actually do not believe you have the authority to put a threshold and we for that for strict legal reasons we would prefer option 3. However, we do recognize the need for bright-line test especially with things like emails and and, and letters. We don't want to sweep those up, so as a we would be we would be willing to compromise with option 4, which at least does provide that bright-line test for things that stakeholders were concerned about while keeping these campaign materials, especially the flyers, the door hangers, the posters, the

campaign buttons, that the campaign bumper stickers, without any threshold at all because their campaign materials.

Chair Hatch: If I could—

Chair Remke: I'm not done, so at one point I just, I'm concerned that you're saying we have no authority, it was addressed in AB249 its 0, 1 goes out there's a disclosure, then some issues have been raised about that and the concern about bringing people in that were not intended including in the email process, and now you're saying well I guess you have Authority 450. I just wonder again if this isn't an issue that it is better left for the legislature with us leaving it as we had it with the tweaks that were already in the process, because it just seems now we're all over the board. You don't have authority, you do have authority for this, I mean.

Mr. Lange: I'm sorry let me address it, so part of the reason that we believe you do have the authority to make a threshold like 50 or 200 on emails or direct mails is, is that there is a question of what is a, a general or public communication there?

Chair Remke: But why would it only go to those? What about for the flyer—

Mr. Lange: Because a campaign button and a campaign bumper sticker is clearly meant and designed to be a general or public communication. A door hanger is clearly meant to be a general public communication, a poster is by its very nature public. I suppose somebody's more, what are they gonna put up a campaign poster in their, in their bedroom? I doubt it, that's not like Star Wars. The only thing that could potentially be questionable, there would be flyers, you know somebody prints a flyer and they just give it to somebody. We might be open to some sort of tweak on just the flyer part, to say of something like: flyers that are handed out to the public, or to or to households, then if they're handed out to the public, then clearly they are meant to be a campaign material, but if somebody prints up some bullet points and they just give it to their friend and it's not a public person then, then that might not be a general or public communication, that may be a tweak we might—

Chair Remke: But wouldn't that be the same argument about door hangers that's going to a household not hand it out to the public. I mean I guess I just feel like we're starting to create all these issues that could have probably been resolved at the legislature or we have resolved them starting in 2001, and the issue is what what's wrong with them?

Mr. Lange: What's wrong with them is that the intent of this legislation, which amended it again to take off person to address some of the concerns that were people had in the 2002 time frame. They were reasonable concerns that individuals who print up flyers and go out to a market and hand them out. They print up a hundred flyers or 200 flyers or 300 flyers and they're not a committee, that's a reasonable concern because they're not sophisticated, they don't know the rules, they're not a committee so, AB249 purposely amended this definition to remove persons, so that only committees would befall these communications, would fall under the definition of advertisements. They'd have to have the disclosures because of your committee you should have the you need to know the rules basically, so we did address it by changing it certainly the intent

of the legislation when we completely rewrote the disclosure rules for ballot measures independent expenditures for television ads, radio ads, print materials was one of the sections that AB249 completely rewrote from current law. It was always, always understood that every single ballot measure, there was not a single legislator that I talked to that I thought had mentioned anything not thinking that'd be under 200 was nobody, everybody assumed that it was any committee that did ads versus ballot measures or independent expenditures would have to have that the disclosures.

Chair Remke: Any other questions?

Commissioner Hatch: Yes.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Thank you. This, this issue of the 50, this as I understand it from your late communication was offered in the spirit of compromise. You still are in the position that the first impression should be disclosed with a disclaimer. Correct?

Mr. Lange: It's, I would say that it's this it's a an open enough question on things like email communications and, and direct mails that you do need to have some way of defining what is a general or public communication, because it's not obvious that an emails the general public communication in the same way that it's obvious that a bumper sticker or campaign button or door hanger nobody uses door hangers for anything except for a campaign. I mean, I guess maybe for Walmart but so, so the so, I think that it would be important to have some, we don't we're very cognizant of staff's concern about having to deal with things on a case-by-case basis. We think that is that we would want to avoid that, if we did not that the 50 threshold which is much more reasonable and less likely to cause problems in small races than, than 200, is one way of doing it, you could potentially have other definitions of defining what a general public communication would be for terms of an email, that one could come up with but that would take more time to work to come up with things like you know: are you sending it to a friend, are you sending it you know there are other tests that you could come up with. But they are more complicated than a simple threshold of 50, which which I think it is pretty clear that any emails that are substantially similar that go up to more than 50 people are about a campaign are clearly campaign related and and general in public communication, so that's why we would accept that proposal offered.

Commissioner Hatch: And, the base that we we have now our existing rules we're envision at a time when everything was sent to the printer and you know is quite clear. And, now so many innovations have occurred since—

Mr. Lange: right

Commissioner Hatch: —that allow very sophisticated kind of communications targeted to individuals based on their social preferences or even their religion I've seen used as a screener, so that there's no target too small for them to use—

50:00

Mr. Lange: exactly

Commissioner Hatch: —and this is all to avoid any disclosure at all and it's not an election that goes by that I don't receive something that has no disclaimer on it at all, and I know people of goodwill want to do the right thing, can get caught in a trap where we're run the accounting game. We have been and now we're just arguing about the threshold that that we apply but it's still an accounting game and I've come to believe that everything that we adopt into form of regulation here to interpret a law that the legislature has provided us, we need to do it in a way that is auditable and it can be complied with. It if it's if it's not and this is that in one of those categories where this just doesn't work if I understand and I sympathize with the remarks made by staff about, you know this was that term, what kind of scrutiny?

Ms. Harrison: Exact.

Commissioner Hatch: Exact scrutiny, thank you, but there is a balance here that we just need at least to scoop people up, because these things are so diffused, as you as you say I could email something out to a bunch of my friends and they might decide to print them out and tailor them and send to their friends and quickly, they're obviously over any kind of a threshold and yet there's no disclaimer and so the public would be far better served you just put that darn disclaimer on there from the first impression.

Ms. Harrison: Can I call your attention to the regulation where it talks about forwarded emails and telephone calls? If you have an email that's in substantially similar form and it's forwarded or has the intent to be forwarded to more than 200 recipients, then it falls under that category, so you can't just—

Commissioner Hatch: I get that but, and then they send out 199 of their other friends and so on and so forth but the point is that we don't have a whatever clock on this, we only have a mileage meter on it, that tells me you know they certainly how many of these were sent out to people and that's the problem. Is how do you comply or how do you how do you enforce the compliance when you've got no ability to determine whether there has been or has not been compliance? If we have a law like that or I should say a regulation like that, when you rethink it and I I think I'd rather risk being overturned by saying at the first impression and see where the chips fall, but this could perpetuate this craziness where we we put a regulation out this non-enforceable, it's not easy to comply with, and it just causes nothing but frustration on the part of you know small grassroots organizations in small towns. They have these little tax overrides and stuff and a lot of this is volunteer stuff, and I'm sure they'd be happy to put their disclaimer in if they knew that from the first impression that's what they're supposed to do. I'd like to hear your reaction to that.

Mr. Lange: I think you raise very important concerns and we we do not think the 50 threshold is ideal we offer it in, in a spirit of compromising and understanding that there does need to be some sort of bright line test, but you're right, a person who forwards an email committee affords no has no idea how many it's gonna be forwarded it to. You have no idea and you have no idea is

how many if you make a hundred copies of a flyer you know hand them out to people, especially activists, you have no ideas how many copies it they're going to go and and and make. They may make hundreds of copies themselves, good activists will do that sort of thing and hand them, hand them out, so those are important issues. I think that you, you would want to have some clear-cut test so you don't have to side on a case-by-case basis: what is a general or public communication? I think that's partially what we're struggling with here is what's the definition of that and like I said I could I don't think that you want to define it right here in this Commission, because it would require some thought but you can imagine things like a, an email or a letter sent by somebody to somebody that they personally know, that's not necessarily communication but if it's sent by a committee staffer to somebody that they do not personally know that, that sounds actually pretty, pretty general or public to me, and if they only send out ten, so I could imagine you could actually come up with clear-cut regulations. Not here it would take some more time I'm sure but you could come up with some clear-cut regulations that would say was the definition of general or public. The 50 is a, is a, is a shortcut to that that has some, some problems.

Commissioner Hatch: I came, I woke up this morning thinking that we should maybe drop it down to ten and I've been agonizing about this all morning and but when I really kind of tested against my concern about enforceability and whatnot it really doesn't matter what the number is, because of the nature of this, if it's unless it's zero or one, I should say it's not enforceable and it's denying the pub..the public the right to know where this thing came from, and should I rely on it. So unless you have strong objections that, I would like to have basically take all the numbers down to, to one.

Mr. Lange: We would not object to that though we would suggest, in that case, that the Commission do follow up regulations to define what a general public communication is in the cases of emails and, and direct mail and, and direct mail, so you could exclude actually exclude things where you're sending an email from from you to somebody that you personally know, an individual email that it's probably not it, that would be our suggestion if you were to do that.

Chair Remke: Then we would go back to figuring out a number most likely.

Commissioner Hatch: Excuse me, it was a follow up.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Within the option to ones on the table has, to be possibly option 4, there are two distinct categories that although they're not self-defined, they're not obvious on their face, you've got a bunch of 200s and you've got some 50s, so obviously, there's some distinction there. Some value judgment has made between our staff and yourself, in terms of the categorization is that not correct?

Mr. Lange: Well the option one and option two have the two hundred thresholds, as we said. We have very serious concerns about that in terms of local city and county races and so forth, so if there has to be a threshold which is what our compromise suggestion was, then 50 is a much better threshold than 200.

Commissioner Hatch: Am I wrong that your proposal though, you count your offer of conciliation, was make some of those fifty but not others?

Mr. Lange: Yeah, our offer was to make the two, three, and four, which dealt with telefilm, fax, electronic messages and direct mailings, to give a threshold of 50—

Commissioner Hatch: So, this is on the basis of a distinction between those two classes, in other words—

Mr. Lange: yes—

Commissioner Hatch: —some of them you're not challenging the 200 but the others you are

Mr. Lange: Well we're challenged at 200 on all of them, we'd like, we don't think, we think 200 is a too high of a threshold in light of 23 city and county city ballot measures, last year being decided in 2016 be decided by fewer than 200 votes, so we would want it to be 50 but we're saying there, there's more of a difficulty in determining what is a general public communication for it, for a for an email, for a direct mail, because you may send these things personally to your friends, then we don't think there's any confusion at all when it comes to campaign buttons, campaign bumper stickers, to door hangers to those—

Commissioner Hatch: those are

Mr. Lange: —those are the zeros.

Commissioner Hatch: But the ones are the ones that you currently are offering 50?

Mr. Lange: Those ones we're currently offering zero on

Commissioner Hatch: Oh, zero, okay.

Mr. Lange: right

Commissioner Hatch: What are the ones that you're offering fifty?

Mr. Lange: Telephones call, telephone messages like robo calls, fax messages, electronic media communications so that would be emails and direct mailings.

Commissioner Hatch: Okay, I have no discomfort with making those all zero personally.

Chair Remke: I guess I'm just confused about the ,the concerns you have which seem to be significant on the 200, despite the fact that it's been the law since 2001, that's where I'm getting, I'm having a hard time buying this real, concerned emergency need to lower it when I'm not sure we've had any issue or, or cases broad or samples where people were fooled, but I think we

should also move to other public comment and then when you can come back and follow up with any questions there it might be

Mr. Lange: Sure

Chair Remke: Just because you, you yourself said there were others who wanted to talk so

Mr. Lange: Yes, I'll just quickly on that one we will say that the law has significantly changed now disclosures with AB249 are infinitely more clear, so it's more of an issue now. The disclosures before, a lot of people wouldn't even notice because they were so buried in fine print, in many cases, but now that's not an issue so, so this issue has to be addressed in our opinion. Thank you.

Commissioner Audero: Yes I would like I have a question for you.

Chair Remke: Commissioner Audero.

1:00:00 Commissioner Audero: Thank you, so you know I just the more I listen to this, and the more I remember all the discussion about AB249 a few months ago, I seem to recall a comment I'm not sure if you made it Mr. Lange or somebody else made it, but the comment was along the lines of you know, we've been working at this for seven years or however many years and it may not be perfect, but let's put it let's, let's get this on the box and then we'll fix it and that's fine. But, the problem I'm having is, we as a Commission are now being asked to fix this, and I'm just not sure that were the right body to do that and this goes back to my comment that if you have a fix-it bill right maybe 21:55, fix it there, why not I guess that's my question, why not fix it there?

Mr. Lange: We thought that it fixed it because the section on print materials says print advertisements shall have the following disclosure. We thought that fixed it we change AB249s definition of advertisement, to remove person from being considered an advertisement in communications because people had legitimate concerns about that, and so only committees can fall under those, so we thought it fixed it. We said only committees, we said print materials shall have the following paid for by these kinds of committees, shall have the following disclosures so it's, it's it seems unfortunate that that it's being questioned, that what the intent was, what the intent of our fix was? I think you'll hear testimony here that everybody thought the intent of AB249s language was to, was to require those disclosures from print material one, exactly so with a couple of exceptions for candidate committees in 84305 and 84310, so we thought we fixed it. Obviously, we will if the Commission does chooses option one or two we'll have to see what other remedies there would be to fix it, we would certainly hope that you would accept at least one of the either option three or option 4, I think would substantially address the concerns that we have of matching the intent of AB249.

Chair Remke: But you just keep referring to print media and your fix and now you're talking to us about telephone, text, and emails.

Mr. Lange: Well it, it also has the section on telephonic messages which includes robo calls and it says telephonic messages shall have the following and radio ads shall have the following disclosures, that's 85704.1

Chair Remke: And then what does it say about emails? The one concern you have I guess, I would say conceded to.

Mr. Lange: Emails is left in it's part of the definition of electronic media communications in a 85704.3, so that that was also intended to be from, from email one, now it wasn't, we didn't explicitly call out email messages in that, in that section, so that might be something that we would address in, in that but we certainly an email messages is electronic media communication in our minds and so yes, that section requires disclosures on, on electronic media communication one in fact your regulations, have that for other types of electronic media communications. There's no threshold for Facebook ads or graphic ads or any of that sort of stuff, in the in the proposed regulation, so we intended the same thing for email messages. I can see it may need some more additional clarity, but that was certainly the intent.

Chair Remke: Did you want to let others speak?

Mr. Lange: Yes.

Chair Remke: So, other public comment?

Chuck Velvel: Chairman and Commissioners, Chuck Velvel, McAndrews and Hill Tech. I'm not here on my own or representing any client, just representing my own opinion. Just to address initially Commissioner Hatch's question about the 200 threshold, the actual provenance of the 200 threshold was in the 70s, when the mass mailing statute was adopted in the regulation 18435, included the 200 identical or similar pieces of mail threshold and I think that it was adopted at that point for the very reason, that Miss Harrison indicated in terms of the legal standard to avoid capturing individuals or even small committees, particularly small committees, that are not, despite what you may think not aware of either the general regulations that you have enforced for advertising or the very specific ones that AB249 has added to this. Really the 200 threshold that was picked up later, in both the statute and also the initiative, concerning mailings of public expense was taken I think also from that 200 threshold and I guess I've been listening to this and thinking about you know the issues, you know obviously AB249 was adopted, you have to follow it to the extent that it's explicit about that, but the provenance of the term public communication and that is something that was really pulled in from federal legislation without thinking about the fact that you had something specific like a 200 threshold, that you had adopted as one for mass mailing communication, so I do agree that you know clarifying what public communication is in the context of all these different types of communications that are now in play, is important. I would just say and there's also the problem I think that this evidences which is an endemic problem to the Political Reform Act, which attempts to regulate both local and state political activity, is that you you know you have different consequences of the same rule that are going to apply at the local level, from the consequences at the state level. Almost I can tell you virtually every that we've ever represented, is carefully advised about the necessity

to comply with these disclaimer requirements, because of the onerous consequences that can be applied in the penalties which can be enforced if, if you fail to comply, usually failure to comply at the local level is based on abject ignorance of these rules and you know not with any bad faith or intent so maybe there's a an out in for enforcement, but I would say the problem with getting a 1 threshold in, in effect, no threshold, is that if you thought you had unenforceable issues at the higher level you've got massively unenforceable issues if this Commission is going to be asked to police when even a small committee, \$2,000 threshold puts out something that's arguably or not a mass mailing or an electronic communication, you've got an even greater problem for enforcement here. So, I think it probably is worth a legislative fix, and I don't really have a dog in this fight I might litigate this issue at some point, but at this point I don't have a dog in this fight, but I would suggest that it might be prudent to take the Commission's recommendation and maybe that's a signal to the legislature. I don't think they're gonna need many signals because they're here.

Chair Remke: Thank you, additional public comment?

Bill Walzer: Hello, my name's Bill Walzer and I think we're counting. I'm here to talk about lawn signs, because I use those and it's not two hundred signs, it's the fact that I'm hoping two hundred people see my sign, so I really think one is the number for lawn signs and six square feet, I've never seen a lawn sign that big. My neighbors would object to that. Our signs are half that size and I really think it's important that they not have lies on them, like the committee against unfair taxes, which was really 3 biggest tobacco companies and how they defeated a proposition recently. I don't want that kind of untruthfulness on lawn signs. Thank you.

Chair Remke: Thank you, additional public comment?

1:10:00 Jack Blattner: Hi, Jack Blattner with California Common Cause. We at Common Cause were strong supporters of AB249 as it passed through the legislature and we've long supported the disclose act goal of improving disclosure on all ballot measure and independent expenditure ads. From our perspective, as from the authors and sponsors perspectives, that means not having loopholes for printed ads, direct mail, mass emails, or what other kind of communication just because they're produced in quantities of fewer than 200, exempting certain communications produced by campaign committees runs contrary to AB249's text and intent. One of the primary purposes of AB249 was to create uniform predictable disclosures that voters could easily identify on advertisements exempting certain communications from AB249's requirement creates two reporting rules and potential for unnecessary confusion as voters won't know whether an ad with disclosure is in violation of disclosure rules or produced in a batch of less than 200. We also fear that the enforcement of the 200 copies are fewer provision would be difficult, if not impossible. For bad actors the 200 copies are for your requirement, would be easy to circumvent as committees could print in house with little possibility of auditing or use several different vendors or batches to make counting print runs difficult. For these few reasons, we echo Assemblymember Mullin and the California Clean Money Campaign in respectfully requesting that the Commission reject proposed options 1 & 2, and instead adopt proposed option 4. Thank you.

Chair Remke: Thank you, additional public comment?

Craig Dunkerley: Hello Commissioners, my name is Craig Dunkerley. I'm a longtime volunteer with California Clean Money Campaign, but today I'm gonna be reading a statement from MOVI M-O-V-I: Money Out, Voters In. They were not able to be here today, MOVI urges the Commission to not adopt options 1 or 2, for the definition of advertisement, which would exempt certain communications under 200 pieces from the California disclose X disclosure requirements, that MOVI feels that would complicate matters for some committees including their own that they operated in 2016. It was a grassroots campaign, with enough decentralization that it would not only have been nearly impossible to find a way to track who was printing what, and how many, but try as we might we likely have been unsuccessful in trying to do that. More troubling to us however is that a well-funded campaign with donors who would prefer to remain anonymous, what they might do with this 200-piece exemption. A sophisticated committee could use micro targeting with direct mailings of 200 pieces here, 200 pieces there, 200 pieces there, each one slightly different so that they were not substantially similar and by doing that reach thousands or even tens of thousands of voters. MOVI is sure that the exemption well-intentioned, but imagining the ways that it might play out during an actual campaign alarms us and does not, we think reflect the intent of the California Legislature when they passed AB8249, nor the wishes of California voters who work very hard to achieve this major disclosure bill. MOVI therefore would urge the Commission to not adopt options 1 or 2, and as we're sure you will give very serious consideration to this matter. Thank you.

Chair Remke: Thank you.

Nancy Neff: Good morning, good morning Commissioners. Thank you for your public service and thank you for listening. I'm Nancy Neff from Palo Alto and I did work for seven years to pass the Disclose Act. I became a regional coordinator a few years ago, and even though I'm a volunteer it's pretty much like a full-time job for me sometimes of year. I trained a lot of volunteers and talked to a lot of groups and the general public about the Disclose Act and I've heard a lot of questions about it. Only one I can think of relates to this issue. Ralph Wheeler said, "Every election he writes up a flyer to give to his neighbors about what ballot measures and candidates he's voting for and is he going to have to deal with all this disclosure stuff?" I said, "Well are you gonna spend \$1,000?" He didn't think he'd get too close to \$1,000, so I said, "Okay you're good." It never crossed my mind that we should be looking at exemptions of 200 or anything like that, I'd really never heard anybody talk about that issue at all including talking with legislators, but the regulations that were talking about today, we're talking about campaign committees and campaign committees should know the rules and some of them may be looking for ways around the rules. It doesn't make any sense to me to exempt certain things from the disclosure. What if they do a thousand dollars or fifty thousand dollars worth of direct mail with disclosure on it but then make 200 door hangers? Why shouldn't that disclose them? Over the past seven years the biggest concern I've heard from the most people, is how are you going to keep them from getting around this and I urge the Commissioners to make disclosure apply as far as possible to all ads not just some of the ads by committees and to please reject options 1 & 2. Thanks for your time.

Chair Remke: Thank you.

Andrews Angally: Hi, Chair and Commissioners. I'm Andrews Angally. I'm the policy director for California Assembly Speaker Pro Temp Kevin Mullin. I appreciate the opportunity to briefly address you on his behalf today. First, just thank you to the staff and Commissioners for the considerable work on this and I'm definitely enjoying the, the dialogue and the debate. Actually stepped out just to make sure after everything that's been said, I'm gonna stay on message here cuz it's been a good, good discussion. Um the, the comments that Assemblyman Mullen wishes you to consider were stated in a December hearing by one of my colleagues and submitted via letter, so I won't rehash that. Just to address things as they stand now, it is the assemblyman's message that in the conversations on the bill AB249, a specific number of threshold was not included nor understood to be included in this regulation, so we would ask to reject the options one or two. It would be in more line with what the Assemblyman and his colleagues understood the bill to be. to not have any of those threshold numbers. so please take that into consideration and again thank you for grappling with us. We know it's a lot of work to—

Chair Remke: And then what about option 4, what's the assembly members position on that with the 50?

Mr. Angally: He just give, wishes he wishes to be consistent with with the prior comments that we made to the Commission which was that no, no number was discussed or understood between he and his colleagues at the time of debating and amending and passing the legislation.

Commissioner Hatch: Excuse me and follow-up.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: Did does he mean then that that, they were sort of leaving it up to us to decide that should there be a threshold and if so how high or is—

Mr. Angally: No

Commissioner Hatch: Or is his view is that there should be no allowance?

Mr. Angally: The latter or consistent what I understand.

Commissioner Hatch: So, his view then if it to put words in his mouth would be that as the term was zero or one on all these that are, we did 200 or, and option 4 would be some of them than fifty, his just to be clear is it on all of them the 200s and the fifty or—

Mr. Angally: Right, so...

Commissioner Hatch: Those categories of fifty

Mr. Angally: Yes, so they they did not discuss at the time of the passing the legislation, they did not discuss having a threshold on on any of those. So I recognize that you're, you're doing the real now you know subsequent additional work on that and I I'd respect that but to be consistent with their conversations on this bill, there was no parsing of communications of you know this one will have two hundred and that one, I'll have fifty that that or anything I can't, yeah I can't state that that was on his behalf that that was part of the conversations in the legislature.

Commissioner Hatch: So, his view is that we should have no allowance

Mr. Angally: Yeah, that would be consistent with how the bill was passed and in their mind in his, in his mind with his colleagues.

Commissioner Hatch: Right okay.

Commissioner Audero: I have a question

Chair Remke: Commissioner Audero.

Commissioner Audero: So, to get to zero or one right, the first one out the door has to have the the language, that would take rejecting off options one, and two, and three, and four, right? I mean you're just basically saying don't regulate this because the law itself is clear. Are you saying no regulation is, is the outcome that warranted here?

Mr. Angally: I hesitate that, that was not the the message that I was authorized to state. It was merely that a threshold was not discussed and therefore we would reject the, the options with the **1:20:00** one and two with the threshold, even you know 50 or other numbers. Those were not discussed in the legislature, so I don't want to, I appreciate where the questions are coming from but I don't want to then evolve the statement that I am here to make you know, yeah even as I would like to you know answer your question as best as possible.

The live stream experienced technical difficulties and roughly ten minutes of the feed was without audio. The time on the YouTube video where the audio is cut out is 1:20:24 – 1:31:05.

