

BIPARTISAN COMMISSION ON THE POLITICAL REFORM ACT OF 1974

Overly Complex and Unduly Burdensome

The Critical Need to Simplify the Political Reform Act

Final Report and Recommendations





LETTER FROM THE BIPARTISAN COMMISSION

DEAR GOVERNOR DAVIS, SECRETARY OF STATE JONES,
MEMBERS OF THE LEGISLATURE, MEMBERS OF THE FRAN-
CHISE TAX BOARD, AND THE CHAIRMAN AND MEM-
BERS OF THE FAIR POLITICAL PRACTICES COMMISSION:

Nearly two years ago, as the 25th anniversary of California's Political Reform Act of 1974 was approaching, the Legislature and Governor Wilson agreed that a fundamental review of the Political Reform Act was in order. The result was the passage of SB1737 (McPherson) creating the 14-member Bipartisan Commission on the Political Reform Act of 1974.

Over the past 18 months the Bipartisan Commission has held fourteen public meetings—including Public Hearings held throughout California to solicit the public's input—in order to assess the present state of the Political Reform Act and how it might be improved. The Bipartisan Commission, with the assistance of the Institute of Governmental Studies, also conducted extensive research and empirical studies relating to the three principal areas of the Polit-

ical Reform Act—(i) campaign, lobby, and public official financial interest disclosure, (ii) conflicts of interest of public officials, and (iii) enforcement of the Act.

The work product of the Bipartisan Commission is embodied in this Report and the accompanying Appendices. An Executive Summary of the Report and the Commission's Recommendations is included. In summary, the Bipartisan Commission has concluded what may already be obvious to many people who deal with the Act on a regular basis: in its present state the Political Reform Act is overly complex and unduly burdensome for many persons who want to lawfully participate in the political system.

The extent of the current problem is such that there is a serious risk that the Act will substantially deter persons from participating in the political process due to: (i) a lack of understanding of how to comply with the Act, (ii) an inability or lack of

desire to incur the expenses necessary to comply with the Act, and (iii) a fear that—even with reasonable diligence—full compliance with the Act may be unattainable, therefore exposing the political participant to possible monetary liabilities. The Bipartisan Commission therefore proposes in this Report a series of Recommendations that it believes would simplify the Act, lessen the expense and burden of compliance, and make the enforcement of the Act more fair and reasonable.

It is for these reasons that the Bipartisan Commission urges the Governor, the Legislature, the Secretary of State, the Franchise Tax Board, and the Fair Political Practices Commission to seriously consider the Recommendations contained herein for possible adoption in furtherance of the purposes of the Political Reform Act.

Sincerely,

Steven S. Lucas, Chairman

COMMISSION MEMBERSHIP

Steven S. Lucas, Chairman

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Kathy Bowler

Jesse Choper

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Dan Lowenstein

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Eileen Padberg

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**A brief biography of each of the Commissioners is included in Chapter 2, pages 16-17.*

ACKNOWLEDGMENTS

THE BIPARTISAN COMMISSION would like to acknowledge the work of the many people who assisted the Commission. Thousands of hours of volunteer time were provided to the Bipartisan Commission by many people. Specifically, the Bipartisan Commission would like to thank the following persons and organizations for their generous assistance with the Commission’s work:

<p>The Fair Political Practices Commission, including Chairman Karen Getman, Enforcement Division Chief Cy Rickards, Technical Assistance Division Chief Carla Wardlow, the FPPC Staff, former Chairman James Hall, former General Counsel Steve Churchwell, and former Enforcement Division Chief Darryl East.</p>	<p>tant Secretary of State Jeff Uyeda; former Chief, Management Services Division Bob Nishimoto; Deputy Division Chief, Political Reform Division, John Keplinger; Deborah Davis; Angela Ponciano; Lisa Kinetz; and Alfie Charles.</p>	<p>with the Los Angeles Area Public Meeting.</p>
<p>The Secretary of State’s Office, including Secretary of State Bill Jones; Undersecretary of State Rob Lapsley; Chief Counsel Bill Wood; Division Chief, Political Reform Division, Caren Daniels-Meade; Assistant Secretary of State Vickie Glaser; Communications Director Beth Miller; Assis-</p>	<p>Senator Bruce McPherson and staff assistant Rick Van Nieuwburg.</p>	<p>San Diego County Supervisor Ron Roberts and Deedee Castro, Director of Community Outreach and Policy Advisor for Supervisor Roberts, for hosting the San Diego Area Public Meeting.</p>
<p>stant Secretary of State Vickie Glaser; Communications Director Beth Miller; Assis-</p>	<p>The San Francisco Ethics Commission, including Executive Director Virginia Vida, for help with the San Francisco Bay Area Public Meeting.</p>	<p>Tony Miller, who provided timely updates on the Commission’s activities to many interested persons.</p>
<p>stant Secretary of State Vickie Glaser; Communications Director Beth Miller; Assis-</p>	<p>The Los Angeles Ethics Commission, including Executive Director Rebecca Avilla, for their help</p>	<p>Stephen Trout, staff of State Senator Ross Johnson, for finding meeting rooms for the Sacramento Public Meetings.</p>

