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February 19, 2017

VIA EMAIL & U.S. MAIL

Jessica Levinson, Chair
Los Angeles City Ethics Commission
200 N. Spring Street, City Hall 24th floor
Los Angeles, CA 90012

RE: Proposed Amendments to Enforcement Regulations

Dear Chair Levinson:

As you may know, our law firm has represented numerous respondents in enforcement matters before the City Ethics Commission over the years, and we submit this letter in response to the proposed amendments to the Commission's enforcement regulations which were distributed on Wednesday, February 15, 2017. In addition, we look forward to discussing our comments with you and the other Commissioners at this week's Commission meeting.

As a preliminary matter, we thank the Commission for sending out an email on Friday afternoon confirming that the Commission is only "beginning the process" of reviewing the proposed regulations at the meeting (even though the packet prepared and distributed by staff last week indicated that staff was recommending that the Commission "adopt the regulations" at the meeting). Staff did not seek input about the proposed changes to the Commission's enforcement procedures from our law firm or, to our knowledge, from any other law firm active in the California Political Attorneys Association. We believe that the perspective of law firms which have represented clients in enforcement matters before the Commission, other local ethics commission, and the FPPC would be helpful to the Commissioners as they consider the proposed amendments.

Although we just received notice of the proposed amendments and only had a very short time to review them (over a holiday weekend), our preliminary review reveals several policy and due process concerns.

First, staff proposes tolling the four-year statute of limitations while settlement negotiations are pending, claiming that the statutory deadline makes the settlement

process “unnecessarily hurried” when it begins near the end of the statutory period. We agree that settlement negotiations are often more stressful and less productive when done immediately before the statutory deadline – but this rush is typically caused by staff not acting more quickly in its investigations, and in no event warrants such a “power grab” against the due process rights of respondents.

Four years is more than enough time to review campaign or lobbying reports, subpoena documents, and interview witnesses in order to determine whether a violation has occurred – and is longer than statutes of limitations in other jurisdictions and in other enforcement contexts. Moreover, the proposed amendment makes a mockery of the statute of limitations because staff could simply tell respondents that “settlement negotiations have now begun” and thereby give themselves unlimited time to complete its investigation. This proposed amendment would therefore defeat the purposes served by statutes of limitations-- finality for respondents and reliability of the evidence.

Second, staff proposes requiring respondents and witnesses to “cooperate” with investigations, and the proposed regulatory language defines cooperation in very broad terms. This proposal raises serious due process concerns: Would a respondent be deemed uncooperative if he or she asserts a legal defense to a claim being made by Commission staff? How about if he or she asserts that staff’s request for documents is overbroad or unduly burdensome? The proposal, which would require respondents to “timely comply with subpoenas” and “provide truthful sworn statements,” also seems unnecessary -- the law already places deadlines on when a respondent must comply with a subpoena, and already imposes the penalty of perjury on those who lie under oath. Finally, City law and Commission regulations as they exist now require the Commission to consider whether a respondent has cooperated in the Commission’s investigation when deciding on an appropriate penalty; this existing requirement seems to put respondents on sufficient notice of the advantages of cooperation.

Thank you very much for your consideration of these comments, and thank you for delaying the Commission’s vote on the proposed amendments until the regulated community and other interested parties have had time to review them and provide comments to the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bradley W. Hertz". The signature is stylized and cursive.

Bradley W. Hertz