Public Commentor Unkown: You you is and talking to legislators just being a regular good citizen I hope and this thing is, everyone I talked with in the campaign activists, just they don't understand that it's just uncover everything. I could go into more detail, but there's a lot of better, a lot more better people. I can explain that to them than me and all to just be there I guess I could make a side comment that because I'm doing media stuff for Santa Clara County Democratic Club and it's a County Club and we're emerging and having impact in some small ways in elections, I can tell you the folks that I'm with, there's about 300 dues paying members, another couple thousand on email listen they're just too cheap to pay to be a member, but we haven't hallway forward to get them to participate right, so we're actually my you know no one would look to take advantage of a loophole with the people, I were with but hey the Koch brothers are testing the idea of coming in and impacting city council like elections. Will the Koch brothers

take advantage of a loophole? Well I don't know where that's headed but it happened. Reported in the New York Times.

Chair Remke: Thank you.

Lynn Heidi Cofer: Hello, my name is Lynn Heidi Cofer and I am a resident of Manelo Park, politically active nurse and I remember going back seven years ago, when it was Senate bill 52, Jerry Hill and Mark Leno in testifying and we, Trent, can give you the number but that year we presented I think it was 40,000 signatures and my Democratic Club, every time we did voter registration had people sign the Disclose Act. There are thousands of Californians that want this and now that I've heard about 200 as a threshold would harm smaller districts and cities, I'm going to ask you to consider three or four, thank you.

Chair Remke: Thank you.

Sherry Fitzgerald: Hi, Sherry Fitzgerald from Vallejo California Citizen Voter. Commissioner Hatch

1:30:00

The live stream experienced technical difficulties and roughly one minute of the feed was without audio. The time on the YouTube video where the audio is cut out is 1:33:35 – 1:33:48.

Sherry Fitzgerald: you I want to ask that you reject number one and two and if you have to go for option three or four, but a 200 threshold, I've been out gathering petition signatures with several other people for AB249 and the intent was not to have a 200 threshold and we spoke to thousands of people and god, explained to them AB249 and the intent of it and after our explanations, they all signed in very easily and we never talked about our 200 threshold, so that's all I wanted to come up here and say.

Commissioner Hatch: Thank you.

Chair Remke: Thank you, any additional public comment? Trent, I know you wanted to respond to something.

Mr. Lange: Yeah, I just wanted to add after Assemblymember Mullins staffer, Andrew spoke that, option three would fit the assembly members' conversations that there not be any threshold and, and we are quite happy to have option three. I mean that really is our preferred option, we offered option four and the spirit of compromise and the desire to have a bright line, line test. We think as you've heard here today and I'm sure there's many, many more people that feel the same way, that just didn't come here today. Option one or two was the 200 threshold all across all those types of communications would be really, really, really bad, so either one of those options if you do choose option 3 as we discuss it, would probably want a little bit of clarification what counts as general public or what's a private communication on email and direct mail but that's just a suggestion, and happy to take any questions that you guys might have.

Chair Remke: Commissioners any questions for Mr. Lange?

Commissioner Hatch: No question.

Chair Remke: Okay, any comment? Thank you. Any comments from Commissioners down at this end? Just thought I'd—

Commissioner Cardenas: Because I have the coffee the first I'd well. Generally, I I think I think option three is as, as the option that is most consistent with what I understand to be the the spirit and the intent of, of the disclose act and so I'm going to I'm going to speak toward, toward its toward its, its passage here. First I want to offer my thanks to the people who came here from from near and far, mostly a little more far, than their it's been a long time since I felt like I felt the presence of Thomas Paine and, and that this is a this is the most heartening discussion I've I've had and the three meetings that I've, I've had the privilege of sitting up here so far. I I think one is a bright line, I think one is very bright and so in this context I believe in the power of one. 2002 was a hell of a long time ago, Facebook didn't even exist in 2002, much less the the myriad ways that we are finding it seems by by the hour or the minute that are just being used and misused and abused in this country and beyond toward toward our collective detriment. I I just I just want to put on the record a couple of things because someday, particularly if the if the legislature does not clarify more specifically, its its intent that that that any number what what suffice with respect to two staff's memorandum. I just want to state for for what it's worth. yeah my own preference and in current intent to vote for option three is is not predicated on my understanding of legislative intent through Assemblymember Mullins communication, I am aware that there are there is some precedent for the proposition that that statements of legislators, even authors of subject legislation, is is not necessarily to be seen as legislative intent representing the the intent of the the collective body, and and so I understand that and and I just want to suggest for the record depth that for my part it's my my support of option 3 does not does not rest on that. Although I did I did take take notice of it as as I do the representations of what would what has been the intent of quite apparently many thousands of people across the state who have labored for far too long, to to get the disclose Act such as it is, I mean many of us would would rather that there be something more more robust, but it is what it is and we got what we got after, after your after your years of hard work. What would I what I do want to suggest is it seems to me that that ultimately if this is reviewed someday, it may really come down to the the nature of an understanding of the the substantiality if you will, of their relationship between option 3, if that that carries the day to day and what is what is understood to be the legitimate state interest that's at stake here, and so I want to I want to speak to that briefly. For my part it seems to me that that there are three things that that are are driving a fair gravitation toward option 3, and before I go any further I wanna I want to thank Ms. Lasher, I found I found option 4. **1:40:00** Thank you, I appreciate it, you put it in the right place that's why I didn't look for it. Three things I think I think drive a a respectful moving away from the the 200 from the 200 limitation, to the extent that that that it qualifies as a principle of law in the first instance, I mean to the extent that County of Los Angeles versus Frisbee is still you know all these decades later still you know that's still controls, and I assume it is because it's it's in it's in the memo, but but it's it speaks to principles of law. Right? And and I don't know

that you know 200 vs. 201 or 199 rises to the level of being a principle of law, but in any event I want to speak toward the the compelling state interest because I think that that also has evolved over time and the way that it has it has evolved is I think an informative I hope on on this body. First the technology has changed since since 2002 dramatically, I'm not even qualified to go through a litany of how it's how it's changed I think Facebook came on in like February of 2004, my iPhone, any anyone's iPhone did not exist in in 2000, 2002, and and what we can do with it and the wonders that we can do with it and the horrors that we can that we can exact with with technology that's come online in the last 16 years is is incredible. Secondly, for my own part it seems that the audacity with which some actors are prepared to do violence to our democratic institutions and traditions has grown, and never in my life have I seen such a disregard for the rule of law, as I have in these last couple of years in particular and third, is the globalization of the of the nature and identity and scope of those who would seek to do harm to our democracy. We have we now have our under threat, I'll call them later—

Commissioner Hatch: that was my wake up

Commissioner Cardenas: Wake up dude, we're, we're under threat from near and far, and and I I would rather that that every communication have, have a you know a requisite informative statement on it. If it had, and some of my more recent comments wouldn't be wouldn't be wouldn't be appropriate or helpful because many of us would have seen about a year and a half ago emails that said brought to you by friends of Vladimir Putin and we would just know that we were being duped but it's it's that type of technology, it's that type of audacity, it's it's the globalization of anti-democratic action that I think has has heightened our need to see our legitimate state interest in providing disclosure and providing information to people who want to participate and what's left of our democratic institutions. That state interest is now it seems to me more compelling to another, than ever and so option three seems like the best option before us today and I think we do need to act. The legislature is apparently preparing to provide some clarification, but we saw how long it took just to get the Disclosure Act and so let us act today with the logic, what the legislation that is it in front of this body right now.

Chair Remke: Commissioner Hayward

Commissioner Hayward: And now for something a little different. I still tend to be and and and I thought the staff did a great job explaining why option one is really the option that we should be pursuing today if what we are doing is adopting our regulations to affect reflect the passage of the Disclose Act. The Disclose Act doesn't say anything about thresholds one way or the other, we had a long-standing regulatory standard the Disclose Act does specifically leave to the FPPC, the ability to not include under the definition of advertisement quote any other communication is determined by regulations of the Commission, that's sub F of 84501 whatever it is. Nevermind, anyway, I fully can believe that people who worked on the Disclose Act thought that there were no thresholds because the thresholds were in the regs and no one pointed them to the regs. But, it is what it is and so I think our today our task is to bring our regs up to date with what the Disclose Act did do, and did say, and then if the legislators believes that thresholds were something that nobody understood to be part of the law and oh my gosh, why didn't the Senate committee report talk about why this, why didn't the assembly committee report talk about this,

nowhere in those reports and those analyses that legislators were using was the notion that we would not have any threshold or that numerosity was even an issue. It's just not there, so I'm in favor of option 1 today with the recognition that if the regulated community feels like thresholds in this day and age are super inappropriate, then let's do let's notice that reg, let's not do it at the you know 11th hour of the last reg that we really need to pass today to get the Disclose Act fully incorporated in our regs. I also, this is just an aside thing, but I'm curious when people talk about well somebody might make a flier and then somebody else makes a bunch of copies of the flier. Well then the the disclosure on the bottom for who paid for it isn't accurate anymore ,because it's the individual who made the copies and they're not a committee or maybe they are committee if they've spent \$1,000 on this and then they become an independent expenditure or if they're really rich, a major donor committee, because by the way individuals can become committees in California. It's crazy, but it's true. I think that's all I have to say. I, you know I just I just I just don't see in the act Legislature passed, specific intent to undermine an interpretive read that it has been there for a long time, and I think you really do need more than sort of post talk, well that's what we thought we were doing, even though I take that to be sincere that that is in fact what you thought you were doing. That's it.

Chair Remke: Commissioner Audero.

Commissioner Audero: Thank you. So, like it's a big question of course is how do we interpret silence and what I personally would rather have happened here, has no place as far as I'm concerned in this analysis and and I say that because I'm persuaded that AB249 is clear in its silence and and and I believe and I interpret its silence to mean that there should not be these to this 200 threshold. I think, I think to regulate otherwise is inconsistent with AB249 and I and and and that is something that exceeds our authority as as a Commission, so that's how I'm looking at it. I guess I'm left between three and four, I really I'm just not seeing four, so those are my thoughts.

Chair Remke: Commissioner Hatch, anything more from you?

Commissioner Hatch: Yes, thank you Chair. Excuse me, try not to belabor this too much as the person who asked for staff, to staff up an option three some months ago, I certainly support that over any of the existing ones. I'm really troubled by having any thresholds at all and that's the closest I can find to that before us not having to go back to the drawing board, and so when it's appropriate I'd like to make a motion to adopt a option three.

Chair Remke: I just have another question for you Karen, because I'm just I'm trying to understand the concerns with option three and what that leads us open to, because there's definitely in the memo a notion of concern, when whether or not something is going to be
1:50:00 deemed public or general communication.

Ms. Harrison: So, the overall concern with option three is that it may not meet the exacting scrutiny standard. What it does is, it puts the Commission in the position of making a case-by-case analysis of communications to determine whether or not they're of a public or general nature, such that they otherwise meet the definition of advertisement. Then the result, is that committees will need to try to comply, where there isn't a bright-line rule, and in trying to

comply they will be burdening their free speech with disclosures in a greater fashion reaching more private type communications, less clearly public communications with those disclosures. So, if this were to result in litigation the court would take a look at that result and find that there is less of a relationship to the state interest and the state interest here is the State of California's interest in informing voters of attempts to publicly sway opinion, so that that's why that that public element is an important element because if you're reaching more private type communications, you're not really matching that state interest of informing voters. So, with that in mind, the court may determine that the section is not constitutional, not just the regulation but the section, as as its resulting in its application.

Chair Remke: And, just to follow up it, when you look at the different categories we have an existing regulation, this seems to be the biggest issue with electronic communication. Is that fair to say or am I looking at that too narrowly?

Ms. Harrison: I'm sorry. Are you, are you could you clarify your question?

Chair Remke: Just because we have I mean we've talked about door hangers and flyers and yard signs and billboards and a lot of people are saying of course that's political. Of course, that's what the intent was and it should be on there, whether it's one or not. And the only fuzzy area I'm hearing under existing reg, people are saying, there might need to be a limit, is on email communication.

Ms. Harrison: Emails are a great concern, because when is an email public and when is an email private? But, I would say you take that same content and you print it out on a piece of paper and you hand it to a friend and it's very similar to an email communication, so I would say that I see the concerns in emails. I also see it in a direct mail, which could be a thank-you card sent to somebody. I also see it in the printed material, that is designed to be individually distributed.

Chair Remke: But, again by committees?

Ms. Harrison: Yes, but again the committee's can be individuals. If you're a major donor committee you're an individual and you may or not may not be sophisticated

Chair Remke: Okay. Do you have a follow-up question? Commissioner Audero.

Commissioner Audero: Yeah, I did. So, I apologize if it's in your memo. I inadvertently did not bring everything I printed. So, I don't have it in front of me, but so on what basis are you saying that option three may not meet the exacting scrutiny standard, so are you relying on case law or you what what what case law are you relying on?

Ms. Harrison: The exacting scrutiny standard is case law from US Supreme Court, and examining that case law and the requirement that there be a substantial relationship to the state interest. I'm applying that test, there's been a number of cases that have followed the exacting

scrutiny standard and Doe v Reed is another example, so so it's an application of that case law but I'm not sure I'm answering your question.

Commissioner Audero: No, I I completely understand the source of the standard.

Ms. Harrison: That I would imagine—

Commissioner Audero: My question was a little bit different, my question was is there case law on point that you are relying on to say that option 3 may not meet that standard? On point, I don't mean completely unrelated, I mean on point.

Ms. Harrison: I think Commissioner Hayward has a comment.

Commissioner Hayward: McIntyre V Ohio Election Commission.

Commissioner Audero: So so what was that what was that case?

Commissioner Hayward: Mrs. McIntyre was that a, I think it was a school board meeting when they were talking about a bond and she had printed up flyers on her position on the bond. I don't remember if it was for, or against, I think it might have been against. Ohio is really good, by the way, at generating these kinds of cases because Ohio's been at the forefront of coming up with aggressive ways to regulate free speech and gets knocked down the court. Anyway, so there's Mrs. McIntyre with her flyers and somebody comes up to her from the court, I guess and says you can't do that and she says yeah, I can, it's public and then they took a flier and they realized it didn't have a disclaimer on it and they filed a complaint with the Ohio Election Commission. And it went to the Supreme Court, because Ohio said yeah, you know, for those little casual fliers that you were standing out that you put together on your own yeah you had to have a disclaimer on it, that was Ohio's position and they lost.

Commissioner Audero: And, they lost? Sorry, so I I'm not following.

Commissioner Hayward: Ohio was enforcing a disclosure requirement against these casual fliers. It went to the Supreme Court. Mrs. McIntyre prevailed in Ohio, Boston.

Commissioner Audero: Right, so well.

Commissioner Hayward: But, you know it could have been a committee. In Ohio, ya know how it didn't matter.

Chair Remke: Okay but, here it does.

Commissioner Hayward: Okay, so if you're looking for a California case of somebody with casual fliers there might be one out there but McIntyre's, the Supreme Court one, that holds the level degree of scrutiny is not you know it's not furthered by having people who are doing casual hand out fliers, have to go through the rigmarole that we put the people through.

Commissioner Audero: Okay, other than McIntyre is there?

Mr. Lau: I don't have the the sight on me right at the moment there's also another case where the it was a disclosure of a committee, the disclosure required an extra extra verbage it was and the court found that because the law required a disclaimer, that was 250 words when 125 words would have sufficed, that that will increase in the burden of free speech was enough that the statute requiring that long disclosure was unconstitutional, so there's just these I mean there's nothing directly on point of what we have before you today, but there's just precedent that when you start moving towards those lines, that start restricting or requiring burdensome disclaimers that they could be problematic, so all we're trying to point out is that there is a risk in adopting no thresholds.

Commissioner Audero: So, if you were a betting woman, would you bet your house on it?

Ms. Harrison: That option 3 would pass exactly?

Commissioner Audero: That would not meet exacting standards. Would you bet your house on your position?

Ms. Harrison: I don't think it would mean exacting scrutiny.

Commissioner Audero: Would you bet your house on your position?

Ms. Harrison: Yes I would, and I have a lovely home.

Commissioner Audero: Okay, you bet your house, that's fine. Okay, that's that's what I wanted to know. Thank you, not know whether you would bet I wanted to know about the case law. Thank you.

Commissioner Hatch: Chair Remke.

Chair Remke: Commissioner Hatch.

Commissioner Hatch: I believe, I heard more than once today from proponents of AB249, that they took an amendment in the process, that would apply this only to committees not to individuals, and I hear that you as someone who's got the resources could spend enough money to become a committee, but up until they spend that money, they're not a committee and this would only apply to committees. And, I and I think there's a third party to this, that the court has never had before it that's a balancing of the public's right to know versus the state interest versus the private interests that one and not disclose and maybe this is the time and place that you put that before the court, so the only way you get there is if you adopt something that might attract that legend, litigation.

Ms. Harrison: Are you asking me if the Supreme Court has looked at committees and disclosure requirements?

Commissioner Hatch: This this law as distinguished from Ohio only applies to communications by committees. That's far different than the Ohio standard, which was everybody, no matter how small.

Ms. Harrison: Ohio is a different case and and the authority that I'm citing is Citizens United and Doe V. Reed and the exacting scrutiny standard which is actually a little different than the standard that was applied in Ohio, which was an earlier case and in a different case on its facts. So, you're correct it was different on its facts but in this context, the exacting scrutiny is still the applicable screws, standard of scrutiny

Commissioner Hatch: So, again whenever, Chair you're ready I'd like to make a motion.

Chair Remke: Well any further questions from the Commissioners before the motion? Okay, Commissioner Hatch?

Commissioner Hatch: I move that we adopt option three.

Sasha: Commissioner Audero?

Commissioner Audero: Yes.

Sasha: Commissioner Cardenas?

Commissioner Cardenas: Yes.

Sasha: Commissioner Hatch?

2:00:00 Commissioner Hatch: Aye.

Sasha: Commissioner Hayward?

Commissioner Hayward: No.

Sasha: Chair Remke?

Chair Remke: No.

Sasha: The Motion passes.

18. Discussion of Changes to Enforcement Streamline Programs. Staff: Chief of Enforcement Galena West. In response to Commissioner Hatch's request to revisit the streamline programs penalty structures, specifically the late or non-filing of campaign statements and reports penalties, the Enforcement Division presents information to

facilitate a discussion of changes to the existing streamlined programs.

Staff Memo

Chair Remke: All right, so the next item 18: discussion of changes to the enforcement streamline program by Miss West.

Ms. West: Good afternoon, Galena West, chief of enforcement. I'm sure everyone's still staying for my item, right? Yeah, yeah sure. I'll give a brief introduction and then if Commissioner Hatch, who I brought this item at his request would like to make comments as well. What I've provided today, is a, an item to start the discussion about streamline, so the streamlined memo which we refer to ad nauseam that May 2015 memo, is is when we first consolidated all of the streamline programs and put them in one place. And so, the intent of that was to be able to look at them in a couple years and say you know what's working, what's not working, what needs to be included, what shouldn't be included, that the Commission thinks is too egregious to be in the program and so, that's what we're starting that that process now. My suggestion to the Commission as you see in my memo, is that we talked about the scope of review and give the public some idea of what the Commission is looking forward to change and then have an interested persons meeting where the public can give input, which I don't think iss generally happened in the streamlined program in many, many years, so I think it would be really constructive to hear what is working in the public's eye, as well on the streamlining program. So what I propose the Commission discussing today would be: including additional violations or excluding any additional or any violations that exist now, increasing or decreasing the penalties, increasing the thresholds, an example of that would be the threshold for campaign non-reporting is 25,000, whereas in the governor's race its... and I had it on a post-it, and the governor's race its 32,000? Here it isL the governor's race is 29200 and for political parties for state candidates, it's 36,500, so just making one of those contributions what already excludes you from the streamlined program as it exists now and then increasing, their decreasing the look-back of five years from the last behavior occurred as a right to qualify or requalified for the program. So, those would be my suggested areas for scope, but obviously you can talk about whatever interests you or you found as an issue or a problem or something you'd like to address. I don't know if Commissioner Hatch has anything you'd like to add.

Commissioner Hatch: Well first to thank you, for bringing this back in a form that I think is reasonably understood and also gives us an opportunity to put more cases in the in the stream if you will, and of on page two, of the items that you offer up for consideration, for adding to the streamline. I think all of those are good, except perhaps, the slate mayor organizations. To basis this, I think two different reasons one as I understand that there are very few of those cases that that come before you and enforcement, and the other is that slate mailers organizations by their nature are folks who are paid to deceive the public about the source of the information, so I'd like to leave that off the list if you don't mind. And, some contacts here, these suggestions will be taken into consideration, you may come back with something different.

Ms. West: It's not in the future.

Commissioner Hatch: Yeah, thank you. So, having step past that, I agree with you on the differences in terms of these categories with the party and the statewide elections and so we should restyle this in a way that you can take those into consideration, depending upon the venue that or that they're in. And, I'm not sure it takes some interesting writing, it might be getting too complicated but I was thinking that there may be a way to make a reference so that these would adjust themselves because all of these limits outside this policy are automatically adjusted.

Ms. West: Sure.

Commissioner Hatch: So, I don't think that that should in itself be a reason for us to come back and redo it.

Ms. West: So, you're referring to the cola adjustments that happened to the limits?

Commissioner Hatch: Right.

Ms. West: That they would eventually exceed whatever limit

Commissioner Hatch: right

Ms. West: We said.

Commissioner Hatch: And, I think that when we talk about small amounts of criterias of small amounts of cash contributions received or expenditures made. Small, as a term, is kind of general so I would like you to come back with a number whether it's 100 or 500 or whatever seems to make sense, what was in your head when when you could just you said small and similarly with the one bank account rule. Pick a number so that it's clear.

Ms. West: Okay, well no what do you as a Commission prefer numbers or percentages or do you see a value and both being presented as options?

Commissioner Hatch: I'm open to percentages because I know that there's it's difficult to apply one rule to these teeny-tiny elections, that were on the list that was supplied earlier but you know the whole campaign may be you know a thousand dollars and whereas somebody else's spending ten million dollars on a campaign, so you I think I'd encourage you to look at it and see if you think that there's a way to to do that. And, I think generally in each of these categories we should have you know a number, or or a scale, and I think that in the, as I saw in the statement of economic interests, current provisions and I thought and some of the others, there were the term under review is used in the context that, in order to qualify to be considered in the program, the the filer has has had has to not have had other violations under review, and that is also a bit difficult to understand. So, I by the way commend you on the the draft that you posted of an enforcement policy and within that I noticed there was quite granular, there's a various steps, they're clearly articulated, I would like you to pick one that you think is appropriate and I'd say that if it's not reached that level then they can be considered.

Ms. West: I see. Complaint versus case, basically.

Commissioner Hatch: Right and there's several other steps that I was not aware of until I started reading that this last night. They and in terms of your experience in this policy, you write the mitigating circumstances this is no longer in office, illness or other extenuating service stances, have you developed over time with experience kind of a sense of what those kinds of things are and and do you think it would be appropriate to give them as an example so in you know like including but not limited do kind of things?

Ms. West: They're, they're kind of one-offs well, I guess not one offs cuz one of them is you died. We didn't really want to put deceased, but but some of them are one-offs, like um on the run from the FBI and we're not gonna pursue the case. Yeah, it's it's like these very odd the little circumstances that the resources don't but I could try to come up with a little.

Commissioner Hatch: If it, if it doesn't seem feasible and I understand.

Ms. West: Okay.

Commissioner Hatch: And we talked about the \$25,000 limit and the other limits so we can
2:10:00 work on that, and then the bottom of page three under C, campaign statement reporting on filer additional factors, D of the majority or a large amount of contributions were not disclosed prior to the relevant election. What would you consider to be large contributions? Is that something that we could apply some kind of a scaled? A large amount is standing by itself, is kind of subjective, each person who might want to work on this, might come up with a different number.

Ms. West: Yes, that numbers generally what would the Commission freak out about if it wasn't disclosed before the election. But I'll try to come up with something more definite than that.

Commissioner Hatch: What would Hatch squeal about? On page four, see they're both on the campaign committee provisions, repeated both you have a one-thousand-dollar limit that's not a limit—

Ms. West: where

Commissioner Hatch: —one thousand dollars of activity unreported

Ms. West: Oh, at the top

Commissioner Hatch: I forgot what is the threshold to have to form a committee, in terms of a campaign committee for re-election say or?