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- 6. Written Comments Submitted By Public; Proposed Recommendations Considered

Questions and comments may be directed to the Bipartisan Commission on the Political Reform Act, c/o Steven S. Lucas, Chairman, 591 Redwood Highway, No. 4000, Mill Valley, CA 94941 tel. 415.389.6800; e-mail slucas@nmgovlaw.com.

**The Appendices have been placed on file with the Fair Political Practices Commission's filing officer, located at 428 J Street, 4th Floor, Sacramento, California 95814.*

OVERVIEW

The Political Reform Act of 1974 (the “Political Reform Act” of the “Act”) was adopted by a vote of the People of California over a quarter century ago in order to, among other purposes: (i) provide for the full and truthful disclosure of receipts and expenditures in election campaigns, (ii) provide for the full and truthful disclosure of the assets and sources of income of public officials which may be materially affected by their official actions, and require decision-making disqualification where appropriate, and (iii) provide adequate enforcement mechanisms for both public prosecutors and private citizens in order that the Act would be vigorously enforced. (See Government Code Sections 81001, 81002.)

The Political Reform Act: Extensive and Far-Reaching

During the past 18 months, the Bipartisan Commission on the

Political Reform Act of 1974 (the “Bipartisan Commission” or the “Commission”) has conducted an in-depth study and analysis of these three principal areas of the Political Reform Act: (i) campaign, lobby, and public official financial interest disclosure, (ii) conflicts of interest of public officials, and (iii) enforcement of the Act.

There is no doubt but that the Political Reform Act provides for extensive disclosure of campaign and lobby finances and public officials’ financial interests, complex protections against conflicts

of interest with respect to public officials and those financial interests, and elaborate enforcement mechanisms for violations of these provisions. The Act’s provisions may be more extensive and far-reaching than those of any other state, as was certainly the case over 25 years ago when the Political Reform Act was adopted by the voters .

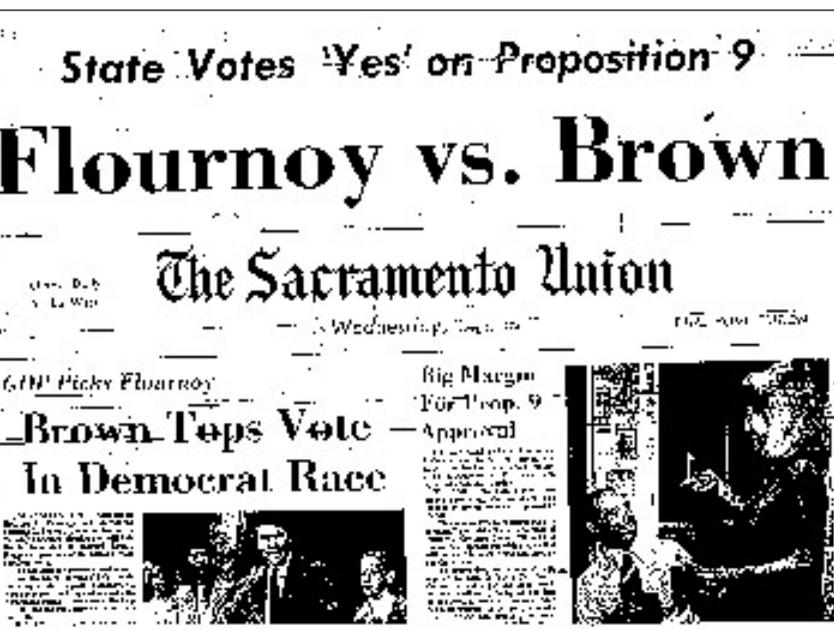
The Bipartisan Commission has studied the provisions of the Political Reform Act both as a matter of viewing the original provisions as they are applied and implemented over a quarter century later, but also as a matter of how the provisions and their implementation have changed, either by amendment or by regulatory change over the years. It is clear that the regulatory changes—the many Fair Political Practices Commission (“FPPC”) regulations that have been adopted and the FPPC advice letter interpretations that have been promulgated—account