Ms. West: Sure, recipient committee, this threshold is now 2,000 so that's something that do this to that 2,000

Commissioner Hatch: Doesn't make sense to have a limit that's lower than that that requires you become a committee, and then I noticed that excuse me microphone, I noticed that in in the two provisions relating to campaign committees and in order to be considered for streamline, you've had not to have received a penalty from the Commission in the last five years. However, in all of the other categories considered including SEI's, there is no five year, it's a lifetime sentence that you couldn't be excluded from, being considered for a streamlined program, so I would like you to evaluate whether or not it would make sense that any of these categories be treated with the same five-year standard or some other number of years if you know if it's more appropriate. I don't, I'm not picking up that and let's see if, then he had a table on the back pay, a couple back towards the back there let's see, wait a minute. This is under on page five near the top, the enforcement has discretion and under says, I'm about on the Agri, this under aggravating circumstances, and then it's towards the end of that sentence, it says the number of reports not only time timely filed, majority or large amount of activity not disclosed. Is there a way to make that more specific? You know large amount; how much is large? Depends on if it's a small community or a governor's race.

Ms. West: Well, this is for state lobbying so you'd probably be the best to give us a threshold at large.

Commissioner Hatch: There's no limit to high. You make a good point, I have to think more about that I don't want to—

Ms. West: Okay

Commissioner Hatch:—top of my head then. On the very last page page six, this is the chart and you'll notice on all three of those charts, on the last page, it's you know an amount of money plus one percent and I think I've squawked about this in the past that we should be making them more of the differences is not enough, so what I would propose that you consider is that we're in the first one where it's you know where your compliance is the highest, it's \$200 would be the same plus it says one percent that's fine. But, when you if you're one of those who doesn't come into compliance until the second category, then it should be four hundred plus two percent, and then likewise at the next level, the 800 plus three percent and then the last category for 1000 plus four percent and that will help to to adjust this, according to the size of the the non-compliant activity and I would do that in each of these charts or that's my recommendation. So, it become one, two, three, or four percent depending upon where they came into compliance.

Ms. West: Okay.

Commissioner Hatch: That's kind of my two cents worth, those of you who didn't fall asleep before you got to this part of the agenda. Do you have any other suggestions, I appreciate.

Ms. West: Any other Commissioners' comments, suggestions for Galena to look into?

Commissioner Hayward: I do.

Chair Remke: Commissioner Hayward.

Commissioner Hayward: I mean, that's me, that's okay.

Chair Remke: I'm falling asleep.

Commissioner Hayward: Oh, come on, thank you. I had just everyone should know that we had an exchange in email and you answered several of my questions but one came up between that and today. Which is do failure to actually to list occupation and employer, fall within the present non-reporter stuff or are we, are they not streamline?

Ms. West: It is. In 2015, we added occupation employer and sub vendor into the 84211, which is the non-reporting stuff.

Commissioner Hayward: But the, though they do report they just is not a complete report and so the the, how do you then deal with the applying the \$25,000 threshold of the total contributions or expenditures? Because they've been reported because we just don't have information should have.

Ms. West: It yeah, it's for the non-reporting, it's \$25,000 that wasn't reported—

Commissioner Hayward: right

Ms. West: — So it's for occupation employer, it'd be it would have to go above \$25,000 of they didn't put the occupation employer properly, so the unreported amount per statement has to be that.

Commissioner Hayward: Okay okay, because because when I read this I read it, and I think but but, the amount was reported, it's just this other information that's missing, maybe we could tighten that up and make that a little clearer. If there are other aspects of the reporting that are the front of foul of the law, then we still count those.

Ms. West: Okay

Commissioner Hayward: as not being reported. That's it.

Chair Remke: Other Commissioners?

Commissioner Audero: I have.

Chair Remke: Commissioner Audero.

Commissioner Audero: So, I have related but a different, different types of questions. I took your 2017 enforcement statistics and double-check them. And then, I took and what I looked at was, what is the breakdown of the total enforcement cases and how does it break down between main main line I guess and streamline? Both as to number of cases, as well as to total dollars of

penalties, and I and I thought you've been in your job for I don't know three years? So, I looked at the prior, the the 2014 statistics and and did the same kind of analysis and what I found was total enforcement cases I think was about the same, 350 in 2017, 333 in in 2014, assuming I counted right but I mean generally speaking, I think I got to the almost the same numbers that you did for 2017 just by looking at our agendas. But, what I found was really interesting, is that and and sorry and the breakdown between mainline and streamline is pretty much the same, give or take a few percentage points. But, what I found really interesting, was that the average penalties for both types of cases and therefore overall, are twice as much when I when we look at 2017, then they were in 2014. And, I am sure there's an explanation like the penalties doubled or you know somebody caused the penalties to double or some law was passed or something, but I'm just wondering what why that is?

Ms. West: I think the biggest reason or the the the law went up to \$5,000, I think back 10, 15 years ago so it's been a while I think it was 2002. So, but I think one of the biggest reason is we started moving the older cases and those were a majority of them were defaults, because what happens is when you get priority set for you and you have to move your cases and you have to keep everything moving, if someone is non-responsive and doesn't want to participate and doesn't want to do, those are the hardest cases to move because they take the most man-hours and so sometimes those fall by the wayside and and don't ever come to the Commission as defaults, and and so I think that we started trying to get rid of the cases from before, that words were sitting and those are higher fines.

Commissioner Audero: But I would understand that for main line, because streamlined don't don't go that far right? Streamlined we're either going to fix it right away or not, there's four opportunities according to your chart, so why would the average penalty in streamline cases in 2017, which I calculated to be 641 dollars about, assuming I counted everything right and be twice as much as what it was the average penalty for streamlined cases, which was three hundred and ten dollars in 2014.

Ms. West: I can't answer that off the top of my head other than until today. Our practice currently, under me is to follow the steps in streamline program, as they are written: meaning tier 1, tier 2, tier 3, I don't know if that was always the practice, to get the settlement.

Commissioner Audero: Fair enough, and then just a question about a streamline and historically, I have been told and could be right could be wrong, so let us know, but I have been told that in the past, we issued a lot more warning letters without penalties then we have recently
2:20:00 and I'm just wondering why that is and in a you may recall that if a year or so ago a few months ago, I mentioned that I had a friend who ran in a very small campaign and was horrified by what happens to you when you make a little mistake, right? And, the resources used to penalize somebody when really I I would rather, I personally the would rather have those kind of resources go to training which we do a lot of, and I think we do a fine job but just the kind of the philosophical approach to number one, is it is it correct? Is it factually accurate, that we were issuing a lot more advisory letters rather than penalizing? Sorry, not advisory, warning letters. Sorry, about that. Number one is that true, and if it is true and if that's easy enough to figure out

right, I just haven't gotten it unlocked but and if it is accurate then why, what's the philosophical difference here?

Ms. West: Well it's funny, because I went through this with a reporter a couple years ago, so I'm kind of familiar with the numbers. What the the biggest difference and the warning letters last year, were over 564 I think it was what the number was, so there was quite a substantial amount of warning letters as we got back to our regular system last year. But, the biggest difference was in what's the exact time, that we changed the regulation for admin term, but it was a couple years ago.

Commissioner Audero: For what?

Ms. West: Administrative termination, so when we started getting the referrals for the \$50.00 program we found out that a lot of these committees were from 2009. The last time they had activity 2005, 1999 and so writing them a warning letter did no good. There was nothing that we were going to get from this, we were gonna get another administer annual fee referral the next year, nonviolent referral and they kind of have dropped off the grid. So, what we did instead is we rewrote the administrative termination regulation and got approved by the Commission in order to expand that program, so the committee's that would have normally gotten warning letters were administratively terminated and then and of course it has a great due process in it that they any reason they were just write to the executive director and she has to reopen the committee if they in are active, in any way they just have to come up to date on their filings, so there was a quite a substantial number. We had a one staff member, that was just doing administrative terminations and full-time, because we had so many. So, that took away from the warning letter program, because these were the smaller committees, the ones that just hadn't filed and and so there was a time when the warning letters had gone down substantially, but the administrative terminations, for those years had gone up drastically and so now we're back to evening out.

Commissioner Audero: Okay, that's helpful and that answers the question. As we go through this a review of the streamline program, I really would like for us to also include in the discussion, you know where is that line for the warning letter versus fining. We're not, I don't see our mission as being the great moneymaker for the state of California. I I personally don't take pride in the large, ooh look at how much money we brought in this year. I I would much rather see smaller numbers because that tells me that hopefully people are doing things right, so I would like to consider I would like a discussion of you know where are we drawing the line for the warning letters? Is that the appropriate line for the warning letters so, that we find the right balance between you know protecting the public from violations, but at the same time now creating a situation where somebody is too afraid to run because run for office, because they're going to be dinged every time they make a tiny little mistake. So, I this is probably not the time for that discussion unless you have some great answer for that, but but I do think that it has to be part of this discussion.

Ms. West: Certainly, and I think that that is what we started to do, when we we wrote the first streamline memo in 2015 by putting in those paragraphs at the end, they tell you this is how you

get excluded from the streamline program, which means if you still had a violation you get a warning letter but so we started the discussion and we're happy to continue it.

Commissioner Audero: Great, thank you.

Chair Remke: Anything? I just want to talk about the proposed process for this, because I think you said you wanted to hear initial feedback from us, and then you would take it to IP meetings is that right?

Ms. West: Yes, I was hoping to be able to say scheduled and interested persons meaning to get the public perspective on the streamline program as it exists. What the Commissioners have expressed, they would like to see we would put it in the notice and then I get their comments and bring them back to the Commission with possibly a draft at that time, unless there's like so many comments that we you need to do sort of a pre-notice of the draft, so just that's the plan. It really depends how much public participation we get, on whether or not I would bring back a a full presentation or not, and then this could also be the bones of it, could be in a regulation if we decided to go that route, so I don't know if the Commissioners have any desire to do that as well.

Chair Remke: Well that's that was going to be my point. I just feel like in the last several years, I've heard several times now, where's the streamlined memo? Where do I find the streamline memo and again to the extent that this applies to 77 percent or more of our cases, I think it would be it would benefit us and definitely the public and the people subject to the act that it were in a regulation. So, I would if it doesn't isn't part of this process, which I think would make sense because it would move smoother if you incorporated the changes that you heard today, you wouldn't incorporate the additional comments that want to be made, and put it in a reg form that could go to an IP meeting. That's what I would propose again, I just not only do I think it's best for again notice due process, I also believe there's some case law that says enforcement policies need to be pursuant to regulation, so but at the very least I do think it's the best way to make sure everybody understands how we're operating and has the same information.

Ms. West: I can look into that as well.

Chair Remke: And then my only other comment, is I would to the extent you can flush it out I would like to see all those cases are proposals on page two added to the streamlined program. I have a little different thought than Commissioner Hatch. I think even if it's a one or two off all the more reason to get through resolved quickly through a streamline, as opposed to a mainline but depending on the workload I guess those could always be added later too.

2:30:00 Ms. West: Just to follow up do any of the Commissioners agree that the fine structure needs to be looked at, as perhaps proposed by Commissioner Hatch or does anybody because the way that a way that I have it structured is as Commissioner Hayward was talking about, non-disclosure versus non filing non-disclosure, you start at a lower threshold amount on filing you throw a higher threshold amount, because the activity is at least partially disclosed. So, I don't know if you have any comments on the fine structure.

Chair Remke: I would just say if you do go bring back the proposal by Commissioner Hatch, to go one, two, three, four percent that you give us some good examples of what that would end up looking like and I'm sure that would be helpful for the IP meeting as well, because I'm assuming the defense bar might have some issues but I but maybe not, maybe that's not that dramatic, I don't know.

Commissioner Hatch: Public comment?

Chair Remke: Yes, but that it for the Commissioners?

Commissioner Hatch: I just I'm kind of excited about this because to me it's an another way that we can untie resources that could be on higher priority cases, that would other you know otherwise take a lot of or otherwise just have to be bypassed because you don't have the resources to do them, so I'm excited by expanding this programming and fine-tuning it. I share your concern madam Chair, about what I call a codification issue, when it's a policy or a memo it's sometimes gets lost track of and if it's a regulation certainly, it's there's things that are required that it be not only published but maintained in a manner that's easily accessible by the public. I personally think that a lot of our written policies the written policies that we've adopted in the past have been lost, so we don't even know what they were, had they been codified you know, like a regulation is. I'm not saying everything has to be a regulation, but I think we need to codify written policies over time, so that we we had the public and in the and the regulated community can find these things so that's my two cents. And thank you very much for this effort.

Chair Remke: Any public comment on item 18? Okay, do you feel you have sufficient direction Miss West, any questions for us? Thank you okay, it is 12:35. We still have plenty of items to go through but we're gonna go ahead and take that lunch break. I would propose that we come back at 1:30 just to keep it clean if that works for everybody. Okay so we'll go off the record and come back at 1:30.

Public Meeting adjourned for lunch at 12:35 pm.

Public Meeting reconvened at 1:30 pm.

19. Review of Enforcement Priorities and Procedures. At the February 15, 2018 meeting, the Commission voted to review its enforcement priorities and create a procedures manual. Commissioner Audero requested this item to discuss and vote on the method for conducting the review, the scope of the review, and the issuance of instructions regarding the preparation of the next steps of the review process, including the launch of the review process itself.

Staff Memo

Audero Memo – Contains Complete Agenda Item

Chair Remke: okay let's go back on the record and we are on item 19 Commissioner Audero you requested that

Commissioner Audero: yes, I did thank you so yeah

Chair Remke: just we do have Adam Silver who prepared the memo

Mr. Silver: good morning Chair Remke Commissioners Adam Silver Commission Counsel at Legal Division I'm here to present on item 19 review of enforcement priorities and procedures at its February 2018 meeting the Commission voted to conduct a review of the enforcement divisions procedures the stated purpose of the review is to inform and achieve the following three goals and please note that I'm paraphrasing one the establishment of enforcement procedures to the reduction of those procedures to have manual and three the subsequent publishing of that manual on the Commission's website in anticipation of the review the Commission asked the legal division to prepare an impartial memorandum discussing the advantages and disadvantages of each available review method I'm here to briefly discuss our findings and answer any questions Commissioners may have before deciding what review what form the review should take but before we delve in our discussion I wanted to quickly thank all the individuals and entities that assisted us in preparing our memorandum they include several members of the California Political Attorneys Association various local ethics agencies and of course our own Enforcement Division I'd also like to highlight that per Commissioner Audero's request we have developed an enforcement review page and the Commission's website the page will serve as a clearinghouse for all materials related to the enforcement review and among those materials currently posted on the page of the draft enforcement manual the overview of enforcement procedures slide show several comment letters in the regulated community and the McPherson report as you know we've identified three methods of review for consideration by the Commission: Commission review, subcommittee review, and task force review and I'm prepared to answer any questions you may have

Chair Remke: Commissioner Audero

Commissioner Audero: actually I don't have any questions right now I will

Chair Remke: Commissioner Hatch

Commissioner Hatch: there's a comment here bottom page five that kind of surprised me that a task force is subject to the open meeting act if it has three or more members and that's and then as it goes on to say or delegate authority I was surprised by that I thought that that unless there's delegated authority that is just like an advisory committee with no standing and

Mr. Silver: so an advisory body with three members and more would be subject to Bagley Keene

Commissioner Hatch: is that right okay

Chair Remke: when you say members do you mean Commissioners

Commissioner Hatch: no

Mr. Silver: no just members in general

Chair Remke: okay

Commissioner Hatch: just people off the street

Mr. Silver: correct

Commissioner Hatch: okay but if they just to pose a question

Mr. Silver: of course

Commissioner Hatch: if a group of self-appointed people came together around a subject and they issued a report and they can't ask to come before the Commission where are they where do they stand

Mr. Silver: so, if it's independent it wouldn't be a state body because it wouldn't be created by a separate state body so the reason why a three person or more task force would be subject to Bagley Keene is because it would be created by the Commission

Commissioner Hatch: right

Mr. Silver: so, treated by a state body

Commissioner Hatch: so if I is a Commissioner or not I can't speak for the rest of the Commission if I just said to a couple of people out there I said gee sure would be nice if somebody put together a Commission or a task force to come make recommendations to us they could do that and they wouldn't be subject to any of the Bagley Keene am I right

Mr. Silver: sure the rule is if there's a advisory body created by another state body there's three or more members

Commissioner Hatch: the reason why I asked that there was a I think it was a task force of people who came out of the regulated community a while back to make some recommendations on things I think it was around the enforcement area but they weren't an official task force of ours to my understanding so maybe that's something we should be considering - put on our list of consideration

Mr. Silver: sure

Commissioner Audero: I have a question

Chair Remke: Commissioner Audero

Commissioner Audero: so where does the number three come from because I thought I thought Bagley Keene is triggered when you have a majority when you have a quorum of the body so three is our quorum right the Commission's quorum because were five but how does the three suddenly become the quorum for what could be a much larger body

Mr. Silver: so I believe you're referring to the requirement for a meeting so the requirement that where I'm getting the number three from is when a body would qualify as a state body for Bagley Keene that could get that statute number for you if it like so that would be Government Code section 11121 subdivision C

Commissioner Audero: right but I'm not sure that's my question so

Mr. Silver: sure

Commissioner Audero: you a body is subject to Bagley Keene if and meaning the notice requirements right and holding public meetings etc if the quorum of that body right decides to hold a meeting right

Mr. Silver: so the distinction I'm looking at is being subject to law versus triggering the actual notice requirements and public meeting requirements so you're talking about qualifying to be subject to it or actually triggering the notice requirements

Commissioner Audero: well both because one as to being subject to it is that a statutory three no matter the size of the body

Mr. Silver: so if it's an advisory body it's three or more

Commissioner Audero: no matter the size of the body no matter the size of the Commission okay so they are subject to Bagley Keene but then whether they trigger the notice this is the distinction you're making whether they trigger the notice requirements really depends on how many people are going to get together

Mr. Silver: right

Commissioner Hatch: and that's independent of the size of the body that -

Mr. Silver: the size of the state body who creates the separate

Commissioner Hatch: no I'm talking about any state body that if there's a hundred people body of Commission on something or other but three of them get together it because it's the magic number three its independent of the quorum requirements right now there's three or more get together it's a meeting subject to

Commissioner Audero: notice

Commissioner Hatch: notice and public this is a form of a question I'm not

Mr. Silver: sure yes so just to be clear a meetings defined under Bagley Keene is any congregation of a majority of the members of a state body at the same time and place to hear discuss or deliberate upon any item that is within the subject matter jurisdiction of the state body to which it pertains so like we said if the Commission were to create an advisory body of three or more they would have three or more individuals then it would be subject to Bagley Keene that wouldn't automatically trigger any sort of notice requirements but if a majority of those individuals got together and discussed something that's within the subject matter jurisdiction it's a notice requirement I'd be triggered

Commissioner Audero: right and if less than half then no and then they can that body can that advisory body will call it can create subcommittees right that depending on the size would not trigger anything a subcommittee that is less than half right would not trigger the Bagley Keene notice requirements

Mr. Silver: sure I want to make sure that I'm not stepping on anybody's toes it's a later item on the agenda just talking about Bagley Keene in general on different subcommittees is that some is that a question Brian or John you want to answer

Mr. Lau: I'm sorry I'm not sure what the question is at this point

Commissioner Audero: If you have an advisory body of three or more let's say 20 people let's pick a number they're now subject to Bagley Keene but if they if they create a subcommittee of nine and that subcommittee meets, that subcommittee is not is not required to post, it's not subject to the notice requirements of Bagley Keene

Mr. Lau: the one instance that i know that we did this in the past, the interpret we found that they did the smaller meetings would not be subjected Bagley Keen, that's correct now I don't know about whether or not an official action to make sub committees somehow triggers Bagley Keen, that's not something we've researched, well yeah as far as the smaller bodies of that larger body meeting, they did do that in the past and as long as the majority weren't meeting quorum of the, quorum of the larger body were wasn't going to meet, then they did not do Bagley Keen in public meetings

10:00 Mr. Feser: that's correct

Commissioner Hatch: okay okay I'm still confused because I get that you know we're a five-member Commission, three or more of us you know, but if we appointed an advisory committee and it's composed of three or more people then they are treated under the same rules as we are then without get into the technicalities or is that correct so and that is that because of the size of this group or is that just the minimum under the law now

Mr. Silver: that's because the Commission is considered a state body under Bagley Keene

Commissioner Hatch: right so any so is it because we're five member or is it or as the law simply say if three or more people you know advisory capacity get together they're required to be subject to those provisions

Ms. Peth: if I may and Commissioner has to answer I think what your question is I know yeah I know it's confusing but you're correct this the statute says if it's an advisory body so created consists of three or more persons so it just happens in this instance that our number of three to form a majority is the same as the statute

Commissioner Hatch: Thank you

Ms. Peth: does that clarify?

Chair Remke: Is there additional questions?

Commissioner Hatch: I just want to get that confusion out of my hand

Chair Remke: Commissioner Hayward

Commissioner Hayward: yeah I just had a remark on the Enforcement Division policy review material. I think something I would like learning more about is the in this, I don't think it's addressed here, but I think it is well within the arena of issues that we could look at which is the aging of enforcement matters to see maybe how that's changed over time how close were abutting to the statute of limitations and how many ever cases and are they big ones, little ones I don't know. I don't I don't know how deep how deep a dive is practical, but but that's something I really seen sitting here as a Commissioner I don't have a very good sense for that I don't have a very good sense for how it changes over time or you know what's done to accelerate certain things because of other reasons and and so that would be an aspect of this I think would be useful to look at thank you

Commissioner Audero: I have a comment

Chair Remke: Commissioner Audero

Commissioner Audero: so I I didn't realize we were gonna get into your exhibits, so I do have comments on this so your exhibit one is the Enforcement Division manual that I think I recall hearing and reading from Miss West, is what is there used to be a manual and Miss West started to to revise it and this this was never as I understand her and correct me if I'm wrong but this is not in use currently correct?

Mr. Silver: nonuse currently? so what it is it's it's sort of a living document it's a draft that Miss West prepared, so the public could be better informed of enforcement procedures but it's still very much open to revision if the Commission felt that was necessary as my understanding but

Chair Remke: Miss West do you want to add anything to the since it is your document?

Miss West: thank you for allowing public comment actually I sped up the process drastically so this is a current document that is in use in enf-, so we did our eight-month project in six days

Commissioner Audero: oh that's pretty handy it's amazing what you can do when you want to really fast huh

Miss West: when you dedicate all your resources on it instead of other things sure yeah so

Commissioner Audero: because the last thing you said was that there was an out-of-date manual and that you had started to revise it but stopped

Miss West: no not stopped it was in process

Commissioner Audero: oh that's you said

Miss West: okay I reread the transcript but um it was in process it was not up to date as of yet as of last meeting either way did you

Commissioner Audero: so it's in the process of being updated and I stopped because once we start this process then yeah we might as well just rewrite it all at the same time

Miss West: I stopped that day is what I was trying to say it was because then it got agendized as an enforcement review so I figured it was going to be reviewed and so I had already prioritized it on as Duty statement of one of our employees previously in the last couple months before that and then I said well let's hold off and see what happens at the Commission meeting and then the Commission meeting happened and then we realized that having at least a quick update done to have a document that we could publicize would be in the best interest of everyone

Commissioner Audero: so this is a manual as I understand it from other people not anything that is that we've discussed this is a manual that was approved in the past by the Commission

Miss West: I have not seen a vote I looked back when bipartisan Commission when were mcpherson report came out they requested a manual I I haven't had at that time to do an extensive review of every single agenda but I did not see it posted on the Internet

Commissioner Audero: well that it wasn't posted doesn't mean that it wasn't discussed but okay fair enough fair enough Mike I I haven't done the review either of the agendas but my understanding is that this was approved but we can set that aside for now

Chair Remke: maybe if we know where that came from or where you heard it was approved

Commissioner Audero: so I have a copy I was given a copy of one that was that's dated April 2014 that is twice as long as yours and that has yeah I imagine that some of this might be out of

date but it's significantly different than yours I mean big important sections that I think are important are gone

Chair Remke: Can we just ask where that came from those who have an understanding of what exactly it is

Commissioner Audero: I received it from someone who asked me not to identify him or her

Chair Remke: is that so what you received a document not we're now discussing but we can't understand where it came from who gave it to you

Commissioner Audero: yeah you can check to see if it ever existed I'm sure you have a record of it

Chair Remke: I've never seen it and I started in June 2014 so that's

Commissioner Audero: okay well this is dated April 2014 in anybody

Chair Remke: I just think it would be helpful to understand where it came from so we can maybe distinguish what stage it was at, if it was approved, who had control over it

Commissioner Audero: in any event, it's different and so I'm just if we can at some point establish and I'm not going to make that effort right now but if the right person comes before the body, our body and gives us it more information that he or she would like to share about this document. I'm just wondering if this might not also be a good starting point because it seems to have more than what your manual has and I think that this should at the very least to be included in the body of documents that is given to whatever workgroup we come up with - to begin the enforcement review process, assuming that gets voted on and we go forward with it so okay so you don't know anything about this

Miss West: I know there used to be an operations plan and I know that it was mostly out-of-date and some of it not true, so I decided to take out the portions that were incorrect, update it as much as possible and try to bring as much light to the enforcement process as a starting point for the overview that we were about to undertake

Commissioner Audero: so what do you recall taking out a section about training

Miss West: I recall we have a section in the current one about training

Commissioner Audero: okay I'll have to look for that, I thought that you did not. okay we can decide what to do with this later but so that answers my question about that

Miss West: okay if we do put it on the website I would just hope when we mark it not current

Commissioner Audero: I'm sorry?

Miss West: I just hope if we do put it in the enforcement portion of the website that we do mark it not current

Chair Remke: or not even fppc I mean I don't know what it is or where it came from

Miss West: I have earlier drafts of the operations

Commissioner Audero: I'm sure I'm sure this exists I you know I it wasn't hidden

Chair Remke: I just don't understand the mystery behind it

Miss West: I you know I it wasn't hidden we weren't hiding it from

Commissioner Audero: okay that's fine yeah somehow I got it let's leave it at that okay I'm certainly I didn't write this

Miss West: I have copies of the old operations plan so

Commissioner Audero: oh that's that's great and maybe you'll find one dated April 2014 and it'll be exactly that this isn't maybe done

Miss West: yes

Commissioner Audero: so one of the things that I read in this and maybe this is one of the things that isn't true, I mean you can you can clarify that but that that there is a training, their training materials in like an I Drive or that there's substantive training materials and procedural
20:00 training materials is that accurate?

Miss West: and that is in the current manual as well yes

Commissioner Audero: okay so is that something that I think that we should at some point, we should start to gather all this stuff and I know that what I requested last time was that you gather and I have not looked at what where it is but that you gather the communications with the public, regarding their prior requests for and for an enforcement process review and I heard that we now have the section in our website so I'll go look and is that what's there now? has that request been completed?

Miss West: mr. silver was working on that so I would assume he could answer that better

Mr. Silver: so it hasn't been completed similar to the to the manual, it's a it's a living document basically, we're collecting different letters that we received over the years from from all over the agency and from the regulated community but we already have a fair amount of materials up there

Commissioner Audero: so are the CPA letters there yet?

Mr. Silver: all of them ever so?

Commissioner Audero: Any?

Mr. Silver: we have yes three different letters

Commissioner Audero: great so is what's in that site just that and I understand that's all I requested. I would just okay so for purposes of the enforcement process review I think that we should and maybe we're getting ahead of ourselves at this point, but gather up all of the documents that exist regarding process and put it in this site or one next to it so that as we as whoever in the body is going to be, has everything that they need. they have all the training materials, they have all the manuals, I understand there's an investigators manual

Miss West: kind of yes there is bare bones of investigators manual yes

Commissioner Audero: okay so you know that should probably be included the training powerpoints, I understand their standard letter forms or I don't know. are their standard letter forms? I think we talked about this last time

Miss West: we have conga templates for certain very short letters

Commissioner Audero: yeah so I think all of that should go in there. are there checklists of any kinds or flowcharts? I know that your materials had some flow charts

Miss West: we there's flow charts in the reinforcement manual

Commissioner Audero: yeah is there are there any other flow charts anywhere, related to enforce my process

Miss West: No, when you're talking about the training also being up there are you talking about our internal subsidy of law training that we give

Commissioner Audero: mm-hmm

Chair Remke: okay I I just I think what should be up there not maybe disputed then, I have concerns of just putting everything in enforcement's docket up on a website and I was guessing that Miss West may have concerns about confidential work product, attorney-client privilege, I mean they are working in a confidential area doing prosecutorial work, so I just think this widespread everything you have, which you learn from somewhere which we don't know, I don't want to just say okay it all goes up without I having to better understand you know what it is or at least an opportunity for you to review it and tell us anything you may have concerns about

Commissioner Audero: and I have an agenda item for that, I understand their concerns I understand that there's going to be attorney-client privileged documents and I understand there's going to be attorney work product and I think that we have to be very vigilant not to waive the privilege on any of that at the same time I think we have to be careful not to hide behind it on things that aren't and so I think that I know that at one point you mentioned last time that you didn't want to share all of enforcement processes, documents I think at one point you called them trade secrets and I think you were joking because I don't think we have trade secrets but and so I think that we we have to be very careful with what we was hold and you know as long as there is a legal basis to as hold it. I completely agree but I think we have to be careful with that and I think that we shouldn't, just I think this is something that we need to review and you know maybe it's gonna require a closed session to review it, especially since we'd probably be and help me out here with mr. feser but if we're going to be reviewing anything that is attorney-client privileged I think that probably a closed session would be an order. is that yes/no?

Mr. Feser: correct

Commissioner Audero: okay

Miss West: and I would also hope we actually look at the value of whatever we be putting up there, as in the substantive law training, I can't imagine how that would inform the enforcement process and its overview but

Commissioner Audero: sure yeah I agree I think that makes sense, I think that makes sense but I think we do have to evaluate that

Miss West: okay

Commissioner Audero: and so anyway I think that so my list of kind of what I envision is, whatever version we have of the last one before you in six days changed it and and then the one that you just changed that I guess is now operational in live a little suddenly, is it?

Miss West: are you talking about the one that we just finish yes

Commissioner Audero: so that should go there I sent a

Miss West: And its operational and live just in the sense that it recites what we do yeah so it's not that we're making up processes and

Commissioner Audero: no I understand okay no I completely understand

Miss West: okay

Commissioner Audero: there was reference to an investigators manual that I think also right as part of enforcement training powerpoints and we can talk about substantive versus procedural but I think you mentioned last time that there were some procedural powerpoints

Miss West: right mr. Bainbridge did and he said that it had been subsumed into the presentation we were making is what the basis for this slideshow that you saw

Commissioner Audero: okay I think you mentioned internal guidelines and I'm just hoping you can clarify what you meant by that? okay so on page 92 of the minutes from our last meeting, Commissioner Hatch asked if there were any procedural requirements in place beyond regulations in the statute and you responded that we have general guidelines and he asked if they were internal guidelines and you said yes they were internal guidelines so I guess there are some guidelines that are being used that I think

Miss West: could you give me the context of that what that subject matter was at that point I was up there a long time

Commissioner Audero: it was not well it's on page 92 so hold on that doesn't tell you what the context is we were talking about

Miss West: subpoenas

Commissioner Audero: yes we were okay yes then there was a discussion about oh contracts with local governments that that I guess have something to do with our enforcement

Miss West: the contract with San Bernardino?

Commissioner Audero: I think it we did talk about San Bernardino I don't remember if it was let me see if I can find that

Miss West: that's the existing current contract that we have right now that's the only one

Commissioner Audero: oh okay okay so and is that part of our enforcement process

Miss West: the city the contract is a public document I believe we've we have it on our website is that correct executive director

Mr. Lau: yes it is on the website

Miss West: ok thank you and so we abide by the contract as it's written

Commissioner Audero: and then apparently there's a thing called a desk manual?

Miss West: desk manuals are common for state positions so the reason that we beefed up the portion of personnel, in the manual, was so that in that way you could see a peek into each desk manual and what each person's responsible for handling within enforcement. desk manuals are merely if you left tomorrow how would the next Commissioner start on it's kind of like your your handbook that you have

Commissioner Audero: so it explains how somebody in enforcement does his or her job

Miss West: their duties

Commissioner Audero: okay but does it explain how the person does his or her job

Miss West: I think you're thinking more in terms of the people doing their jobs as in attorneys and investigators and I'm talking more clerical

Commissioner Audero: so give me an example of a desk manual, what it would contain

Miss West: okay so we have an MSTOT position that's its office technician and their desk manual says this is what you do when you receive the mail. you're responsible for the mail, you're responsible for making sure it's stamped and you're responsible for distributing it, so it would go it does that

30:00 Commissioner Audero: and you don't have a desk manual for people who do enforcement

Miss West: the manual

Commissioner Audero: yeah I'm sorry

Miss West: the investigators the program specialists and well the investigators and attorneys are they do not have a desk manual

Commissioner Audero: okay okay so anyway so I think that those kinds of things should be gathered as part of the documentation that we provide to whoever this working body is, subject to and we can like I said I could we can make this a future agenda item for next month, where you can gather up the documents that you are concerned about sharing with the world I guess and we can talk about the legal basis for

Miss West: sure

Commissioner Audero: withholding them not

Miss West: I would also say I talk to whoever is going to represent us in the legal division about what I can share with you guys as well

Commissioner Audero: huh like what, I'm not understanding your site

Miss West: I'm not ready to answer that question of it

Commissioner Audero: okay so mr. Feser, maybe you can answer what are we talking about that is not being shared with the Commissioners?

Mr. Feser: privileged information I don't know I mean I have no idea what context and I think that's why the answer their answer isn't available

Miss West: I'm just working in an abundance of caution

Commissioner Audero: sure no I understand

Miss West: charlie territories so I just want to make sure that we the ethical wall is is sound and strong

Commissioner Audero: fair enough

Miss West: and I want to double-check what I'm doing with the legal division and make sure that they're in agreement and then we'll proceed from

Commissioner Audero: yeah no and I understand that and this was not an intent to in any way permeate the ethical wall and because I think that those are specific cases that are going on.

Miss West: Sure

Commissioner Audero: I'm not referring to specific cases that are going on I'm referring to anything related to process

Miss West: I don't understand

Commissioner Audero: and and you know with respect to the attorney-client privilege I think we need a discussion of who owns that privilege right because I think the Commissioners as a Commission own that privilege but I'm happy to hear otherwise so anyways that's those are my comments about the memo. I appreciate the fact that this memo was put together, I know that it somehow fell off the agenda item and so I appreciate that legal stepped up and and provided it. I do want to, I have my own points that I want to make but I don't know if this is the appropriate time but how do we go forward and just kind of following my agenda item of what I had requested for this discussion so Chair Remke do you want to proceed a different way?

Chair Remke: well how we go forward I think everyone should have an opportunity to see what they see or say is part of this process so I'll turn to my other colleagues if you had anything else to add or comment on first before we talk about how we go forward about the process or the scope of this or what's been said so far.

Commissioner Hayward: I don't think I have much to add, I mean I had some comments sort of inter lineated but I think that's the kind of stuff that this process is gonna tease out. I don't need to be boring you guys with all that today so

Chair Remke: Commissioner Cardenas, anything from you on this?

Commissioner Cardenas: Not today other than I would I would hope that our enforcement legal staff would keep their eye on the ball and and that is the the work that that you are charged and we are charged under the political reform act to do and so this review work is is not unimportant but what the people are counting on us to do is to continue to prosecute the work that needs to be done

Chair Remke: Commissioner Hatch, anything?

Commissioner Hatch: yes I did have a couple more questions before I get into the ones I wanted to ask though. could you clarify for me did we ask for anything that was confidential in nature? did I miss that?

Mr. Silver: as part of the memo?

Commissioner Hatch: that were requested that weakens

Mr. Silver: so the memo was just as was requested by Commissioner Audero was an impartial, unbiased review of the different available methods for conducting there

Commissioner Hatch: ya know I was talking about your document I was talk about the documents that that Miss Audero asked that may be posted and I I didn't think that these are like client. these were actual cases I thought it was just like procedural stuff about how we do things? is that am I wrong

Mr. Silver: so what we have posted on the website right now are letters from the regulated community. we also have the draft enforcement manual. we have the slideshow that you watched at the last meeting and we also have a copy of the McPherson report

Commissioner Hatch: right but I meant the additional documents that

Mr. Lau: if I may I think at this point we the legal division has looked into the different methods of moving forward and the types of committees we could use to do that. as far as the actual what the enforcement process is and and what what procedures and policies are out there I mean that that's not something that we've had a chance to review, look at or or or comment on at this point

Commissioner Hatch: so well I miss may have misunderstood but I didn't think there was a privileged kind of documents requested so that's all I was trying to understand

Mr. Lau: my understanding right now is you'd like us a comprehensive review without knowing what those documents are, I have a hard time commenting on whether or not any of them may or may not be confidential.

Commissioner Hatch: all right and then the other things to Galena this good work product but it did seem like it was a description of what we do, not a here's what you must do to the employees that would follow this they might correct is it just a style thing or is that still supposed to it's governed behavior of enforcement staff

Miss West: govern behavior

Commissioner Hatch: well it's just this draft it's attached the your work product essentially or people with the for you. it's coming together nicely but there's certain writing style here that it maybe it's just a purpose that is kind of like this is how we do it but this is what we do or you want to say that, not you know in my young years I was a firefighter and everything was the and thou and you shall and it's not it's not in that style I like it but it's more like a like an explanation to the uninitiated about what we do and how we do it is that

Miss West: well and and I think that that tone is purposeful because when you join enforcement you are learning what we do and enforcement and what you're going to be doing so yes there are some documents that are like here's your job and you are going to do it. you sign a duty statement that says what your job is and that you will fulfill and you'll you know do what your supervisor tells you to do and all that, so this was more of here's what you do, here's what the guy next to you does and and here's how we get it all done together

Commissioner Hatch: right so I can figure out where I fit into this whole puzzle if I'm working okay and then unrelated to that and you can answer or the legal staff can. i've always been puzzled about the statute of limitations thing with a lot of these cases that come forward. is it the statute of limitations satisfied with a probable cause notice? is that what stops the clock

Miss West: the filing of the probable cause report yes

Commissioner Hatch: so if you can get to that stage you preserve it and you continue to

Miss West: sure and that's true and then we also try to enter into tolling agreements with represented parties so that they know exactly what area

Commissioner Hatch: right cool that's a unique concept alright thank you

Commissioner Audero: I have some more questions

Chair Remke: Commissioner Audero.

Commissioner Audero: so last month, I think when I you said a lot of things that were very encouraging, not the least of which was that you were I don't and I'm paraphrasing although I'm sure I can find a quote that you were happy to talk about enforcement and that you we're excited that we were something not sure you said excited but when I asked you know do you have any objection to it or any concerns you said no so so that's great, because I think the regulated community was jumping up and down when they heard you said that say that, and I and I think they should, because I think your participation is going to be very critical and valuable. I'm

wondering if what you understood the end product of what I was referring to, which was the the procedures manual, if that's what you understood as being this document that is attached as Exhibit one. is this what you think is a procedures manual? this document that's attached as Exhibit one?

40:00 Miss West: I think that it is a starting place for what you what you were looking for and the best thing that I could do at this point was get us all on the same page as to what we do and how we do it and as for why I was excited I thought it was going to be of limited scope, I thought you were going to identify issues that you see with enforcement and all of you were going to give us direction and we would get public guidance on certain issues and I was excited about that because there are times when we go back and forth with the regulated community and we aren't really sure what the Commission is going to say and to get direction on those type things, setting priorities for cases that's what I ask you to do every month so yes I was very excited to get a specific scope review of the enforcement process, as to this giant project over every document that's ever been made, yeah it's daunting because this is an election year and I know that that sounds flippant but it's not because it's like as Commissioner Cardenas has said, we have this duty that we have to perform so I'm getting a little frustrated because here our scope has gone from there are some issues we've identified, some issues I've heard some complaints and I want to get to the bottom of this and review things too now we're going to look at every process, every bit of material, go through every job duty figure out everything about enforcement which is fine if we have a year, but not if we have two months and so I'm really concerned now after this meeting that the timing of this is going to be unmanageable

Commissioner Audero: so if I can respond to that because I understand your concerns and it's it seems we're on the same page I have no interest in having you guys do this in two months I think that would be ridiculous and with respect you know and that is and as far as the timeline of this. it hasn't been talked about at all ever, in anything I've read, so I want to put your mind at ease and then with respect to the scope nor has that been discussed in fact, I think that that's part of my agenda item, it may not have ended up as the part of the agenda item but it's there and so I think that that is something that we have to discuss is is this you know every enforcement process soup-to-nuts, you know cradle to grave, or is this certain things that hopefully the regulated community will bring to our attention as something that they're really concerned about and then you know we prioritize or is it soup to nuts and it's and and we're talking about a long period of time right, taking into consideration and I'm glad that you brought it up last month and I and and you should because that's your job, is to remind us right you have this other job to do on in a very important year, so to put your mind at ease and I you know we're going to decide how are we even going to do this, that was that was hopefully what with what the discussion today was going to be what is the scope of it and then you know maybe in a following month, we would get our arms a little bit more around what exactly we're gonna do, I think the only thing that has been discussed and voted on so far is are we going to do it right and I think that was a resounding five to zero yes so I think we're on the right track but I I appreciate your concerns and I think that you'll see as we have this discussion that they are being taken into consideration and this is not about you know requiring something completely unreasonable because nobody benefits from that so

Chair Remke: I guess I just have the same concerns that have been expressed by Miss West and while I think there is no harm in setting out what Enforcement Division does and how it does it and what are some of its protocols, which is already have been for some time on our website. more extensive overview I think is fine but at this point I feel like we are talking about a process, looking for a problem and I'm not sure I've heard what the problem is yet, I think it's not 100% accurate to act as if the defense bar, does not know how the enforcement process works and we also know that they have no problem coming forward and sharing their concerns when they have concerns and we have welcomed those and we would continue to welcome those, but to act as if we need to take care of them or do this for them I would first like to have some understanding of what the actual problems or issues are. again I I feel like we're looking for a problem here and I'm not sure if that's the best use of time right now, I mean we have a living document of a manual that provides a fairly comprehensive overview of the enforcement process. we have statutes and regulations with control how the enforcement process works. what are the problems that the defense bar has in defending their clients, in these cases, that they would like to have addressed? I mean I think that's the place to start here then we could talk about the scope of review the process for review but until we even know what we're reviewing or I I think we're really jumping ahead of ourselves right now, so I think one of the options in this memo of bystaff was to have some IP meetings where those can be flushed out. where staff can work with the defense bar and other members of the regulated community to here under the existing process, what are the issues? then we can bring those back to the Commission and we can get an understanding of how comprehensive this review has to be and what the focus should be and what the best way to handle it is. I feel like deciding to be a task force or a committee or what we don't it's a lot of work for what we're we're we're what are we focusing on that those are my thoughts

Commissioner Hatch: if I could

Chair Remke: Commissioner Hatch

Commissioner Hatch: that wasn't the reason why I voted to do the review. what I read in the statute is we the Commission are charged with ensuring that we enforce the laws properly and because of the process that sort of developed over the years it's like a black box. I don't know if we're gonna do it a good job or not and so for my part, yeah I want to hear from the regulated community I want to hear from everybody. I would like to know what it is we do without divulging any secrets, so that I can do my oversight responsibilities. I mean we as a Commission have delegated out a lot of what it is we're statutorily charged to do and when we delegate, we incur an obligation to do oversight of the people and the processes that we delegate out and to me right now it's a mystery box yes I think we should have some input from the regulated community I think that's a step that I think I had heard Commissioner Audero articulate at the last meeting. she's at this point I think the stage is trying to figure out what the forum should be without trying to overly tax anybody but it's a job that needs to be done and just because you don't think that the regulated community has any problems doesn't you know make this go away

Chair Remke: That's not what I said, that's not what I said

Commissioner Hatch: that's responsibility I'm not going to shirk it and I'm going to figure out a way to assess whether or not I'm doing a job that the public intended for me to do.

Chair Remke: Commissioner Cardenas

Commissioner Cardenas: Sometimes we're the masters of our own ignorance and you know this is the only my my third meeting I'm trying to come to speed as as quickly as I can. if this had been my my tenth meeting I would hope that I would no longer be laboring under that that level of ignorance frankly. I want to associate myself with everything that I think I just heard the the Chair say and it occurs to me that you know as was probably the case at all times, somewhere there's someone out there who was laughing hysterically at the fact that we are talking about finding how we can more further elaborate this process, in the hope that we may ultimately come to a real problem and the longer that we that we spin our wheels doing this, the closer they are to getting off the hook, either before the statute ends or the election comes around and I don't want to be associated with that so if ignorance needs to be liberated then let us get to work but it doesn't mean that they need to propound every document that has ever existed including some which may or may not have existed which are which are introduced into the discussion without authentication or attribution and so I will ask if Commissioner Audero would provide since it was referenced since the head of enforcement was asked questions in, connection with it and since it appears to be physically present on the dais here if a copy of the what is at the April 2014 document a copy can be made to for Miss West and for each of the Commissioners and I would **50:00** also like the the source of the document who may well be listening that's not present to please identify a way without identifying yourself to authenticate this document for the benefit of our staff. if you're not otherwise able to do that

Commissioner Audero: sure so I can talk to that absolutely I have no intention of keeping those for myself this this should absolutely become part of the record, here it is I would be very very surprised if this doesn't already exist in your library of documents but I leave that to you. but here it is and I am NOT going to disclose the source, the source can disclose him or herself I don't have a problem with that that's not for me. I can tell you that the reason I'm not disclosing it is a reason that I have heard from several people with whom I've spoken who say when I posed the question, you have the mic come and talk to us and they fear retribution and that is but look make your face if you want you know believe it if you don't if you if you don't want to believe it that's fine. that's absolutely absolutely a right and especially so when I'm not telling you who is saying it, so I get that I understand that all I'm telling you is somebody said it to me and by the way it's not necessarily retribution by enforcement. I'll just leave it at that but so but regardless we know that there have been CP, at the very least we know that there have been CPAA requests for for a review of at least certain specific processes requests that never made their way to the Commissioners and that some were met some are not and so you know if we want a starting point we certainly can start with the CPAA letters I don't have a dog in this fight as to how big this is going to be, so I think that that is some that has to be decided along the way and I think as Commissioner Hatch mentioned and as my agenda item says, we are not here to revise the manual today, whether it be this manual whether it be Miss West current manual we are here today to discuss how we're going to do this and that's what I'm hoping that we can get to at some point, I think we're going to get public comment and if you know maybe we need to hear the

public comment at this point, regarding whether there even is a need for this, so if anybody has public comment on that I think that's might be a good talk.

Chair Remke: questions from the Commissioners? Commissioner Cardenas?

Commissioner Cardenas: somewhere out there there is a dog who is enjoying this fight and speaking for myself to our staff, don't slow down someone wants you to but the people need you to do your good work now more than ever.

Commissioner Hatch: you know I resent that I think

Chair Remke: Commissioner Hatch you haven't been recognized can we just

Commissioner Hatch: I beg you pardon.

Chair Remke: I'm just gonna ask that it with me perhaps if emotions get high, if we can follow the decorum and I'll call on you. Commissioner Hatch.

Commissioner Hatch: I feel that that remark, impugned my good intentions I don't appreciate that. Attack my ideas but not me please

Commissioner Cardenas: I apologize if I was misunderstood and apparently I was quite severely

Commissioner Hatch: right

Chair Remke: any other comments from Commissioners?

Commissioner Audero: yeah I just can we just move forward with my agenda item?

Chair Remke: I'm sorry all the Commissioners get an opportunity to comment

Commissioner Audero: I think they have

Chair Remke: well that's I'm just verifying that before we go to public comment. any public comment on this item?

Joe Guardarrama: Chair Commissioners good afternoon Joe Guardarrama president of the California political Attorneys Association. our Association submitted a comment letter in which we supported option number three, the task force option but I'm here to say that if the Commission so chooses, we are happy to participate fully in interested persons meeting to flush out exactly what issues are currently the subject of much discussion within our organization. we're happy to do an IP meeting first and then engage in whatever process you feel is appropriate to look at the enforcement process.