The Act’s provisions may be more extensive and far-reaching than those of any other state, as was certainly the case over 25 years ago when the Political Reform Act was adopted by the voters.

for the lion’s share of the changes to the Political Reform Act and its implementation.

The Critical Need to Simplify and Bring Fairness to the Political Reform Act

Based upon its extensive research and analysis, the Bipartisan Commission finds that the Political Reform Act should be commended for its many and sub-



stantial accomplishments over the past quarter of a century, including principally its system of extensive disclosure of relevant information necessary to create an informed electorate and a fair political process.

Nonetheless, the Bipartisan Commission also finds:

- As may be obvious to many who deal with the Act, in its present state the Political Reform Act is overly complex and unduly burdensome to many persons who want to lawfully participate in the political system.
- The extent of the current problem is such that there is a serious risk that the Act may substantially deter persons from participating in the political process out of one or

a combination of the following factors: (i) a lack of understanding of how to comply with the Act, (ii) an inability or lack of desire to incur the expenses and/or other resources necessary to comply with the Act, (iii) a fear that—even with reasonable diligence—full compliance with the Act may be unattainable, therefore exposing the political participant to possible monetary liabilities.

- The Political Reform Act is in serious need of amendments that would simplify the Act and its implementation, lessen the expense and burden of complying with the Act, and make the enforcement of the Act more fair and reasonable to the many persons who

use reasonable diligence but nonetheless violate some of its provisions.

The Bipartisan Commission therefore proposes in this Report a series of Recommendations with respect to disclosure, conflicts of interest, and enforcement that it believes would, if adopted in full, provide for a more efficient, effective and fair implementation of the Political Reform Act—and the purposes that the Act serves. These Recommendations take the form of statutory, administrative, regulatory, procedural, and clarifying changes.

Simplification and Fairness as Only a First Step

While the Bipartisan Commission believes the Recommendations discussed below are critically necessary to serve these purposes of simplification and fairness, the Commission also believes that this is only the critical first step of what should be an ongoing process.

The endless attempts to fill every conceivable loophole in the law, to require disclosure of every possible financial interest of a public official (no matter how convoluted), and to require disqualification from participation in governmental decisions in circumstances that are so confusing

that lawyers argue for months over the correct application of the law, have exacted a toll from the political process. The Act is largely viewed as a law of “strict liability”; that is, violations can be found no matter how reasonable the diligence of the person attempting to comply with the Act. Simplification and bringing even greater fairness to the Act are critically necessary steps to furthering the original purposes of the Political Reform Act.

Therefore, in addition to the implementation of the Recommendations contained in this Report, the Legislature and the FPPC should continue down the road of simplification and fairness, to create a system that is more readily understandable and better differentiates between the most egregious violators and the ordinary and reasonably diligent—but not perfect—political participant. In this regard, the Bipartisan Commission has compiled all of the hundreds of written and verbal proposals received from the public during its investigation, many of which might be helpful as a next step down this road to simplification and fairness. (See Appendix 5.)

RECOMMENDATIONS

Disclosure Under the Political Reform Act

Recognizing that disclosure is the cornerstone of the Political Reform Act, the Bipartisan Commission devoted substantial energies and resources to its investigation and analysis of this subject. The Commission quickly learned that—due to its complexity—disclosure may also be the Achilles’ heel of the Political Reform Act.

The Bipartisan Commission—through its Focus Groups, its Campaign Report Form Experiment, its Public Comment Hearings, and the work of the Commissioners—studied and analyzed the three primary areas of

regulated by the Act that they threaten the Act’s effectiveness.