Chair Remke: thank you any additional public comment

Chuck Bell: Chuck Bell Bell McAndrews and Hill Tech for myself and not my firm we I think we welcome doing something and I you know this was really precipitated by watching you deal with some enforcement matters and trying to scratch your heads about what was the underlying process, what was the policy behind decisions that were made about fine levels, how do you deal with matters that may not be charged and this was not new to us some of us have been around here for thirty years involved in the enforcement process and our observation is that though you were a Commission of five you're really a rotating Commission as people come on and off as you get familiar, we're familiar with the process and that there are issues that you're legitimately raising in the context case-by-case of enforcement matters in which you may be giving direction to the staff, about how they should deal with a particular enforcement issue and so the genesis of approach in fact our organization was formed primarily to be a body that would come to the Commission to work cooperatively with you in, on regulations as well as an enforcement policy and it's always been our objective I think and I was its first Chairman but I think probably most of the ones that followed me would concur that our desire is to work with you and helping you to understand the enforcement process from the standpoint of not only your responsibilities but ours as people who defend people who are respondents in these proceedings and you know all of us also are involved in trying to help people comply with the law so we never have enforcement darken their doorsteps with investigations and that's hard to do sometimes, so there are issues that really merit an overview in terms of how you approach and how your staff approaches, charging and prosecuting, investigating enforcement cases and it's primarily I think for your benefit not ours because you have the duty under the law to enforce it to understand what the issues are, but you also have a process that you're charged with doing which is statutory in nature and defined by the you know chapter 3 primarily of the act, as to how you and your staff will handle enforcement matters be they administrative, which are the vast majority of the ones you have or civil and how you interact with criminal enforcement authorities where there are dual issues of potential criminal conduct involving political reform act violation so I think it's in your interest to do this I think it's in your educational interest to do this I don't think anyone is laughing about trying to put can some kind of spoke in the stick in the spoke of the enforcement process and I don't think that we have any intention of doing. what our process has been sometimes with success and sometimes less is to try to get you to do an overall review so that you understand the process and you also have an opportunity to hear from those of us who are on the other side and you know have our own perspectives about how the process works and what the you know what your powers are and how you use them and are you using them in our view appropriately or are you abusing them because your government and there are some structural issues that deal with the act and how you interpret your authority to enforce that are worth considering and there are some due process issues that are worth considering I don't think it you

1:00:00 know I think as Mr. Guardarrama said, we're willing to participate in however you structure it we don't want to structure it to make it unduly burdensome if you will on the staff in carrying out its regular duties but I'm not sure that it has to be and more recently in 20 in 2015, we did respond I think we had a good meeting with the Chair who heard some general stuff and said well do you have some specifics so we came back with some specifics some of those are still problems some of them were dealt with very promptly, some of them are outdated some of them were concerned about how you would enforce AB800 which was a new audit process

which we looked at is something that could be potentially very burdensome to the political process, if you were going to engage in you know spot audits during the end of an election campaign, when people are also trying to campaign for office comply with the law so there are a number of issues that I think can be raised, I think they can be fleshed out and probably sharpened for review and I hope that you'd do that. I don't think it need something that really picture Commissioners against one another in terms of how this is carried out, so we're cooperative none of us are laughing about it, we want to participate and we hope you'll do it

Commissioner Cardenas: yes sir Mr. Bell thank you for your comments that's very heartening and and helpful to me I look forward to working with you this is what I'm talking about this is an opportunity for us to learn and and so I look forward to doing that you've been doing this for what 30 years

Mr. Bell: yeah too long

Commissioner Cardenas: well hang out a little bit longer please

Chair Remke: any other public comment? Seeing or hearing none zero

Commissioner Audero: so I think that we are I haven't heard anything where we are not going to go forward with some level of process review so I think we have to then figure out how we are going to approach it, I think that this memo about the you know the the effects of Bagley Keene on the three possible ways that I could come up with, and I don't see any other one so I'm assuming there are no is is helpful I what is not here but which I guess could have been but wasn't really thought of by anybody until now, is instead of approaching it in one of these three ways is to define the scope before we decide how we're going to approach it which is something that I don't know who brought it up a second ago but somebody did so I you know I think we need to figure out what's our next step, is it do we do we figure out, do we us I figure out which of these three ways or now a fourth way to start the process and then there may be other things that follow but you know I'm certainly, I am certainly open to this fourth way in a discussion if that's the better approach so I think you know of the three I would favor a task force but you know holding IP meetings to figure out what the scope in my mind the first thing that a task force would have done is to figure out what the scope is but if we want to go about that a different way and we want to do it through IP meetings, where you know somebody takes decent notes and really tells us what was said because we're not there, then I think that that's that's that's another possible way to do it and I wouldn't be completely opposed to it

Chair Remke: I just feel like an IP meeting maybe in some ways the fastest way to move this forward with the least amount of work in the beginning, again so we could see what the scope of problems are and then figure out what's a realistic timeline to tackle those problems, whether it's through a task force or a committee because I think an IP meeting can happen sooner rather than later and then we would just obviously encourage everyone who is interested in this topic to submit their concerns, issues, things they want to see address that they don't feel have been addressed. again I feel that the manual although draft and living is a good start for people who feel like they don't understand the process or have concerns about the process because I think it's

also a place just look at and say wait I think we should have this area flushed out more, I think this area can use more description it's things like that which I would encourage to be part of this that that would be my thought as to the best way but Commissioner Hayward do you have leaning forward

Commissioner Hayward: I was leaning forward out of excitement and grabbing the mic and saying something profound but yeah I think um I think that that's I agree about that

Chair Remke: any other Commissioners have any other alternative ideas or proposals or

Commissioner Hatch: I think it would be helpful to perhaps invite the CPAA to consider whether they want to put together a task force to bring things to us because it sounds like if we're not careful, we might overload our enforcement staffs time and certainly I don't think that was anyone appears you know intention to do, but we we have a big obligation we have delegated it all out and we don't know enough about it to be able to provide decent oversight and protect the public and there has to be a way to get there and this is not a solution in search of a problem in my view it's trying to get all your arms around what it is you're supposed to do, when you come here every month and to that end I personally would make that invitation a CPAA to consider that on their own and at the same time I I would agree with the Chair that we should set an IP meeting interested party meeting on the general subject of what has been put forth by this Commission and see what that brings

Chair Remke: and and just as to your CPAA idea I heard it from someone on staff I believe that they have created an exactly out there earlier

Commissioner Hatch: You heard that from me

Chair Remke: no I don't think so I don't think we talked but uh they have some committee right on this issue

Ms. Peth: yeah I mean Chuck or Joe could probably give more detail but I think the organization generally has an enforcement committee that's I don't know if it's always a Standing Committee

Chair Remke: but I thought maybe they referenced it in one of these

Commissioner Audero: I have a comment

Chair Remke: Joe do you want to just explain where I'm getting that notion from

Mr. Guardarrama: yes so CPAA does have a standing enforcement committee. we also are willing to by a representative from one of the two representatives one from each major party if you prefer just to hear from two of us, rather than the entire committee but we're happy to participate in whatever form you want us to participate in as long as we can you know voice our concerns in a meaningful way

Chair Remke: well I would leave it to you to decide how as a group you want to do it or if you have people who want to go separate and say their own piece because again I think the my thought is the IP we could get flush out as many ideas as possible of issues or concerns and whether they're group together whether you know even within your own own organization I guess there's probably some disagreement

Mr. Guardarrama: yeah there's I mean sometimes we agree on some topics and disagree on others, I mean we're human beings and we're also bipartisan in nature

Chair Remke: but I think that at the IP stage it would be good to hear that you guys can't even agree but yeah it's a problem

Mr. Guardarrama: Right and I'm sure you might hear from members of CPA that aren't there speaking for themselves and not for the group that's totally possible

Commissioner Audero: I have a comment.

Chair Remke: Commissioner Audero

Commissioner Audero: so I think though that and maybe you need to expand on this a little bit more Commissioner Hatch but I think that what you were thinking was a little bit different I think you were thinking of a task force that involved more than just CPAA but that I guess was put together by CPAA as whether you want to or not I mean it's up to you you guys are the ones who wanted this enforcement review so so anyway if you wanna

Commissioner Hatch: I could elaborate yeah perhaps I didn't articulate it well enough but my hope was CPAA being a leader in this field might look around at other interests that should be represented and convene your own task force where you cooperatively figure out, I mean you know what the issues that you know how we should get educated on things that aren't good and could be improved upon

1:10:00 Mr. Guardarrama: you know I think as an association we could only speak for ourselves there are other associations for instance the California Political Treasure Association that might have an opinion about things, there are academics that might look at the issue a little bit differently but as CPAA we can only

Commissioner Hatch: thank you

Commissioner Audero: and I note for you I just have another comment

Chair Remke: Commissioner Audero

Commissioner Audero: yeah and I think that you know to the extent obviously there will be in an interested parties interested persons meeting we may need more than one I don't know that we should require or limit it to one meeting to figure out what's out there and what needs to be

addressed so I would say that we have we we can have the interested persons meetings start with one and if we feel like we need more than we asked for more I don't I really don't want to see a limitation placed on this because that will then clearly limit the scope of what is going to be addressed and I and I think that that defeats the purpose of what we're doing

Commissioner Cardenas: I have a quick question

Chair Remke: Commissioner Cardenas

Commissioner Cardenas: These IP meetings Commissioners are invited or not?

Chair Remke: you can listen but again if you to what is it three participate

Commissioner Cardenas: when three or more gather

Chair Remke: It's a problem, it's you know normally I know some Commissioners over time have listened in because they are telephonic so you can listen in which is a good way to hear if you want to really hear what's being said but normally what happens is it's staffed, they do bring a summary bring it back to us that could be posted and then again obviously people who are at the IP meeting and feel that they weren't heard or their comments aren't in the summary, they can add more comments I'm again but I would rely on staff too

Commissioner Cardenas: so a Commissioner cannot ask questions and a Commissioner cannot participate in the meeting in one of these meetings

Commissioner Hatch: having actually participated in this a few of these just to see how it works I found a little bit frustrating because I'm not even supposed to identify myself let alone ask questions or make comments so it's really a listening thing so for us

Commissioner Audero: I have a question about that I have a question about that and so if one Commissioner attends an interested persons meeting that Commissioner can't speak

Mr. Lau: No I think as long as there are no more than three participants

Commissioner Audero: Right so if two of us participate

Mr. Lau: As long as you don't share it behind

Commissioner Audero: Right as long as we don't create a serial meeting if we can two of us can fully participate as long as we don't thereafter create a serial meeting by talking to other which would be a totally different violation but two Commissioners unless I mean show me where I'm wrong but two Commissioners can go to an interested persons meeting part fully participate without violating Bagley Keene is that wrong?

Mr. Lau: I don't think that's wrong

Commissioner Audero: okay

Ms. Peth: Commissioner Audero just as a just practical matter a lot of times people are calling in on the phone so I think if that was the intention of two of the Commissioners it would be better if we could coordinate to ensure that the two that are attending whether they're because they're just sometimes attending remotely so we would just want to clarify that we don't have a majority of the Commission on the call

Commissioner Audero: well I think that goes without saying right I mean I think we all understand obligations

Commissioner Hayward: I'm just clarifying that

Mr. Lau: the other if I may the other option I mean we can do a bagley keen notice and give 10 days notice of the IP meet I mean it won't be a meeting of the Commission if the Commission wants to participate in a meeting where we didn't have interested persons come forward with other testimony we can do we can notice it as a meeting and give a 10 day notice and fully comply with Bagley Keene and we can have them presented to the Commission

Commissioner Hatch: well that's far better in my instance I was cautioned because it was telephonic not to identify myself or you know ask questions or anything it was like well where I need this for you know so that would be a much better way so you could actually have some give-and-take here

Chair Remke: what if we had an IP meeting I just want to get that flushed out as much as possible before we all come back and sit here again and listen people who may or may not be as open to commenting which I've heard is an issue if the five of us are sitting up here versus an IP meeting where we're not involved it's the players who always see each other and interact they come up with their issues or not issues, bring it to us we could set aside either a special not a special meeting, a meeting this is the sole topic or it could just be part of the meeting but

Commissioner Hatch: well actually it has to be a special me so you're saying people would be intimidated to have the Commissioners participate

Chair Remke: I just heard that's why some people don't want to be acknowledged and we don't know where some of these comments are coming from so that's what I was referring to I know that's what said so I just don't want people to be feel anything but I again we can so what's the proposal

Commissioner Hatch: well the purpose of the IP I thought was to educate us so we can better understand what it is we need to do or not do if we can't participate in it I mean we should not have to pick and choose between us who can listen to this and who know

Chair Remke: the purpose of the IP is to flush out the issues and have the all interested parties treasurers other key stakeholders at secretary state FTB the defense bar anyone lobbyists I'm assuming the lobbyists government affairs organizations would want to come if we're talking enforcement have them all go in a room flush out their concerns ideas and then bring it back to us in an organized way where we could review the summary of the report

Commissioner Hatch: without any of us there

Chair Remke: Commissioner Audero

Commissioner Audero: I actually think that's a really good idea I think that if we I really think that people people have told me that they will they are more willing to speak if they have the ability to not identify themselves they are concerned about anyway we've talked about the concern so you know let them get together in a room I think that's great get together in a room tell us if you need another IP meeting come up with your list of issues that you would like discussed I think a lot of them have already been identified so I don't know why we're here pretending that we don't know what the issues are but a lot of them already have been identified but that's fine. if we want a comprehensive list at this point so that we can start the process I think that's a I think having an IP meeting where we're not present if that facilitates the process I think is fine

Commissioner Cardenas: what if I want to be present so I can learn

Commissioner Audero: knock yourself out

Chair Remke: I think the idea is again the IP's not for any individual to learn it's to get the information out to flush out ideas and then bring it back here where you'll have time to hear those concerns and hopefully learn but I'm sure we can arrange if you're the only one who wants to go

Commissioner Cardenas: I want to go

Chair Remke: got one guy down hurry up call your name if you want to go okay so is there a motion to move forward on this?

Commissioner Audero: okay so I learned to write out my motions but this is unexpected because this is a turn of events so I don't have one written out but I think it's pretty simple I think I move that we notice and hold an IP meeting to discuss the scope of all the problems that the regulated community and anybody who wants to attend that they see with our enforcement processes, such that there is an end well timeout I'm not sure who if it's who's gonna bring us who's gonna create the list and who's gonna bring who's that person

Chair Remke: Staff, staff oversees IP meetings

Commissioner Audero: okay so

Chair Remke: I think someone from enforcement someone what firm legal work together so we have two people working on it that's what I would propose is the best way to staff it someone from enforcement who can be more responsive and then someone from the legal division but that's

Commissioner Audero: I think that kind of defeats the purpose right I mean of or it creates the situation that people don't want created but I guess we can talk about who should staff it so I think that miss brar where's Miss Brar there you are you've been running the IP meeting so far right by yourself oh I see okay okay

Chair Remke: Adam silver right here in front of you from legal he was the one who put together the memo and he has an interesting background of having worked at enforcement then going to private practice and now back in the legal division sounds pretty good almost full scope

Commissioner Audero: yeah that is pretty cool yeah you have all points of view so anyway so
1:20:00 that that's my motion I'm not I'm not sure maybe we should talk about who should staff it but I don't think it's a good idea to have enforcement and legal there

Chair Remke: so the motion is to hold IP meetings on the enforcement process to gather concerns and problems to bring back to the Commission to see the scope of it is that fair the summary

Commissioner Audero: yeah yeah okay

Chair Remke: is there a second

Commissioner Hayward: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: yes

Sasha: Chair Remke

Chair Remke: yes

Sasha: the motion passes

Commissioner Audero: okay so who's gonna staff it I don't think we got to that point

Chair Remke: oh I thought you said it wasn't appropriate to discuss I'll leave it to the executive director to decide how that should be best staff working with the chiefs we don't normally do things here as a Commission well

Commissioner Audero: but that's okay sometimes the normal procedures aren't the most appropriate at all times I honestly don't think that it should be staffed by the chief of enforcement and the chief or a representative of enforcement a representative of legal I think one is enough I think mr. silver since you have the breath of background I think that would be fine I just I want to make sure that the meeting is welcoming and that people feel comfortable speaking

Ms. Peth: just to assure you staff at all just also share that goal but I would just remind you it is a public meeting I mean it will be open to anyone

Commissioner Cardenas: and as a as a public meeting and as the head of legal and enforcement I personally would enjoy having the benefit of the presence and inside of head of legal and head of enforcement at whatever meeting I'm at and I'll let you know which one I'm going to be attending

Chair Remke: can we move to the next item

Commissioner Hatch: actually I had a question Erin you know what you might checking in with folks over at CPAA to see there's a sensitivity around who they have to talk to

Ms. Peth: yes I would be happy to

Commissioner Hatch: and I don't know the answer to that I'm just asking yes

Commissioner Hatch: they kind of use your judgment would you get back

Ms. Peth: I will do that

20. Report and Recommendations from Ad Hoc Committee Regarding Statement of Governance Principles. At the October 19, 2017 meeting, the Commission established an ad hoc committee to review the Commission's Statement of Governance Principles and prepare a report recommending any potential revisions. Commissioners Hayward and Hatch were appointed to serve and will present their report and recommendations for consideration.

Ad Hoc Committee FPPC Governance Proposal

Chair Remke: okay with that can we move on to item 20 and Commissioner Hayward as Chair of the ad hoc committee I'll let you take the lead on this

Commissioner Hayward: thank you very much madam Chair several months ago the Commission appointed myself and Brian Hatch to be an ad hoc committee to review the statement of enforcement practices that we were currently governed by and so the memo that's attached to the agenda is our best take at what has been both in the letter of the law in in practice and what the problems were or and what we might think works better now I mean I think the memo speaks for itself but one of the things I want to emphasize since I'm here and I have a microphone is that these issues are evergreen this is not about a particular era of the agency's existence. we found going back as far as we could which mostly didn't involve documents but talking to human beings but going back as far as we could you know there has never been a you know shangri-la of fppc governance where all was balanced and everyone was happy and information flowed smoothly but not so smoothly that your confidence is violated bla bla there's always been attention and maybe that's just part of the game I'd like to think that there are some things that we can do to help alleviate some of that but as far as the task before us the governance principles that we were charged with looking at were put in effect in 2001 I cannot find a time where they were actually followed successfully and I one of the things about this process is having said that and having people go oh maybe someone can show that I'm wrong I'd welcome that, a lot of effort and research went into this and so I I but I am also aware that we didn't talk to everybody some of the people we would love to talk to are no longer on this mortal coil and that makes it problem because oujia boards don't work all that well and some of the some of the people we reached out to didn't want respond and so there's obviously may be bias in the data because of response bias and on the other hand I do think that you know the the agendas and minutes represent pretty well what the Commission is really doing in any given month or six months or year and those materials showed us that our current statement which has divided tasks in a very particular way isn't followed, so this is me and Brian hoping, emphatically inviting you all to take these issues seriously. it's not healthy for an organization to have a governance document that's ignored because the implication there is that you know this sort of rules us for suckers thing, is that if there's if there's if the if the rule that's there isn't being followed then there's either no rule or there may be a rule that we need to know about so what I want to say about that I mean some of the examples are fairly specific and but possibly mundane, so for example the current governance document tasks the Commission with approving our budget. now our budget is largely set by statute but also set by appropriation and whether we approve it or not strictly approve it may not actually have had any sort of deleterious effect over time I don't know I don't get to see the budget I can't know and that's the deeper problem. I mean we're all here tasked with a duty to oversee a group of well-meaning talented people and if we don't have the information to ask the right questions or to even satisfy ourselves that we know what's going on. we can't do our job, so with that the the thing that I think is is created the most heartburn about what we're suggesting is the establishment of standing committees you know I think both Brian and I come out of a world where we work with nonprofits for even for-profit organizations that you know have some sort of organic document bylaws and within those bylaws you

typically divide out the the burden of oversight to committees so this is something I feel I'm fairly familiar with. I credit the people who looked at the Standing Committee were assignments and thought to themselves well you know some of those are gonna be more burdensome than others and some of those are gonna be you know they're not really an even allocation of work and well that's true it's also the case that Commissioners here don't have the same availability to do work, some of you poor folks still work for a living unlike some of us who you know hang out and play with our kids and the dog and whatnot and write long memos and so I think I think that may not be a bug as much as a feature I think I think because I have been troubled by the fact that some of these subcommittees that were such as or standing committees that we're suggesting have more work than others but I think maybe that's not a bad thing given the realities of what a part-time Commissioner might look like and I also understand concerns about the standing committees possibly slowing down things or maybe even getting in the way and the problem I have with that is that oversight and anticipates that someone would be communicating with somebody about something and that will take time I don't think the answer is no oversight maybe there's a different creation the other than standing committees that that performs the tasks that we're looking for which is reintegrating the part-time Commissioners into a body that actually acts like a Commission and you know bringing us more into the life of the Commission, we can be better ambassadors for the agency we can offer our life experience in our and our perspectives in ways that are more useful in between meetings instead of sort of sitting around and waiting to you know spend six and a half hours you know talking because we don't we're not
1:30:00 able to talk in between meetings we can integrate with the staff a little better that's another goal and finally you know some of these tasks that have gone sort of beneath the radar in terms of what's been performed here at the Commission are probably things that might from time to time appropriately involve an agenda document and notice and debate that the public can hear and to the extent that that sort of been internalized I'm not sure that's a that's a great result either but like I say the you know the the memo speaks for itself. I know it's a lot to chew on I'm not going to speak for for mr. Hatch but I think I I would I now think that step two needs to happen we've we've done our bit, now it's time for everybody else to tell us why we're wrong because because that's really more fun isn't it I'd much rather poke at a document than write it but and so that's that's my introduction. it was I learned a ton and I thought I knew a lot but I learned a ton and I'm hoping my colleague mr. Hatch did too and without further ado I will pitch the mic to you and you can say what you want to say

Commissioner Hatch: well thank you I'm gonna try not to piss anybody off I I think it's a pretty good work product it's you know several months into it I would just ask that folks talk to each other about giving us feedback but when you do please be specific don't say I don't like it the broad term tell me what you don't like you know which pages it on, what subject, why it's a problem and we'll figure out whether or not we can incorporate your ideas or whether we just go throw up our hands and say we still you know we'll take some and leave the rest and you can take another shot at this but we want to we want to be able to provide something that that becomes I hate to steal somebody else's work terminology but a living document something we actually follow with pride and and increase our participation and understanding what our these are and help solve some problems that that have been nettlesome in the current procedures that we do so we've tried to anticipate everything we think that this should be the kind of document that spans you know generations of Commissioners and we do come and go pretty often what we

found looking back just about the time people get synchronous then somebody leaves and somebody else comes it you know and there's got different levels of understanding and whatnot and you need something that you can refer to, that in fact you do follow and and work in a productive way and my sense of the workload of the the different standing committees is that some of them have a lot more at first and then very little in a long term basis and others who have not so much at first but on an ongoing basis have proportionately more work and this is something that we might have to come back in a year or two and say well I think we're going to reshape you know who's responsible, which can excuse me which standing committee is responsible for what you know redraw the lines based on their experiences and whatnot but this is our best first cut at it we're certainly open to talking about how you think that work should be divided differently than it is but the concept is is you have four working committees that are providing that oversight and and processing information in a way that can be useful to the Commission and provide a collaborative basis for us all to get things done and I certainly welcome all input even people of course that are not here, reach out to each other and and give it a real hard look and a detailed response as to what you don't like and what you do like and how it could be improved

Commissioner Hayward: yeah I think Commissioner Audero to make a few comments and then little pitch it to the legal team in front of us

Commissioner Audero: thank you so um first I want to applaud this work I know that it took a lot of work over many many months I understand you've been out talking to a lot of people and I want to thank you both for the work that you did I want to thank Commissioner Hatch especially for having brought up the issue to begin with albeit many many months and ago and it took a bit to get on the agenda but when it finally did I was very pleased with our Commission that we decided to vote to go forward with us I think I agree with Commissioner Hayward that this these this is evergreen I think as I have talked to prior Commissioners and prior Chairs about other things the one thing that has kept coming up is the issue of the uniqueness of this particular Commission it's I think the only one that has a full-time Chair and then everybody else is relegated to a part-time position and and I use the word relegated because I think that others have also felt that there is a certain power structure that gets created by virtue of a full-time Chair who is here a hundred percent of the time and I think that's just that just happens organically I don't think that there is any nefarious intent but there is that frustration for the other Commissioners who have an equal vote and an equal charge by their appointees to to oversee the work of this Commission so I think that the the push-pull of as Commissioner Haywood put it integrating the part-time Commissioners has existed for a bit as I understand it and I think that this goes a long way to try to make that work a little bit better that said I also have heard the concerns about the committee's the standing committees and I recall reading in one of the agenda items it was attached to a memo and I can't remember which one but it was the the meeting minutes of the meeting when the governance principles were first ever discussed, years and years and years ago and what I found interesting is that the discussion people had definite feelings. they had definite directions that they wanted the governance principles to go and you know not everybody got their way but but it is it is it was very interesting to me because I think that it was a very healthy discussion and so I think that we need to have another healthy discussion since this is the first time that those are that the governing principles have been reviewed since their origination many

many years and Commissions ago so do I think that this is the time to vote on this no I think that we need to really give this some thought as Commissioners Hayward and Hatch have suggested and welcome the discussion of anybody interested parties anybody who wants to weigh in because I think this is I think this is an important document, I don't know that it is beneficial to do this very often because of the amount of time and resources that it has required but I do think that it was beneficial to do now and I'm hoping that with additional discussion and public comment and the back-and-forth that I think would be healthy among the Commissioners to have that we can end up with a document that while living and while open to revisions along the way can be something that we can rely on that this is how we're going to organize ourselves and run ourselves even beyond the time that all of us who are sitting here today are gone so anyway thank you very much to both of you for all of this work I think it's great work

Commissioner Hayward: I thank you now I'm gonna change my mind because it's a privilege of the Chair and allow mr. Cardenas to say something quick before I then hand it over

Commissioner Cardenas: thank you very much I I agree with Commissioner Audero I I want to applaud my colleagues for for this work I've been hearing about this this work in the most general and the most general sense since I since I came on and this shows really a lot of a lot of leadership and insight and I think deep thought I am particularly interested and excited about the prospect of a committee structure how it's actually going to play out I gather will be a matter of **1:40:00** discussion beyond today from what I'm hearing but I'm really excited and I feel indebted to to my colleagues for the yeoman's work that must have gone into gone into this document now I do gather that we're not going to be voting on it on it today but and I was wondering about that because this morning I found out about the a letter from the governor's office and so I was wondering procedurally what are we doing

Commisisoner Hayward: well I mean it is here on the agenda and could be voted on if people thought that was wise it could be voted to stop the ad hoc committee if people thought that was wise I have the feeling that there's something in between, where the wisdom is being channeled which is - now that it's here and it's I mean it's been public all the ten days I mean where are these long you know memos, I'm joking I want to give it a month and I want to see all of those smart people out there who have important things to say about our governance write us, call me you know I'm in the book, and you know and tell us what we got wrong or you know and hopefully constructive criticism is how whatever we did wrong could be done in a better way that's especially welcome and I don't I don't think we need I mean we've already got instances interested persons lineups for you know a couple of things and I don't think we need something like that because I think a lot of the the work is is draftsmanship and I think that's probably done as well in writing as anything so I guess I know now I'm talking didn't you guys return but to answer your question I I see this as step one and now we need to do step two and now our legal division Mr. Feser

Mr. Feser: thank you madam Chair of the committee, Brian Lau and I will talk on behalf of this agency staff. we have some questions actually many questions and concerns but preliminary it does depend on you know where we're going forward on this and the staffs input on on the governance principles are the pros governance principles, you know how with specifically with

respect to the scope and depth of the conversation that we want to if we want to roll up our sleeves and get specific with some of these things we were ready to do that today but the question is with that is that something that we want to do now I don't know. is that up to me?