As an example, evidence of this surfaced in the Bipartisan Commission’s Public Comment Hearings. At its first Public Hearing, a middle school math teacher (who is a volunteer PAC treasurer) took time off from her job and called in favors to have her children looked after so that she could travel over two hours to address the Bipartisan Commission. Her compelling testimony focused on her recurring anxiety over not knowing whether she is both completing her PAC disclosure forms correctly and filing them according to the

The Political Reform Act is in serious need of amendments that would simplify the Act and its implementation, lessen the expense and burden of complying with the Act, and make the enforcement of the Act more fair and reasonable.

disclosure found within the Political Reform Act: campaign disclosure, public official financial disclosure, and lobby disclosure.

Through its investigation, the Bipartisan Commission found a broad consensus that the complexities of the Political Reform Act in the area of disclosure so seriously burden those who are

proper schedule. Her stated fear: the possibility of enforcement action being taken against her for unknowing and unintentional violations of the Act that may occur despite her diligent attempts to comply with the Act—or as she jokes with friends, “who will take care of my kids when they lock me up?”

The Bipartisan Commission also found direct evidence of the complexity of the Act’s disclosure provisions in its Campaign Report Form Experiment (see Chapter 5B), wherein both experienced and inexperienced persons were asked to diligently prepare a campaign report using the instructions provided and were, without exception, unable to prepare the report accurately.

Because of the broad consensus of the need to dramatically simplify the disclosure requirements, the Bipartisan Commission proposes herein a series of Recommendations which would eliminate some of the complexity inherent in the existing disclosure rules.

The Commission recognizes that these Recommendations may result in some modest “loss of disclosure” of non-essential information. However, the Bipartisan Commission feels strongly that the gains resulting from the proposed simplification greatly outweigh any loss of disclosure of non-essential items. These gains include the lessening of the costs and other burdens of compliance, the creation of consistencies and simplified rules that further the users’ understanding and comfort level with the Act, and the reduc-

tion of some of the First Amendment intrusions that all political regulations entail.

The Bipartisan Commission therefore presents these Recommendations to provide for a more efficient and effective implementation of the Political Reform Act in order to carry out the original purposes of the Act as adopted by the voters of California over 25 years ago. The Bipartisan Commission believes that these reforms are necessary to ensure that the citizens of California are not unduly discouraged from participating in the political process due to confusing and unneeded regulatory requirements.

A Threshold Issue: The Importance of the FPPC’s Education Efforts

As a threshold matter, the Bipartisan Commission has addressed the need for the FPPC to increase its efforts to educate persons regulated by the Political Reform Act, including specifically those with complicated disclosure requirements under the Act. Without proper education, widespread compliance with the Act—including its many and complex disclosure provisions—cannot be expected.

RECOMMENDATION NO. 1

Increase FPPC Education Efforts

The Bipartisan Commission recognizes the critical importance of educating persons that have disclosure duties under the Political Reform Act, as well as other persons who are regulated by the Act, and that such educational activities should be a priority of the FPPC. The FPPC should have funds adequate to increase its educational programs for persons regulated under the Political Reform Act.

The Need to Adjust Disclosure Thresholds to Account for Inflation

The Bipartisan Commission also has identified numerous campaign and public official financial interest disclosure thresholds that are in need of adjustment to account for inflation. These disclosure thresholds have not been adjusted for many years, and in some instances, much longer. These thresholds should be adjusted immediately, as well as periodically thereafter in order to eliminate some of the burden of unnecessary reporting.

RECOMMENDATION NO. 2 **Raise Committee Qualification Threshold**

The Political Reform Act should be amended to increase the annual threshold for qualification as a recipient committee or independent expenditure committee from \$1,000 to \$5,000.

RECOMMENDATION NO. 3 **Raise Major Donor Qualification Threshold**

The annual threshold for qualification as a “Major Donor” committee should be raised from \$10,000 to \$100,000. After the Secretary of State fully implements electronic disclosure and creates a data base that permits adequate data searches based on contributors, the requirement for Major Donor committee disclosure should be eliminated.

RECOMMENDATION NO. 4 **Raise Receipt and Expenditure Reporting Threshold**

The thresholds for disclosing receipts and disbursements on campaign reports should be raised from \$100 to \$200.