Commisisoner Hayward: well you know I would I would like to hear sort of from from where you are and if it turns out that this is more than what we can

Mr. Feser: okay let me just hit the primer impacts will hit the big parts because what you could really get into the nitty-gritty of this thing but primarily the first issue would be delegation of authority and I'm gonna read the statute which is unique in the state of California I believe but it's very limiting and this was actually stated in in on page 2 of the memo as well but I'm gonna read the actual the actual language of Government Code section 83108: the Commission may delegate authority to the Chairman or the executive director to act in the name of the Commission between meetings of the Commission, so if you see that's a very limiting statute the day-to-day operations foresees or requires I suppose the executive director and the Chair to have delegated authority and for the larger body to act only during meetings although as been stated many times here is the larger body has the large responsibility over the act and its implementation and everything related to it. the day-to-day operations require authority delegated to those two people only between meetings I'm just laying the foundation here for the discussion

Commissioner Hatch: excuse me you know that is we're required to delegate only that we are power to delegate to those individuals

Mr. Feser: that's correct well that's correct I'm sure now I'm just I'm sort of just laying the foundation here so we have more questions I suppose and then statements or legal advice at this point because we have sort of a lot of questions about what a lot of things are going to play out with this proposal so the first question being do standing committees have delegated authority the memo?

Commissioner Hayward: the memo anticipates that they do not

Commissioner Hatch: yeah could I also indicate that we were thought we had covered all of them that the roles would be advisory only and that any recommendations that they would carry forward would be at a Commission meeting for the Commission to decide for itself whether they want to adopt them or not if we missed one here and there we'd like to know because our intent is that they only play an advisory role to the Commission

Mr. Feser: right and the the word state advisory and the word state recommendations to the larger body but in practice as a practical matter how some of these things we're going to play out it seems impossibility to have some sort of authority that's going to be used by the smaller committee advisory committee the the primary one would be reviewing of advice letters I don't know if Brian you want to address this

Mr. Lau: I think ultimately we're just concerned with the scope of some of the language in here and how that would play out in the long run it does we understand that the memo lays it out as

advisory committees but at the same time there's a lot of thing which within these within the memo that we're concerned with it talks about the law and policy committee recommending criteria to limit the scope of letters and it also talks about it in a sense that we realize it would be too problematic to do this on a monthly basis a committee committee Commission meetings so this committee is set up to help facilitate the process in between meetings so so while it does purport to only provide the my advisory authority, we're somewhat concerned that there's something more to it and we're just trying to figure out the scope of us that there's other language I believe it says

Commissioner Hatch: would you mind if we just take that another time

Mr. Lau: okay no problem

Commissioner Hatch: at a time on that specific issue what we were hoping to do is facilitate this by while still providing oversight so in other words if that committee saw something that was about to go out that they thought the Commissioner did not feel was appropriate, they could you know send that advice to the Commission and with that might delay you know the release of that advice letter or it may not depending upon the regulations or the the policies that are adopted by the Commission with respect to that then the first job of that with respect to that subject matter would be the committee would recommend a policy for the Commission to adopt, that would govern the procedures over those things that it may end up being one that which doesn't hold it up or maybe one that we did our concern would be record you would have to be holding it up until it get the Commission can deal with it and that's something that's in other words we're not talking about a veto by a by a committee because they're not there they're not empowered, another intent for them to be empowered to do

Mr. Feser: that one of the concerns is that that in itself delaying a letter back to the requester is delegation of the sorts actually using the authority of the larger body just that act of saying do not send this we are going to make the recommendation or we're going to bring it up to the larger body that's that's a improper delegation of authority

Commissioner Hatch: another possible way that this could be construed in an implemented and that is that the subcommittee goes you really shouldn't send this and well we're just advising you that because only the Commission can tell you not to send it but didn't you take that into consideration you still want to send it out you still send it out

Mr. Feser: but right

Commissioner Hatch: but that's sort of that's what would likely happen as a result is the full Commission may be saying yeah you know the committee was right and you pull it back which I did which by the way can happen today without a subcommittee without a committee excuse me yes any Commissioner doesn't you have to do it like we got a batch of them we haven't got to that part yet but we could poke we could order that that be pulled back you know one of those letters and that would be what has to happen we could even potentially wait till next year to pull one back when it's brought to our attention that power rests with the Commission and all we're

trying to do is provide a process where it can be facilitated to be done smoother and still provided more oversight than we have today which is nobody looks at them it hopes it's alright

Mr. Lau: which I think what we understand I think we're we're uncomfortable this is we're talking about this is what we're going to do moving forward based on these policies that are yet **1:50:00** to be created we're really concerned with the idea that right now the memo has suggestions to us that looked like we're not sure that that's gonna play out advisory or not but until those policies are in place it's really hard to address where we're at and where we need to go so we're really in preliminary thoughts about this

Commissioner Hayward: Can I interject real quick, mind if I interject real quick

Commissioner Hatch: Oh sure.

Commissioner Hayward: well they have to be advisory right to be standing committees under our structure so let's move off of that on to your next topic

Mr. Feser: okay thank you and I'll just say it's sort of parenthetically that there's a 21-day requirement to turn it around by statute and not regulation but by statute so that's something to consider as well because you'd be interfering with that statutory requirement and I don't you know we could I don't want to belabor this I mean we could go down so many things here just questions I'm sorry I'm not it's not a criticism it's just it's clarification

Commissioner Hayward: I feel like we started out hoping that we'd get some big points and I feel like we've gone and done a dive into almost a line editing situation and that's fine but that's exactly what I want you guys to come up with next month okay and everybody else so if you if you've got like a big sort of you know oh my god there's fascism here or something like that and show me where because that would be you know kind of surprising that that's kind of where I'm at this afternoon okay

Mr. Feser: this is the first one is delegation of authority and there's questions in there and we can we can we could go nitpick but that was a sort of a good example was a advice later so the second one would be whether or not this must be adopted by regulation and that sort of relates to what we're talking about in terms of timing and what happens in next month or however the timing this is going to go oh I'm gonna I'm gonna read and this came up this statute actually came up last month but I'm gonna just read the relevant portion of it because it's important and the statute is government code 83112 governing rules and regulations again not adopted by the legislature by the people of state of California, the Commission may adopt amend and rescind rules and regulations to carry out the purposes and provisions of this title and to govern procedures of the Commission and to govern procedures of the Commission so adopt a man and rescind rules and regulations to govern procedures of the Commission so this I would submit that the original governance principles in 2001 should have been adopted by regulation and I'm going to just read the last part of it too because it's relevant, the second sentence of these rules and regulations shall be adopted in accordance with the Administrative Procedure Act and shall be consistent with this title and other applicable law, that's very explicit and expressed and pretty

clear and in this case and in the case of the original governance principles you had set of rules that were governing the procedures of the Commission and that's what these are, they're governance principles I mean by definition that's what they are so it is staffs position again preliminary that a regulation is required for this governance principles before these governance principles and and should have been required for the original

Commissioner Hayward: Commissioner Hatch

Commissioner Hatch: yes thank you are you are you contending then that we shouldn't be abiding by the original governance principles

Mr. Feser: no because those are those are adopted those were adopted as policy within the FPPC I'm just saying that I think any so than any policy we have within the what's in the FPPC has to be by regulation I don't think that's what this is saying this is this is pertain specifically to rules governing the procedures of this Commission and you can't get more clear than that

Commissioner Hatch: so when Commission back about twenty years ago decided to repeal the compensation regulation and put in his place of a policy than they were probably violating the law into

Mr. Feser: well I don't know about back then I think we've already gone over that quite a bit it was an APA exception that we thought applied certainly doesn't apply in this case and it said very squarely it was a compensation issue which it does not now by the way I would imagine that that you will be following that policy the agency will be following the policy that was adopted last month so not everything has to be done by regulation

Commissioner Hatch: my point is back in August or September when I first began to raise the subject that this policy should be reviewed with an eye towards updating it or modernizing it and I didn't get anything out of legal back then about this distinction about regulation versus policy it seems

Mr. Feser: well with all due respect and of course who anybody from the judicial branch knows that when you say that something else is coming but seriously with all due respect I don't believe that legal was asked about about our position on on these issues that are bringing up right now delegation, regulation, and the third one is Bagley Keene those are the primary primary concerns that we have

Commissioner Hatch: okay give me Bagley Keene

Commissioner Hayward: I'm sorry yeah I'm sure I just I don't think I mean I don't right now have a problem with putting this on the regs and I think that might actually be fairly healthy because it's harder to lose a document when it's codified in the regs so I think part of your you know step two, memo to me and Brian in the rest of the world should be sort of you know as a matter of regulation what is a required calendar to get it done so just

Mr. Feser: okay you know why we're on that can I just mention next meeting because we've we've gone past we I think we can continue the current meeting to a week and buying my calculations we would have to have something to you by April 9 so I would I would request of course we have the regulation issue as well so for legal staff to have our input we would request at least till May to further consider this in brief

Chair Remke: wait are you saying that's the posting date what's because I mean it's it is

Mr. Feser: the posting date sorry

Chair Remke: The posting date is 18 days away so especially if you wanted to get something to anyone before the posting

Commissioner Hayward: okay so we need a we need something posted for the agenda but I think public comment criticisms from legal could be could come in after that can't they yes as long as the item itself that and and people have a understanding of what the scope is that we're debating

Commissioner Audero: Can I just say something real quick?

Commissioner Hayward: sure

Commissioner Audero: you have the research you're looking at it correct so what more do you want?

Mr. Feser: oh it's gonna take more time I mean

Commissioner Audero: but you have the research

Mr. Feser: well I mean I could give you what I have it's a couple pages but we can where there's more there's more time that's needed to do what we need to do I mean it just does it from an attorney standpoint we'd want to give you legal advice just on that level

Commissioner Hayward: well but is a sort of a I think if I'm anticipating what you're gonna say about Bagley Keene that may be the one where I feel like we could do some Scrivener work and make things better if because I think I know because okay we talked. the regulation or no regulation, I think is fairly straightforward and if nobody has a problem with it going to a reg that I think that's healthier and the delegation one I am just going to stipulate that these are standing committees are advisory and if they act in ways that not or not advisory they've gone beyond there so I wouldn't spend a lot of time on that I'd spend more time I think I'm Bagley-Keene because I think that's the place where we've really got some thinking to do I don't know what Commissioner Hatch thinks

Commissioner Hatch: no I'm waiting to hear about the Bagley Keene okay

Mr. Feser: give me Bagley-Kleene you said right yeah all right here we go, so page 17 paragraph 7a7, so the the joint recommendation of the legislative and budget committees just on its face said that that's a sort of Bagley Keene pitfall where you could have four Commissioners involved and then you could even take it to the extreme where those four Commissioners have to how do they get it on the agenda well of course that they have to share that with the Chair, so you have all five Commissioners involved in something that's going to the Commission between meetings so that's a that's a problem

2:00:00

Commissioner Hatch: so you do realize number seven is a charge of the Commission not the committee

Mr. Feser: maybe I'm referring to the memo

Commissioner Hatch: you're at the right place on page seven the top of the page almost is the Commission in a and then one two three four five six seven eight number seven is

Mr. Feser: it's a body of it because they're in

Commissioner Hatch: and within that it's saying after hearing from both of those committees if I can paraphrase then the Commission takes a position on legislation not somebody else

Mr. Feser: that's in the body of the memo well which

Commissioner Hatch: the body of the memo is about what we ultimately have to live by a statement of governance principles

Mr. Lau: it's a it's what he's referring to as page 17 which is the government principles and it's just them our initial read is that it does require some sort of joint recommendation so those are just the kind of Bagley Keene pitfalls that we're looking at

Commissioner Hatch: so so your advice on that would be to have them independently make their recommendations to the Commission

Mr. Lau: I think well I couldn't I mean I think we just need to clarify that they could not work together

Commissioner Hatch: They can't collaborate

Mr. Lau: they can see the actual recommendation to I mean we just need to clarify

Commissioner Hatch: okay

Commissioner Hayward: That's a good catch

Mr. Lau: just line by line like you say I didn't want to get into the life I like it like

Commissioner Hatch: I get that yeah we can fix it

Mr. Lau: I think the other Bagley Keene issue that we have is for standing committees where two Commissioners are going to be on each of two so all overlapping issues could potentially just be a Bagley Keene violation so we just we're looking at ways to try to figure out how you would have two Commissioners on two different committees that could not and you're gonna get into serial meeting problems if those committees work on any kind of overlapping issues if you have two Commissioners sitting on a Personnel Committee that needs to look at the budget that's going to be required to fund another position those two Commissioners would be violating Bagley Keene if they then if one of those Commissioners also sat on the budget committee and had shared information back and forth as far as the budget necessary to fill the position so we're just worried that the structure of this can lead to various Bagley Keene pitfalls we haven't identified all of them were just kind of on a preliminary view those are the kind of issues that we're considering

Commissioner Hatch: I hope you don't mean that it's impossible to do this is just rather there's a different way that you might want to do it without throwing in the wastebasket the concept is

Mr. Lau: we have ideas we just want to have those conversations about different ways of approaching this and see what we can come to agreement on

Commissioner Hatch: right and what I'm asking is to not think that it's impossible to have standing committees operate effectively without violating Bagley Keene I don't--that's think that's the case that's the draftsmanship issue that we make sure that those overlaps

Mr. Feser: no we're not making -

Mr. Lau: those are the things we're trying to consider to have time to consider

Commissioner Hayward: well then I think oh I'm sorry Commissioner

Commissioner Audero: no that's fine I agree with everything and I and I and I think it's great that your catching these things I would only urge you as you are reviewing this to try to find a way to help us make it work not just throw impediments throwing impediments are super simple we can all do it we could probably do it ourselves to this when I give legal advice my job as a lawyer is yeah to inform people of where the pitfalls are and where the risks etc but it's also to try to help them achieve their goals and so I am not implying that this is what you were going to do certainly maybe it's because we are limiting this discussion to you know what are your three points that you're concerned about and that's fine but I really would encourage you to try to get creative and I don't mean violate Bagley Keene but I mean really try to help us do something not just throw things in our way

Mr. Feser: absolutely and you know the primary things there's two primary things one's legal we'll make sure we're following the law two is this the practical day-to-day operation of this agency and - to work with the Commission make sure that the governance principles are going to make it as efficient as possible not foreclosing any ideas and there has to be a dialogue and it dovetails perfectly into a suggestion that we had that the ad hoc committee consult with one person from Enforcement Division legal division and administration division and I just have that have one person from each of those divisions be in contact with the committee and that dialogue could happen and not only as a legal advice but also from the practical discussion of day to day operations so that the ideas can be you know we could provide our input to make sure that the agency runs smoothly under the new system

Commissioner Hatch: we just hope that you keep it in the spirit of how we can get to yes and still preserve and protect you know the Bagley Keene act and all their potential of impediments there are more than one ways to get to Rome and we're just trying to find the best route

Mr. Feser: right and I think that that if if this is something you'd like to do that I think that would facilitate that

Commissioner Hatch: I can't speak for my Chair but we could probably conference call with them

Commissioner Hayward: yeah, we've gotten pretty good at this so yeah I think I'll work with Erin to talk to everybody and who won't who wants to be the the representative and and we'll set up some calls awesome

Commissioner Hatch: just because but it is not directly connected to my head

Commissioner Hayward: Chair Remke would you like to say something

Commissioner Hatch: state those three three

Mr. Feser: three primary areas delegation regulation Bagley Keene

Commissioner Hayward: thank you thank you my apologies Chair that's that's fine I have not yet recognized the Chair would you say something

Chair Remke: sure no I would just say that I also appreciate and support the Commissioners desire to be more involved in the oversight of the agency and there are I think numerous practical ways that could be achieved including using committees but I agree with some of the concerns that have been raised about this particular proposal that I definitely think needs work to address those concerns I have additional concerns I'm not going to belabor those right now but I do think we all want this to succeed to be something that will be out there and followed and no and I think with such fundamental changes because this is dramatic changes to the way the agency is structured that it definitely needs to happen through regulation which would provide a transparent process who's been talked to who's saying what and then again I think it would

hopefully instill more trust in the process as well so I'm glad to hear that it sounds like you're open to the regulation

Commissioner Hayward: yeah I'm open to a regulation I guess what is concerning me right now is so tomorrow do we have a statement of governance principles that governs us right now I think it's the one from 2001 I don't think it takes a motion to make that happen but I do feel like with you the the practical sort of there but not there-ness of the existing statement that something needs to be said publicly and we need to have at least maybe some affirmation today that there's something in place

Chair Remke: well I know that there have been repeated comments about how it is not followed and I know there's a serious concern regarding the budget that I think Erin can probably address now or later through her report issue but I think generally it is the structure that we look to for guidance at the very least this again is moving away from what I would call was guidance to detailed process and that's what we don't have now but I think we have been following the guidance of the governance principles

Commissioner Hayward: any other Commissioner comments before we go to the public

Commissioner Audero: yes I am completely unclear this is so opaque to me right now is the a second ago you said that in 2001 these were not properly promulgated adopted whatever whatever right because they should have been regulations and it wasn't this isn't a regulation and so okay so what do we have

Mr. Feser: well do you have a policy that was adopted and you know it's my legal opinion I think staff shares this opinion that government code 83112 requires a regulation it's been a it's it's been gone ongoing since 2001 these rules been followed this policy has been followed there have
2:10:00 been a delegation of authority by the Commission and I mean you know and what is the alternative

Commissioner Audero: no I just want to know what we have

Mr. Feser: I think I think what you have is a policy

Commissioner Audero: we have a policy so it's okay to do a policy in this way but when but you're also saying no it's not so what do we if it's not okay to do this by any by way of anything other than a regulation I am assuming and I think you said it wasn't okay to do it when it was done so it seems to me we have nothing or nothing that's enforceable we have more loose pieces of paper how about that more to go in that book that means nothing

Mr. Feser: I think you have more than that because it was a policy adopted by a Commission in 2001 it wasn't a regulation

Commissioner Audero: so why can't we adopt these as a policy I guess is what I'm saying

Mr. Feser: well I think that I think the consensus is there's not no full complete document is that a final document that there's further

Commissioner Audero: no I get that

Mr. Feser: some discussion has to

Commissioner Audero: I get that but I thought you had said that once we have whatever the world is going or the governor whatever the principles are that we have to do a regular I feel like we're kind of trying to have it both ways and I'm trying to understand what your message is do we have enforceable rules of governance right now not these but the old ones are they

Mr. Feser: yes

Commissioner Audero: and what because they're a policy their policy then so we could pass this as a policy

Chair Remke: I think they would probably be challenged I think is that that's the distinction we have something from 2001 that was adopted and then has been followed to various degrees but we've never been challenged number one number two what was adopted in 2001 versus what is being proposed to adopted today is an extreme difference again I do think that the 2001 was broad general principles this is literally day-to-day procedure and operations and I think that that would be very likely to be challenged as an underground regulation if we adopted by policy is that a fair assessment at all

Mr. Lau: I was about to say that yes we do think that this policy the proposal right now it goes much further than the 2001 statement so that is one other additional reason why we believe this one is best done through regulation we were going into areas of advice letter procedures which is already provided for in regulation which are public general procedures so this does go much farther than the 2001 so just one of the reasons we're advising recommend a regulation at this point

Commissioner Hatch: so it's the extent that we elevate this to regulation then we really can't miss with the advice letter process first we do a policy we're limited in where our options

Commissioner Hayward: except some of the advice letter stuff is by statute

Commissioner Hatch: oh I thought you said it was by right he just said

Mr. Lau: there is a regulation that lays out our general procedure at the state but there is also statutory provisions

Chair Remke: and I think that's the benefit of doing this by regulation anything that's inconsistent can be resolved

Commissioner Hatch: if there's a consensus that I'm beginning to sense that that we should do this as a regulation and I would propose that we adopt a motion now that would put this on the agenda is this for next month as a regulation so that whatever changes we input we take from then on we're doing it under that regulatory process I do not intend to waste my time for another couple of months fine-tuning a policy that we were not going to be able to adopt so I ask you all to think about that for a moment and let's not waste a lot of time if it's it's the consensus that this should be done as a regulation then let's do it now and then as we now when I say that I don't mean adopt it and vote on it today but schedule it under all the Bagley Keene rules so that it can be heard as a proposed regulation and then we can continue to take the input and fine-tune this product that can be adopted as a regulation rather than diddle ourselves for a few more months as a policy and then have to start the process all over

Commissioner Hayward: oh I agree I think you should come back as a reg but you know what we haven't heard from the public yet and there's been people group patiently sitting here and so I'd like now to open up the floor to public comment if anyone wants to talk about FPPC governance

Mr. Lange: hello there, Trent Lange President in the California Clean Money Campaign first of all I'd really like to thank Commissioner Hayward and Commissioner Hatch for this excellent in-depth memo and study of where where practices are currently at and we think very strong recommendations for policy changes or regulations to go forward in the future that work the Commission and the Commissioners do is extraordinarily important to the people of California and what this memo makes clear is that in current practice the full Commission hasn't always been as involved as it should be in the Commission's activities we can I want to actually give a hard example of this we can attest to this as sponsors of the California Disclose Act as described in our letter to the Commission in October 18th of last year one key point from that letter was that in our experience and experience of legislators that worked with us on that legislation there was a general feeling that Commission staff was lobbying on the legislation before the Commission took a position for example staff broadly released a statement of concern and on AB 14 that person disclosed that in February that ended up in the hands of the bill's opponents and that was ten months no sorry eight months before the Commission actually even heard the staff's recommendation to oppose the bill so we thought that was very problematic we know many legislators who got those letters or concerns thought that was very problematic that not that the Commission might eventually take a position on legislation we understand that that's your position but the Commissioners themselves had not had a chance to weigh in on that so with that as an example we think it would benefit the Commission and the public to have the Commissioners generally much more involved specifically on legislative involvement so having standing committees to better integrate that entire Commission in in the oversight of the Commission that seems like a great idea especially a legislative committee to more quickly review and get Commissioner input on on different staff proposals we think that would be very important in general for these sorts of things having a Budget Committee Personnel Committee Law and Policy Committees also seem like good ideas to us so in general we certainly understand this is this being a very major change in the governments of the Commission that it makes sense to look a little bit more to make sure that you're getting all the details right but I would say that we believe that it's somebody that as an organization that was well has had great

involvement with the Commission is likely to continue to that these could benefit the public and your interactions with public stakeholders and a regulated community very much so we therefore support these general revisions and and look forward to hopefully final improvements and then maybe going into place thank you

Mr. Lino: good afternoon Peter Lino not speaking on behalf of the Clean Money Campaign just hanging around because I heard this was on your agenda and my background is in education education agencies that worked as a school principal and I just was pleased to hear the discussion and the intention of looking at the possibility of a subcommittee structure as a way of increasing your participation in the day-to-day practices it seems as though there are places for an appropriate concern for the regulated community members to be involved and have their voices heard and frankly you as as our Commission our or my community and I look forward to your efforts to be more involved in the process of course the staff have their opportunities to be heard and have their voices put forward and so I'm very pleased to hear of this proposal and have the comfort of knowing that our community the public interest community will be able to be more involved as well so thank you for that

Ms. Arnett: Suzie Arnett from Stockton California San Joaquin County and I feel that your Commission is very important and I really want to thank you for all of your due diligence and all all of the work that you put in and I just want to support your support the revisions of your Commission thank you very much for all of your hard work thank you

2:20:00 Ms. Heideko: Eileen Heideko from Menlo Park I'm glad that you are reviewing all of your practices and you have a difficult job you cover a lot of areas I particularly like the idea of the legislative committee because when we have an important bill like 249 guys are the ones that should be deciding about it that's just my feeling thanks

Mr. Donaldson: David Donaldson Santa Clara clean money activist I support Trent Lange's vision I'm with you guys on that

Mr. Dunkerly: Craig Dunkerley working with the California Clean Money Campaign I also serve on the Citizens Advisory Commission on Elections for Santa Clara County I the more the more I've activists work that I've done over the last 13 or 14 years the more I've come to appreciate the work of Commission's and staff democracy's a lot of hard work and it and it takes a lot of time and it's it can be a real head-scratcher at times so I just want to applaud the ad hoc committees work also the work of all the Commissioners and the staff for being willing to look at this and pursue whatever reasonable revisions to the governing principles you know you think are appropriate so hats off

Ms. Neff: Nancy Neff from Palo Alto I'm also a member of the Unitarian Universalist Church of Palo Alto which one of its Beatitudes is blessed is she who writes the first draft and also they're talking about changing their name to be something more closer to demonstrate who we are they're talking about unitarian universalist community of Palo Alto or congregation of palestine I said how about unitarian universalist committees of Palo Alto anyway so at the risk of making you the Fair Political Practices committees Commission I am just in support of this whole

Standing Committee idea and particularly the legislative committees and your work is so important I mean our work as you know trying to decrease the money influence of money in politics you know would be meaningless without the implementation Thanks

Mr. Curry: Don Curry Menlo Park I have to admit that I didn't see the document till this morning all 22 pages of it but I was very impressed by all the notes and their references so obviously a lot of work went into that listening to this discussion up here it's clear that this idea of more closely integration of you folks with the staff and these so I'm strongly in favor of this notion thank you

Commissioner Hayward: alright then um I don't know that we need a motion

Chair Remke: if we just get an understanding of what you're gonna do next as the ad hoc committee

Commissioner Hayward: I think we will talk to folks here using Erin as a coordinator encourage people who know a lot about this including the people watching at home to send us your comments

Chair Remke: can I just and that which I agree with will those then be attached to your next proposal or as part of the memo just so we all have the benefit of who's ever reaching out to you individually

Commissioner Hayward: oh sure they had that big great that's a great idea I mean it's all they're all public records anyway but sure we could make them easier for people to see so yeah yeah be warned that if you if you write me something the world could see it if the world wants to the world tends to like to watch reality TV instead of read about campaign finance I'm not sure you have a big exposure there but nonetheless so yeah so soliciting more comments reaching out to folks here reaching out to legal I mean you know we don't have to be like holding back our cards I mean let's let's let's chat in the next couple of days maybe and then come forward with an agenda document next month which I if we're going the reg direction might be something that looks like a draft reg not that it is the draft reg that we will go for but at least we could start thinking that way instead of continuing to write long legal memos which I'm frankly really good at and I can do and and so having an agenda document next month that maybe will take another month to clean out because as people were saying that's it's a short it's a short time frame

Chair Remke: yeah it's a short time frame and I'm just it has to be a pre notice reg right

Mr. Lau: yeah it would we couldn't get anything up for like an action regulation

Commissioner Hayward: okay yeah then it's

Commissioner Hatch: I'm sorry could you

Mr. Lau: I was just saying we couldn't get anything up as an action item on a regulation next month at all we wouldn't meet the OAL deadlines we can get a discussion item up and possibly a draft if depending on all our conversations

Commissioner Hayward: right because you've got the 30 days

Mr. Lau: right

Commissioner Hayward: understood

Commissioner Hatch: the 30 oh are you talking about the 45 day notice

Commissioner Hayward: except it's 30

Commissioner Hatch: Oh 45 for everybody else in the world

Chair Remke: yes

Commissioner Hayward: : yeah

Commissioner Hatch: 30 for us okay

Commissioner Hayward: all right then I think I think I can turn the Chair back to the Chair

Chair Remke: okay thank you so thanks for the discussion

21. Review of Reports Provided by the Executive Director. Commissioner Audero has requested this item to discuss and vote on the Executive Director's duty to report regularly to the Chair and Commission on the status of FPPC finances, administrative actions, goals and achievements, and determine the type of report that should be provided going forward, including the nature and extent of such report beyond the already identified topics and a consideration of privilege issues.

Executive Director Memo

Audero Memo – Contains Complete Agenda Item

Chair Remke: we'll move to item 21 Commissioner Audero you wanted to talk about the Executive Director reports

Commissioner Audero: sorry I've got the wrong order I think that this can be tabled for I think this can be tabled for a discussion because it's part of the governance principles so I think I'm fine taking taking this one and just labeling it and merging it with your governance principles discussion

Chair Remke: okay so no action are comment or anything on item 21 will table that for now

22. Review of Process to Prepare the Commission Agenda for Posting. Commissioner Audero requested this item to discuss and vote on a procedure to use going forward for the preparation, issuance and posting of the Commission agenda, including a timeline of tasks related thereto, with the goal of affording the Commissioners ample opportunity to review the agenda before it is posted and with sufficient time to revise it while still satisfying the open meeting laws.

Staff Memo

Audero Memo – Contains Complete Agenda Item

Chair Remke: item 22 Commissioner Audero

Commissioner Audero: yes thank you so I asked for this item to be put on the agenda because I had concerns regarding how the agendas are being set that was before I grew even greater concerns over how the agendas are being set because of how the March agenda was set my memo is really you know pretty straightforward I think it tells the story I think it it has what everybody needs to see to see what we've been going through so I'm not going to belabor that discussion but I do want to talk a little bit about why I think this is important that Commissioners have a say in how the agenda is set and what it says to be fair to be clear I as I said in my memo I strongly believe that control of the agenda means control of the Commission if you don't allow something to go on the agenda it can't be talked about if you change how it's supposed to be on the agenda how it's requested it changes what we can do if you take out words of action it precludes us from taking certain actions so I feel very strongly that we should as Commissioners participate in the setting of the agenda in two ways number one I think that we should be allowed to have our agenda items say what we want it to say I think it's pretty pretty straightforward in this way it allows us to set up the discussion that we're going to have and ensure that we get to take the type of action that we want to take whether it eventually is taken whether the vote falls in favor or not is really kind of irrelevant it's just if we want to vote we should be able to take a vote and if we say we want to vote the word vote should not be taken out of the agenda item so I will say that I received two reasons well actually three if you count the memo as to why my agenda items couldn't be on the agenda the way that I had read them into the record one of them is it's too long so I would just say inquisitive as I am I went and I looked at old agenda items and I found that there were many many many agenda items that were longer than mine my longest agenda item was 270 words I found one that had 472 words that was put out under Chair Remke 395 347 hundreds of words more than my so I figured you know it can't be the length so then I was told well it's it's not neutral enough so I researched that because to me dictating how the
2:30:00 agenda item should be stated is content-based restrictions on speech and I and I believe that that's not proper so I I looked for some kind of rule that said that agenda items had to be neutral and I found nothing there's nothing in Bagley Keene that says it although you guys are the experts I'd love to hear where you found anything like that if you did not neutral not impartial not unbiased there's just no rule like that that was just made up I thought well maybe Mr. Prim who spoke with us about Bagley Keene said something about it nope did a search never use those words I thought well maybe there's an opinion letter out there did a search nothing so so there is no requirement of neutrality that was just made up then I heard that there is a standard

practice for boards and Commissions to have neutral agenda items again I have searched the internet I have searched far and wide I've had other people search for me and I can't find what the standard practice is I can't find who has stated the standard practice I can't I've looked at in New York I'd look to see other agencies I just don't find it it appears in the memo that I got that that we got that I have some questions on and I'll get to that in a second but I'm just not I'm just not finding it so hopefully somebody can enlighten me but it does start to sound like there is an effort to not let us Commissioners say what we want to say I'm concerned about that because although Bagley Keene doesn't say anything about neutrality what it does say is that speech that criticizes the policies practices or the state body cannot be limited and cannot be silenced and there's case law in it there's plenty of case law it says it in Bagley Keene it says it in the Brown Act so I can only conclude that the reason for the limitations on my agenda items and you know about bringing the agenda items also of February which were written in such a way as to preclude discussion and action all of that is the preference of one person and in my judgment given our oversight obligations I just I don't believe that one person's personal preferences should override what any other Commissioner wants to put on the agenda so the the language of the agenda item is very disconcerting to me the way it's being handled and I think we need to address it and the other thing that I have a concern about is the prioritization of agenda items again I think it leads to control of what the Commission does we saw that a couple of times already in the past year but I as a very simple example as Commissioner Hatch's request to have the governing governance principles put on a particular agenda and it took three months to get them on there so so I think that we need to address these two things one the ability of a Commissioner to write his or her own agenda item and two the ability of Commissioners to work together to prioritize what goes on an agenda taking the information that staff may have to give us as as informative because we do have to recognize that you're juggling all staff is juggling all sorts of all sorts of things I Bagley Keene has been used as the shield or the protector of of no you don't get to do that but you know I think I have a very simple solution we set the agenda for next month at the end of this month's agenda we take in staffs input as to what they have on their plates certainly we did that with Mr. Feser saying hey you know if you're gonna ask us to do this keep in mind that we only have three weeks and so adjustments can be made so you know if the only concern that's left is woo Bagley Keene which I don't really agree that Bagley Keene says we can't talk to each other about what agenda item goes first or second but but let's leave that aside and let's just pretend that that's the rule then I think that this very simple solution is we do it in public we set our agendas together collaboratively cooperatively together and if something happens along the way in the month that that you know some kind of an emergency there was unanticipated and you know then there are other ways of dealing with it but I think that the first pass should be an effort by the Commissioners that said because this is part of the bigger picture of the governance principles I'm happy to have that second issue the priority is a priority I can't even say the word prioritization of a pending agenda item to be discussed as part of that so I can kick that but in meantime I also believe that the language for setting the agenda are the language of agenda items should be part of that bigger picture but given where we are in the processing of that bigger picture issue where now it's going to go into a regulation which I think is perfectly fine but as a result is going to take more time I would ask just the courtesy of allowing as we were instructed by the Chair but but actually allowing us to write our own agenda items just as a courtesy until this issue is resolved through the bigger picture so that is what I would ask

Chair Remke: I believe you had questions for

Commissioner Audero: I did yes

Chair Remke: Mr. Feser

Commissioner Audero: so there's all sorts of wording in here and there's like all sorts of background stuff and I'm just wondering how it all fits together but in page 2 you say that a brief general description of an agenda item need not exceed 20 words the first sentence in number 2

Mr. Feser: correct

Commissioner Audero: is it your position that that sentence sets a ceiling of some kind

Mr. Feser: no I think it just sets a parameter in other words it's not necessary to have a lengthy description that's all

Commissioner Audero: but it doesn't set a ceiling

Mr. Feser: No

Commissioner Audero: okay

Mr. Feser: 21 words and you're not going to be taken to jail

Commissioner Audero: right that's fine

Commissioner Hatch: if you make your if you make your agenda item too cryptic and too brief then you're not serving the public and that's why that 20 word thing is

Mr. Feser: well actually there's case law word or two words where some sufficient I mean there's lots of case law on this description that usually comes under the Brown Act but I think I think the the intent of the statute is to keep it within a reasonable amount I don't think they're worried so much at the low end of things believe it or not I see what you're saying it seems like

Commissioner Hatch: I've read it in case law as is a sort of a minimum to comply in other words you you by making it brief you can't make it super brief to the point where the average person can't what's on it

Mr. Feser: it has to be descriptive sure

Commissioner Hatch: yeah and if it takes more words to do that then that's not gonna be barred by the law

Mr. Feser: right I think it's just a general parameter of the legislature saying that you know generally it's not gonna have to have more than 20 words generally speaking that probably is uh like I'm a majority of the time

Commissioner Hatch: doesn't have to but may isn't even not need

Mr. Feser: yeah I'm not just speak for the lawmakers yeah I'll just say what they tell

Commissioner Audero: so so have a question for you who is the arbiter of what is too long

Mr. Feser: who determines what's too long on well under the current governance principles that would be the Chair

Commissioner Audero: no but I mean legally who is the arbiter of what is too long

Mr. Feser: well if you want to take it to litigation you get to appellate court and which is what we have as guidance as I said mostly on the Brown Act but it's related so it's relevant so I suppose the answer is the courts

Commissioner Audero: so on page three at the very last paragraph you say as a practical matter decisions regarding the content of an agenda should be made by one person in order to avoid violating the Bagley Keene Act involving two or more Commissioners would likely result in
2:40:00 communications of violate the Bagley Keene act but aren't you doesn't that sentence presume does that concept presume that that we're going to create some kind of a serial meeting some nefarious serial meeting

Mr. Feser: no presumes that you'll have an agenda item and in the course of that agenda item we'll have some sort of information and they're there for you would be I suppose deliberating or considering that information that should be considered in the public at a public meeting and then if you get another Commissioner involved and then the Chair then you have three people

Commissioner Audero:so but two Commissioners the Chair is a Commissioner

Mr. Feser: that's the other Commissioner that's why would I say one Commissioner to the Chair

Commissioner Audero: right so two Commissioners can have a discussion right

Mr. Feser: this sounds like the beginning of a joke

Commissioner Audero: here says involving two or more Commissioners but actually maybe more than two Commissioners might violate Bagley Keene but two does not we keep coming back to this is like there's like people are very loosey goosey here I've learned I've seen about how we use language two or more Commissioners two Commissioners talking together does not violate Bagley Keene do you agree with this

Mr. Feser: well I'm counting the Chair

Commissioner Audero: well okay alright

Commissioner Hatch: Let me put a point on this if I could interject for a moment

Commissioner Audero: yeah

Commissioner Hatch: put a fine point in this if one Commissioner tells two other Commissioners a funny joke did they violate the Bagley Keene act

Mr. Feser: presumably well I assume that the joke would be outside of the scope what that's the question

Commissioner Hatch: there we go and my my point is conferring over whether or not my agent my agenda item is going to get heard and did you miss characterize what I believe is the subject matter is not a Bagley Keene subject that's my premise and you do not think about it you don't have to answer me today but

Mr. Feser: well we're talking about best practices and going back to what Ted Prim told us and that's really everything about

Commissioner Hatch: what statute is that

Mr. Feser: what statute is that well it's it's what your attorneys need to look at to give you to ensure that you follow the law that's all I mean we're not going to give you improper information or simply we were simply your attorneys and we're giving the advice that's it and if we're gonna be in abundance of caution assuming that you would talk about substantive information in the course of an agenda description then you would certainly be invoking Bagley Keene and a violation sure there that you could have I suppose innocuous conversation or exchange regarding a description and not even to talk about the description that's certainly possible

Commissioner Audero: and in no way violate Bagley Keene

Mr. Feser: no assuming that's the case then that would be fine but just if we if we have a policy that we're doing every month and we say it's okay to just do that as a matter of course well then you have you run into traps or you know you could start talking about things why not just give the council right now that no this is a better way to go one Commissioner to another

Commissioner Audero: or alternatively why not give us credit and why not not treat us like people who don't know what we're doing and why not consider the fact that we do get Bagley Keene and that we would not go out there and affirmatively create a serial meeting or create a situation that violates Bagley Keene that's another option too and I feel like every time you talk about Bagley you not you personally but the memos that come from your division to try to

silence it assumes the worst it assumes a level of stupidity maybe it assumes that we don't know what we're doing why don't you assume that we do

Mr. Feser: well I think it's just in abundance of caution once again we think you know as a legal counsel generally in my practice over the years that's what you do I mean you do assume the worst and again if you get yourself comfortable into a situation where you can have two Commissioners discuss an agenda item and then it goes to the Chair yeah it might be you might have innocuous situations for the first six months and then you forget about the fact that your this is actually something formal and that you're supposed to keep it on point outside of any content of the of the item

Commissioner Audero: let me let me move on to another sentence that I have a question about at the top of page four you say involving any Commissioners other than the Chair in decisions regarding meeting meeting agendas would be inefficient in a misallocation of agency resources can you tell me what you mean by misallocation of agency resources

Mr. Feser: I don't know how else to say that

Commissioner Audero: what resources are being misallocated let me ask that

Mr. Feser: this is what I guess suppose maybe another way of putting this is ultimately somebody has to make a decision you can't have multiple people making the decision on the agenda it's sometimes some point it has to come down to who's going to do it what one person is going to set the agenda and the current principle governance principles

Commissioner Audero: which have no value right because we've already determined they should have been a a a regulation and they aren't

Mr. Feser: we're gonna have that discussion again I think we discussed that

Commissioner Hatch: excuse me for interrupting but you know the Chair is also supposed to be doing this in conferring with those who would like things on the agenda it's not like they do this on the fly you know headphones on and you know blinders and say I can't talk or listen to anybody because I might violate Bagley Keene but I'm going to put together a agenda and somehow are gonna figure out that you want me to put a particular item on the agenda that's not reality and to say that I'm going to put the guardrail a little bit further into the highway in case you get too close to it you don't get too comfortable get too close to it that's not you got to draw the line where the line is supposed to be and then make sure that we understand it and that we comply with it but don't set the boundary further in to prevent us from even being able to do our work because you don't want us to get too used to being up against that guardrail and that's know what I'm hearing from you

Mr. Feser: my apologies that I don't know how to I'm not understanding what you're saying you're using an analogy well can you just tell me

Commissioner Hatch: yes certain things you could do but you might after a while get too relaxed and then violate the law well that could happen at any level

Mr. Feser: correct

Commissioner Hatch: yeah so you're like preventing it from doing things that by law we can do or advising us not do things a week by law because we did get too comfortable with it

Mr. Feser: let me just put it this way the legal division of this agency and I think I could speak for this that the legal division doesn't want you to violate Bagley Keene we want you to comply with the law I think everybody agrees with that and that is what this memo is about that's it well there's no agenda to it there's no there's no conclusion that we're trying to reach we're simply following the law and citing the law

Commissioner Hatch: well what I equated what you defended earlier was it if the reg says or the law says you can't get within six inches of the wall you then tell us best practices you should never get more than a foot from the wall therefore you know reducing our maneuvering room to do our job

Mr. Feser: no that's

Commissioner Hatch: the kind of sense of the advice I was hearing earlier

Mr. Feser: that's actually not true because if you if I were to give you advice you know from a licensed attorney saying you should you should you and another Commissioner and the Chair can get involved in something that that's right there on its face it could be a violation of Bagley Keene

Commissioner Hatch: (inaudible) of what you're talking about and the kind of advice I would expect to get from you is what kinds of conduct and conversation are not within Bagley Keene and which ones clearly are and I believe that trying to get something the Chairs attention to put something on the agenda so that it can be considered is not covered by Bagley Keene and you know show me a case if I start to talk about the substance of an item that is going to be on the agenda or that I reasonably could presume what will be on a future agenda that is a violation of Bagley Keene but you

Mr. Feser: believe in the exchange it's part of this matter on this item that's a exhibit or documents relevant to this matter is an example so it's just it is it is something best practices was something Ted Prim used and that is something we're recommending

Commissioner Audero: are you saying that the exchange that were the exhibits violate Bagley Keene

Mr. Feser: no I'm talking about there's discussion about the agenda item itself

2:50:00 Commissioner Audero: I don't understand

Mr. Feser: I don't either

Commissioner Audero: the words came to hold on the words came out of your mouth so tell me what you meant by them

Mr. Feser: there are emails attached to the memo it's a part of this item

Commissioner Audero: yeah

Mr. Feser: and I I mean I haven't read them all but I think that they have you have some content

Commissioner Audero: they have content

Mr. Feser: they're about the substance of what's going to be in the description

Commissioner Audero: it's about the language of the item okay we'll have to agree to disagree

Mr. Feser: right but you're talking about what should be in there and what's an argument and what's not and what

Commissioner Audero: I didn't say anything about what should be an argument are you done

Commissioner Hatch: yeah

Commissioner Audero: okay let's look at page 5

Mr. Feser: if you'd like me to just change my conclusion I can tell you that I'm not going to do that

Commissioner Audero: I'm not asking you to change don't know what no no no no I'm not asking you to change your conclusion I'm just putting on the record the questions that I have about your legal analysis

Mr. Feser: thank you

Commissioner Audero: that's all so when we talk about on page five meeting high ethical standards that exceed legal minimums so that to me is unclear I don't know what that means because so how far do we have to go beyond what we are this is this is back to Commissioner Hatch's question of you know six feet and a six inches and a foot right how far do we have to go to meet this standard and and who says and who is the arbiter and on what authority is that person the arbiter because there's no case law on this

Mr. Feser: well I think this is a self-imposed under the you know don't want to cite it again but the governance principles again and it in that's what this is quoting the notion of just being an Ethics Commission which this is and the notion of having higher ethical standards and therefore maybe having that extra buffer so that we don't violate Bagley Keene and I think that's what this point is driving at home is that look there could be things where you could get right on the edge and you have a likelihood a possibility of violating the law but why don't we just put it here where you just have direct communication between one Commissioner and the Chair

Commissioner Audero: yeah and I understand that but the answer to why not put it here is because this here ties our hands and that's the point right where we're at what point is that ethical standard line that has to be exceeded who drew the line where is it who says whether we exceeded it enough right I mean those are questions that I don't have an answer to so if I don't have an answer to it how do I meet that standard other than saying oh six inches oh and Mr. Feser says 12 inches I'll go 18 right 18 doesn't let me do anything 12 ties one of my hands behind my back right and maybe nine would have been perfectly fine the problem is you're deciding where that nine is to the detriment of four Commissioners and so that's a problem

Mr. Feser: I don't know what you're looking for but you know this discussion in this discussion I confirmed that you could have say a joke as Commissioner Hatch said something that's there an exchange it's unrelated just innocuous has nothing to do nothing else but please put this on the agenda and that's it and I as we all sit here right now that's not a Bagley Keene violation if you have two Commissioners and the Chair involved in that kind of exchange

Commissioner Hatch: that's why we're talking about it

Chair Remke: what I would like to some clarification and it's 4:25 we still have another staff report future agenda items I believe there's an advice letter that wants to be discussed so is there a proposal are we going in a direction I mean we could drill John all day I think there just may ultimately be a disagreement on Bagley Keene when it applies and the significance of it I know I have that disagreement with some of you and I go along the lines that were provided by the AG's office and said to follow best practices don't get close to the line those things were said and I do think as an ethics agency that's what we should do now I know there's a high level of frustration from you to directly me as is illustrated in your emails you chose to attach to the agenda item but again my goal in preparing the agenda is to comply with the law and best practices while still setting your items I will note that your items were set on the agenda with the words to discuss and vote on to discuss and vote on

Commissioner Audero: no there's one that isn't

Chair Remke: to discuss and vote on to discuss and vote on that's the agenda and as I told you in the email to confirm your concern I had no intention of limiting your discussion or vote now what I did have an intention on doing was taking out your personal subjective opinion in an agenda item which again referring to the AG's presentation to us clearly said the decision to put on an item on the agenda should not involve a discussion of the substantive merits of that item but merely the question of whether it will go on the agenda big caution is not to discuss the

substance the reason that it ought to be on the agenda you need to stay away from that part of the conversation I felt like what you had read into the record the last month was a personal disputable opinion about why your matters should be on the agenda I put each of your matters on the agenda with the full description of your requested action so we are here to discuss it and vote as you see fit but I think we're just going around and around beating each other up on something we clearly disagree about on principles of law

Commissioner Audero: so okay so my agenda item regarding the enforcement process asked for a legal memorandum that disappeared thank you for doing the legal memoranda anyway

Chair Remke: that was at my request that they do the legal memorandum as you stated in your agenda item

Commissioner Audero: I requested it in my agenda item it disappeared so I appreciate it thank you very much my agenda item with regarding the revisions to the closure letter to issue closure letter which is on as a future item deleted my request for a vote they just left it at discussion that's troubling to me because I know what has happened in the past

Chair Remke: this is the perfect opportunity

Commissioner Audero: I have the floor I have the floor you'll have the floor in a second

Chair Remke: you've had the floor for most of the meeting

Commissioner Audero: no that is absolutely not true and I have the floor so it's troubling to me that when I ask for something to be voted on it disappears especially when I when we have a past track record of trying to keep us from acting in various ways I think enough said I think this is going to be resolved as part of the bigger picture but until then and I'm going to ask it as just a courtesy that our agenda items be left in the word that we propose them and I would like to know if you're going to do that if not I'll ask for vote

Chair Remke: well number one I would suggest that we go back and review what you said on the record or your language and I will do so as far as that future agenda item on the opinion piece and to the extent I got it wrong I will correct it so I will do that which is all I would ask you to do is to point out when there you feel that something wasn't properly represented and I will try to correct it number two I'm happy to put on the agenda item as you state if I think it complies with the law I think when you read into the record the reason and substantive nature of why you were putting items on the agenda I think that was inconsistent with the Bagley Keene training we received from the Attorney General's office and again I can read the paragraph to you and I think even Commissioner Hatch at the training said oh you mean we need to avoid pre-selling the issue and so I think that if you're going to state an issue and the you need to state what the subject is and what potential action may be happening but we need to avoid pre-selling the issue by the long subjective agenda items that were offered

Commissioner Audero: I disagree that the Attorney General ever used the word neutral and partial or anything related to what you're saying the only thing the Attorney General said was **3:00:00** that we can talk to each other about setting the agenda as long as we don't discuss substance I never did I'm sorry

Commissioner Hatch: the merits

Commissioner Audero: I'm sorry the merits and I never discussed either so that said all I want to know is do we need to take a vote or were you just agree to extend us the courtesy of allowing our agenda items to go on the agenda as we write them

Chair Remke: I'm hesitant to put inappropriate and I would go so far as to say unprofessional language on the agenda so perhaps we need a vote

Commissioner Audero: okay any any other discussion before any public comment

Commissioner Cardenas: the governor has made his two appointments the governor has the point of the Chair of this Commission I am not prepared today to reduce the discretion of the Chair and her good faith adherence to the law as she understands it I really just think we all just need to chill out and and give the Chair an opportunity to hear our concerns about the way that we think that she's handled agendized things and if you think it requires a vote I I'm not going to take away that discretion of the Chair I wouldn't if I wouldn't if it were you under the same circumstances

Commissioner Audero: I'm sorry

Commissioner Cardenas: I would I would not even if you were the Chair and and the behavior was was the same imperfect it sure seems that way but you were to take away her discretion I think she's an accomplished attorney she's the appointee of the governor and you know if there was a if I thought it rose to the level of gross malfeasance that'd be that'd be another matter but I I don't think that she has that she has done anything that rises to that level what I have done it differently I might have but I'm not convinced that she is not operating in good faith

Commissioner Cardenas: okay so I guess I'm a little can I move can I make a motion

Chair Remke: please make a motion

Commissioner Audero: I don't have this one right now because I didn't expect that that would be necessary but I move that our agenda items as we if we choose to dictate them into the record be placed on the agenda as we dictate them into the record without modification

Commissioner Hatch: question are are you talking about the description that should go on the agenda

Commissioner Audero: yeah yeah

Commissioner Hatch: just this (inaudible)

Commissioner Audero: on the agenda

Commissioner Hatch: I would second that for the purpose of discussion

Sasha: Commissioner Audero?

Commissioner Audero: yes

Sasha: Commissioner Cardenas?

Commissioner Cardenas: no

Sasha: Commissioner Hatch?

Commissioner Hatch: aye

Sasha: Commissioner Hayward?

Commissioner Hayward: aye

Sasha: Chair Remke?

Chair Remke: no

Sasha: the motion passes

23. Executive Staff Reports.

Enforcement Division. Galena West, Enforcement Chief

Legal Division. Jack Woodside, General Counsel

External Affairs and Education. Courtney Miller, Manager

Legislative and External Affairs. Phillip Ung, Director

Chair Remke: okay so the next item of the item 23 the executive staff reports

Commissioner Hatch: point of information madam Chair

Chair Remke: yes

Commissioner Hatch: I stepped out for a moment did we skip over 21 or did you just do it so quickly I

Chair Remke: Commissioner Audero put it over

Commissioner Hatch: okay thank you thank you

Chair Remke: questions or comments from the Commissioners regarding the staff report do you want to start with the advice letter issue

Commissioner Hayward: yes thank you madam Chair there were copies made so I hope people had the opportunity to look at them though I know it's been a long day of the request for advice and our response that we gave to well basically ultimately to Tony Mendoza through his counsel Cassandra Ferrannini and I would like to this is where I need a little procedural help my problem with this is that we've basically it seems to me responded to a not very detailed letter with an answer that betrays in several places that more detail would be helpful but then comes to the conclusion that the Senator can use his campaign money or can raise a legal defense fund in order to defend himself in a claim for damages that arises ultimately from accusations of sexual harassment now the proximate issue is his I guess firing of the staff member who filed a complaint about the fact that he was making an intern uncomfortable I think is what this one is all about but I feel like not just because it's this day and age but in any day and age something that is as contested is how one uses one's political money for sexual harassment several settlements or defense or whatever I mean this is a topic of quite serious debate right now in several states that I'm aware of and obviously you know Congress has had try to try to deal with it too I think that this letter I don't know if we can withdraw this letter if we just need to vote to reconsider it and talk about what advice would be better even if at the end of the day I might my intuition is incorrect and then in fact the answer is oh yes you can use your political money to defend yourself in this matter I still think this is the kind of issue with the salience today that we should have been invited to talk about it in an open meeting rather than have the staff advice letter process sort of chug along again I think that the request letter itself was a little deficient and in many cases like this we asked for more information if we're going to do a formal advice letter or we give it a letter of information that doesn't have the same protections I'm not sure this rises to the level where we need a Commission opinion but I'm not sure it doesn't I mean I'm I'm not sure where I am on that but I was disturbed by the relative ease with which we handled this legal analysis because at the end of the day the the use of money that's raised for political and officeholder purposes and then it's used for something that is not does not involve that purpose I mean even if it's not sexual harassment because it's not something really ugly it's still you know if you're if you're using your political money or your campaign money or legal defense money for something that you shouldn't be using that money for it's income and you're not paying taxes on it I mean it there's there's so many anyhow so my question my initial question is I think I think this letter is wrong what are my options

Mr. Lau: I think the best option at this point if the if the Commission is inclined is to vote for withdrawal of the letter and we send in the advice and proceeding through a Commission opinion we can instruct the requester for a Commission opinion I did a little more research it's something what I ought to do I can't say this has ever been done before so it's a little bit odd to do a Commission opinion if the requester doesn't ask for one at this point so I think the Commission would be best served by voting to withdraw if that's how they're inclined and we would

supersede the letter and and then inform the requester that they have the option of seeking an opinion and that they should no longer rely on the advice as been issued we do we have superseded advice superseded advice letters is not is something that we do do

Commissioner Hayward: yeah no I've seen them and I've seen them done different ways perceived really since I did read a lot of agendas and minutes with regard to the other matter and it just I wasn't quite sure how current practice was and and it wasn't clear to me why it's not always done the same way but that's another story okay then

Chair Remke: can I ask a follow-up on the procedure so then if we voted to rescind it I guess is the only issue before us right now and then you advise the requester that they could seek an opinion I guess the alternative if they do not choose to seek an opinion I guess the issue would be you could look at the advice I mean the regs cited in here on this issue and see if it needs to be tightened up or clarified I mean if you still think this is a left out issue based on the law that they relied on that is that kind of I'm just wondering Brian because I'm not sure at this point in time what the requester is going to do since he's no longer in office I don't know how

Mr. Lau: yes obviously looking into further defining the through regulations the statutory standards is an option it's it's

Commissioner Hayward: for now I think let's just let's let's it at the appropriate time I'd like to make a motion to rescind

Chair Remke: can I and you may have already said it but can you say it again for me if what is **3:10:00** your issue with the advice given other than you think it's broader than we've done before

Commissioner Hayward: I am not sure that our conclusion that the matter that he's being sued on is directly related to a political legislative or government purpose because it seems to me the wrongful termination is part of a larger harassment problem and and it's almost I mean page three based upon the limited facts you've provided the conduct complained of was in connection with Senator Mendoza's duties related to managing his staff well I'm not sure I agree but I also but but even sort of the the even the question before that is well if we feel like the facts the limited facts are limited I've seen instances where we go back to somebody and say you know you're gonna need to tell us more for us to be able to give you advice that we think you would shield you from from prosecution

Chair Remke: do you understand this staff member was not the one who was accused him a sexual harassment just so we're clear

Commissioner Hayward: yeah I know

Chair Remke: okay um so okay Brian you were gonna say so good Oh Commissioner Hatch

Commissioner Hatch: yes a question Brian I was searching for the word I was thinking rescind but you would said withdrawal that the correct

Mr. Lau: we typically guess we would do a superseded letter we would issue it I guess we wouldn't withdraws or we call them withdraws when they when will you draw them initially so I guess I spoke incorrectly called it on withdrawal we probably wouldn't label it a true withdrawal we would just issue a letter stating stating that we were superseding the previous advice

Commissioner Hatch: with what

Mr. Lau: we would just indicate that they should no longer rely on advice provided and we wouldn't be we wouldn't provide an alternative answer at this point

Chair Remke: but give them the option for an opinion

Mr. Lau: but giving them the option for an opinion

Commissioner Hatch: yeah I I wouldn't want to foreclose on his individual decision it's whether or not to do that but I want to be sure we had the wording right is it withdraw or some other word

Mr. Lau: I

Commissioner Hatch: like saying we're taking back our opinion or our advice

Mr. Lau: I don't recall the time we've ever done this by action of the Commission so the exact procedure isn't really laid out we do with- withdraw letters that we label withdraw we also do a letters where we do the same that the same letter

Commissioner Hatch: withdrawal is is to say it we're taking back what we gave you and

Mr. Lau: we technically withdraw a letter when we don't issue advice so I think this could be very appropriately labeled as a which all that are superseding the prior letter

Commissioner Hatch: okay fine and then I have a follow-up slightly different when we were considering the reg regulation change over how much money one state elected official could give to another's Legal Defense Fund one of the other Commissioners here asked the question about whether in light of all the sexual harassment stuff whether or not they could spend that kind of money on defending themselves as a sexual harassment lawsuit and one of the three of you assured that would not be the case and this is way too close to the edge you know that seems to go just the opposite and unless there's some very tightly you know more information that would provide some distinction against that it seems like we're just going backwards on what we said a couple of months ago

Mr. Lau: I I think there's room for some interpretation there I think we tried to indicate that if this was sexual harassment outside a job then that would clearly fall outside of of using

campaign funds so I think that's the extent that certain cases of sexual harassment would not be a permitted

Commissioner Hatch: sexual harassment even if it's you know in his chair at the at the capital it doesn't make it you know his business that's that's separate behavior

Mr. Lau: ultimately I don't think we're in a position to decide whether or not there a sexual harassment occurred what we have is a employees and fellow that we're working for the senator at the time and the the the the permission that we gave to use campaign funds related to a wrongful termination case brought to brought by an employee that was not claiming sexual harassment only that she was terminated for reporting unsavory words that were said to an intern so I mean it's hard to write the letter you know in the context that we're not passing judgment on the ultimate allegation but where you have a employee of the campaign and the legal standard is does it directly relate to his his office and he has an employee alleging wrongful termination we thought it was very consistent with the actual law to allow the use if we aren't actually looking to whether or not the allegation is true or false

Chair Remke: Commissioner Audero

Commissioner Audero: so are you saying that sexual harassment has to be proven before you can make a decision about whether the funds can be used to defend against the case

Mr. Lau: no I don't think I'm not intending that at all I'm saying that where the allegation is coming from staff members and it's unrelated to even a sexual harassment claim against him at this point he's not asking to defend himself from somebody accusing him of sexual harassment he's asking about a a wrongful termination case and an expulsion hearing by the Senate he there's I don't have the complete facts but to my knowledge I don't know if any of the interns or fellows have pursued any kind of legal action against him that would be a different and very different analysis have you I don't want to presuppose what the result would be but the but those facts are are significantly different than the facts before us if this was the actual somebody alleging sexual harassment especially if it was sexual harassment outside of the job

Commissioner Hatch: this is usually something that comes out of sexual harassment you accuse your employer of sexually harassing the next thing you know you're on the unemployment line I mean how can you make that cut that so thin I mean I'm not saying that you're right or wrong it just doesn't look good reflects on us and I don't want to be giving them you know the card to you know use lobbyist money to to resolve this he can do without our advice and I'm saying that it's that the letters gone so we should rescind it or withdraw it

Commissioner Audero: I have a question about the rescission part of this so he asks for advice we give advice that I guess some of the Commissioners don't agree with we pulled it back and we don't replace it with advice that the Commissioners agree with we just leave this vacuum

Mr. Lau: I believe that the Commission was inclined he could the procedures for advice letter says we could sit indicates that we can treat an advice that a request as a request for an opinion

so I suppose we can unilaterally decide to issue an opinion I find it somewhat awkward to issue an opinion to someone who hasn't asked for their opinion so I would at this point suggesting just to allow them to pursue an opinion if they're so inclined

Commissioner Audero: but I would agree with that but I guess my question is why don't we rewriting this advice letter with something that the Commission agrees with why are we leaving this vacuum they asked for advice we gave advice now we're taking it back it's a big oops that's fine I think we have an obligation to give advice I am sensing that there's like no we don't want to give that advice I I think we have an obligation to give advice and and you know and what that advice will be I think will depend on further analysis but I think that what Commissioner Hayward is saying is you know I guess we didn't have enough information to really come out one way or the other I have to say I would I would beg to differ because the first fact sentence is Senator Mendoza was accused of sexual harassment so I mean I you know I think that I think that but that's neither here nor there because I think that this takes this is going to require more analysis also I would tell you as an employment lawyer that and you know you can verify this if you would like but I'm pretty sure that sexual harassment by a supervisor isn't excused just because it doesn't happen on the cap in the capital right a supervisor is a supervisor 24/7 anywhere he is and the he or she the idea behind that is that you can't step outside your office and feel like you're okay harassing someone you're stepping outside to do something that you're not allowed to do inside yeah and I think the law is pretty clear on that but again I think that this **3:20:00** is this is something that's going to be fleshed out if we decide that we are going to give different advice I just don't think that leaving a vacuum after somebody has asked her advice is is the appropriate thing to do

Chair Remke: I think the issue and that's why it's to offer them an opinion because as the regulations are now it's legal department gives advice the Commission can review it and reject it and rescind withdraw or whatever but then I think the issue is does the the Commission vote to rewrite advice letters and I don't see any authority on that at all I think the idea is we write it as an opinion if that is the desired outcome for the requester

Mr. Lau: I'll just say that's typically what's been done but

Chair Remke: so I mean I don't think it's a vacuum because we're rescinding if we resend this we give the requester the option to get advice in an opinion

Commissioner Audero: but why would the person do that right I mean if we're rescinding this it's because we are going to say something that this person is not going to want to hear why would that person codify it or not codify it but why would the person ask for it to be done in a more formal means right I just don't think that's going to happen and I think that withdrawing our advice is and without replacing it with correct advice you know depending on your point of view is an easy way to protect this person

Chair Remke: protect this person I mean first there's several reasons we don't even have to give advice and this might fall into one of those at this point if there's a disagreement as to the law or it's unsettled and that would get us to the opinion drafting phase where that would be more of a

settled law question I'm not sure we're leaving anyone hanging he can act he actually this was requested by his attorneys who can give him advice I just don't want to get and I don't think until we address the question which has definitely been raised about the advice letter process as part of the governance principles and until we look at the reg and think about changing it I don't think the avenue there is for the Commission to rewrite advice letters or tell legal how to write it I think the issue is do you agree or disagree and if you have problems we can raise it and if others agree we can with- rescind it the requester could be notified and he can be put into an opinion or further pursued via regulation I just don't know the avenue of going back rewriting advice letters is open to us

Commissioner Audero: I have a question about that procedure is there something that says we can't

Mr. Lau: not expressly but it does say that advice letters are not an opinion of the Commission so I mean the regulation looks to me as if advice letters come from staff opinions come from the Commission when the Commission is considering something that raises a significant policy issue it should come through the Commission as an opinion

Commissioner Hatch: so we can ask if I could

Chair Remke: Commissioner Hatch

Commissioner Hatch: thank you we could take a vote to withdraw and that would require you then to send a letter saying we've withdrawn it and here's your options okay he can if he wants to try it again through the full Commission process which I doubt that he's going to want to do then he could do so by our simple action of that puts him in a position where he dare not spend any legal defense money on something that we've withdrawn our advice on because he's likely to end up in an enforcement action over that and I think that's a good solution

Chair Remke: so is there a motion

Commissioner Hayward: I think it has come time for a motion I would move to withdraw advice A-18-009 issued to to Cassandra Ferrannini on February 20th 2018

Commissioner Audero: second

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: sorry Commissioner Cardenas

Commissioner Cardenas: not offended believe me the vote is to rescind

Commissioner Hayward: yes

Commissioner Cardenas: yes

Sasha: Commissioner Hayward

Commissioner Hayward: aye

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

Chair Remke: okay were there any other questions or comments on the executive staff report

Commissioner Cardenas: I did a couple hours ago or what days when when assembly member Mullin's person here I was here earlier he suggested that there was a spa bill or something that was going to possibly provide some clarifying language is that 2155 2188 and I'm just wondering I know it's one of these two are they still kind of vacant spot bills just kind of hanging there or is there do either of them have any uh any meat on them and I guess more specifically to either of them go to the kind of discussion we were having earlier today can I even ask that given that now I'm talking about the content of

Chair Remke: you can ask him anything about the bills you want

Commissioner Cardenas: all right do 2150 either 2155 for AB 2188 say anything yet

Mr. Ung: Thank You Commissioner Cardenas Phillip Ung legislative director 2155 was amended earlier this week to no longer be a spot bill and has now some substantive provisions in it although none of those provisions address the issues that were discussed today

Commissioner Cardenas: I was gonna say and it answered the question so

Mr. Ung: and 2188 remains a spot bill although the arcane conversations with the author and in in media reports that they've confirmed that they have some intent for that for that bill which is not related to 249 and is related social media disclosures

Commissioner Hatch: wasn't the number that Trent mentioned 2155

Mr. Ung: yes sir that was the first bill that I was talking about yeah it was 2155 which now has substantive language

Chair Remke: any other questions okay the staff reports will be submitted we do have to go back to the enforcement calendar and item number five

Commissioner Hatch: yes thank you madam Chair before we adjourn I would like to get clarification of on item 20 notice I give you a chance to think about it and on item five this is another default proposal and I would like Galena to kind of educate me as to how far you've extended yourself and whether you think that there's a possibility you might be able to bring this to a good outcome if we roll this over

Ms. West: Galena West chief of enforcement I don't have a lot of hope for this one this one is has been around for a while because she ran in 2013 and 2015 and is currently sitting City Council member and has promised to come up to date on filings and and disclosures and and even as January we were gonna put this on February we pushed it over in order to work with her and still have seen no results

Commissioner Hatch: so he's sorta unlike some of the others you've been able pull pull the rabbit out of the hat when we give you another month you don't think that that's gonna happen here

Ms. West: usually the rabbit out the hat is the disclosure from it being publicized on the agenda so we hear something like this morning or yesterday which we did not in this case

Commissioner Hatch: okay

Chair Remke: and there's the added concern she's a current city councilmember that's

Commissioner Hatch: the end of my sentence was and and she's we don't have a what do you call statute of limitations we've already met the

Ms. West: right we the we've already gone through all of the administrative process up to this point and the statute of limitations was told with the filing of the PC report

Commissioner Hatch: right okay so we rot in danger we could send another threatening letter

Ms. West: sure

Commissioner Hatch: if I gave you another month

Ms. West: I believe she's even been served at City Council meetings

Commissioner Hatch: really

Ms. West: mm-hmm

Commissioner Hatch: so okay we've answered my questions thank you I'm inclined to move that we put it over one more month with an effort to kind of give her a scary I should say an **3:30:00** appropriate effort to bring her to justice on this issue I mean it may not be in agreement here but that's would be my motion

Commissioner Cardenas: second

Chair Remke: take the role

Sasha: Commissioner Audero

Commissioner Audero: yes

Sasha: Commissioner Cardenas

Commissioner Cardenas: yes

Sasha: Commissioner Hatch

Commissioner Hatch: aye

Sasha: Commissioner Hayward

Commissioner Hayward: no

Sasha: Chair Remke

Chair Remke: no

Sasha: the motion passes

24. Proposed Future Agenda Items.

Note: The Commission may not discuss or take action on any matter raised during public comment that is not included on this agenda, except to decide to place the matter on the agenda of a future meeting. (Government Code Sections 11125 & 11125.7(a).) Below is a list of items currently pending for future agendas and the Commissioners who requested them.

- (Hayward and Audero) Solicit Attorney General's opinion to clarify some of the advice provided by deputies attorney general at a presentation on the Bagley Keene Open Meeting Act.
- (Audero) Request the Attorney General's office review its 1977 advice letter (*The Honorable Michael Bennett*, 60 Ops. Cal. Atty. Gen. 16), and let us know if the advice is still applicable considering the application of California's minimum wage law to state employees as of January 1, 2001.

- (Audero) Review whether the Commissioners can instruct the Enforcement Division to re-write all or part of a closure letter in a specific case with language that the Commissioners approve, or otherwise rescind and issue it with that language, starting with an analysis from the Legal Division with a possible request from the Attorney General's office.
- (Hayward) Review the feasibility of holding a future Commission meeting in a location other than Sacramento.

Chair Remke: 22 times sorry (inaudible) and I know that Commissioner Audero has a change for the language of the future agenda item that is already on there

Commissioner Audero: yeah I would just ask you that my original language should be put on that item and then I had mentioned that I thought that we might have another agenda item based on the enforcement issue but we don't givin the direction we decided at least I don't give in the direction we decided to take

Chair Remke: okay anybody else want to add anything

Commissioner Hatch: Madam Chair I just want a clarification as to how we're gonna proceed with item 20

Chair Remke: yours ad hoc he wants to know the proposal and how you will be proceeding

Commissioner Hayward: oh

Commissioner Hatch: because we have short window

Commissioner Hayward: right I thought that I thought that I'd already closed my notebook and now obviously my brain I thought that next month's agenda item informed by all the wonderful feedback we're going to get would be something that has a cover memo that talks about the feedback we got looks a draft that looks like a reg I think I can still do that I used to do it a lot and any backup that seems like people want to see it I mean I'll let people know what kind of feedback we get and you all can say oh you know I'd really like to see that or you know I don't really need to see that and we can take another crack at it I mean I think that moves the needle in the right direction because it gets people talking specifically about regulatory language instead of this more sort of high and philosophical stuff

Commissioner Hatch: right I guess just to be clear though it takes 30 day notice which we're really past you know

Commissioner Hayward: this will be like a like a pre notice I think and is that your understanding I thought you said that and I thought that sounded right

Mr. Lau: yes it would be a pre notice kind of discussion

Commissioner Hatch: and and what an information only on this on what the next meeting

Commissioner Hayward: no youd have to move forward

Commissioner Hatch: is so sort of two things at once we need to pre notice that we're gonna have a reg thing in May but a separate notice that says we're gonna invite comment on (inaudible)

Commissioner Hayward: well I think they can be the same item I mean it's it's a it's an agenda item that has a reg attached to it that has the benefit of the people who felt like they needed extra time to tell us things you know pre noticed regs can still be can be debated and in fact if next month we all get here and it's like oh my gosh this is the worst idea we've ever had we don't have to move forward on right

Commissioner Hatch: I may be a little bit hard headed but maybe we call a little bit soft headed here this hour of the day but I didn't want to get in a situation where yeah we're on notice for a reg for May but we can't talk about it in April I can't take the input I don't want that to

Commissioner Hayward: that's not how it goes okay

Commissioner Hatch: all right

Chair Remke: Commissioner Cardenas did you have one final thing

Commissioner Cardenas: having had a lot of time to think over the last period of time I I just want to say on the record I regret profoundly my mischaracterization of comments made by my brother Commissioner Hatch I apologize to you personally I you're an outstanding public servant that's clear to me and I already consider you a friend and I hope that we still be notwithstanding my impertinent today I let my guard down and and hyperbole got the better of me and I'm not proud of that and I just I just want you to know how how highly I hold you in in esteem and I I regret profoundly any any events

Commissioner Hatch: if I may Madam Chair

Chair Remke: Commissioner Hatch

Commissioner Hatch: I thank you very much for that it's no small thing to do and I also appreciate the personal comments that you made to me in the hall spirits sometimes get a little hot and I was hot and that car set me off and I apologize to the extent that I was discourteous to you it comes out of the passion of what I believe in and what I'm trying to get done here again I thank you very much

Chair Remke: okay if there's nothing else we'll adjourn

The meeting adjourned at 5:06 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved April 9, 2018

Joann Remke, Chair
Fair Political Practices Commission