RECOMMENDATION NO. 5 **Raise Financial Interest Disclosure Thresholds**

The thresholds for disclosure by public officials of certain financial information should be increased as follows:

- Interests in real property—\$2,000
- Investments—\$2,000
- Source of income—\$500
- Disclosure categories for investments or real property—\$2,000-\$10,000, \$10,000-\$100,000, \$100,000-\$1,000,000, over \$1,000,000
- Disclosure categories for sources of income—\$500-\$1,000, \$1,000-\$10,000, \$10,000-\$100,000, over \$100,000

RECOMMENDATION NO. 6 **Raise Disqualification Threshold**

The threshold for acceptance of contributions and disqualification under Government Code section 84308 should be raised from \$250 to \$500.

The Elimination of Burdensome and Unnecessary Disclosure Requirements

The Bipartisan Commission has also identified several burdensome disclosure requirements that provide little or no meaningful disclosure. These unnecessary and costly filing requirements should be eliminated in their entirety.

RECOMMENDATION NO. 7 **Eliminate Unnecessary or Redundant Filings**

The threshold for filing supplemental independent expenditure reports should be raised from \$500 to \$1,000. In addition, the requirement to file a supplemental independent expenditure report should not be required where the filer already files a regular campaign disclosure report in the same jurisdiction.

RECOMMENDATION NO. 8 **Eliminate Unnecessary “Sub-Vendor” Reporting**

The requirement of reporting “sub-vendor” expenditures should be eliminated for (i) all sub-vendor expenditures to petition signature gatherers, (ii) all broadcast media sub-vendor expendi-

tures, and (iii) all expenditures to sub-vendors of under \$1,000. However, all broadcast media sub-vendor expenditures shall be coded generally by form or category of media (either broadcast television, cable television, radio, or internet) and total amount spent per category.

RECOMMENDATION NO. 9
Eliminate Unnecessary Travel Schedules

The requirement should be eliminated that candidates must prepare a travel schedule reflecting their in-state travel paid for by their campaign committees.

RECOMMENDATION NO. 10
Eliminate Unnecessary Reports of “No Activity”

Public officials should not be required to file campaign reports in the circumstances in which they do not maintain a political committee and have not received any campaign contributions or made any campaign expenditures.

RECOMMENDATION NO. 11
Eliminate Unnecessary Reporting of Irrelevant “Gifts”

For purposes of public official financial interest disclosure, the Political Reform Act should be amended to exclude from the definition of “gift” sources not located in, doing business within, planning to do business within, or having done business within the jurisdiction of the public offi-

cial. In addition, and consistent with with federal gift rules, the term “gift” should be amended to expressly exclude food and beverages and incidental expenses provided at “widely attended events,” such as conventions, conferences, symposiums, forums, panel discussions, dinners, and receptions.

Creation of a Simple and Understandable Filing Schedule

The Bipartisan Commission believes that it is important that the campaign filing schedule should be simplified and streamlined in order to create a better understanding of this critical component of the Act and in order to create certainty for campaign filers as to when reports are due (as is the case already for lobby filers).

RECOMMENDATION NO. 12
Create Simple Quarterly Filing Schedule and Eliminate Other Special Reports That Are Not Well Understood

The schedule for filing campaign disclosure reports should be reformed and simplified as follows. “General purpose committees” should be required only to file quarterly campaign reports (in addition to late contribution reports) and should not be required to file pre-election campaign reports. In addition, for all committees—including general

purpose committees, primarily formed committees, and Major Donor committees—the requirements to file “supplemental pre-election reports” and “odd-year quarterly reports” should be eliminated in their entirety.

Place Burden of Notification on the Government

The Bipartisan Commission feels strongly that if the government is going to impose a complicated disclosure system on those persons who are politically active, the government should assist in the compliance function by notifying filers both of their upcoming filing obligations and of any errors or omissions on the face of their campaign filings.

The Bipartisan Commission commends the Secretary of State’s office on its current efforts in this regard, and recommends that such efforts be continued and expanded.

RECOMMENDATION NO. 13
Notify Candidates and Committees of Filing Requirements

The Secretary of State should be required to affirmatively notify registered state candidates and registered state recipient committees of their disclosure requirements on at least an annual basis.

The quarter century crusade to make certain that not a single potential or even theoretical conflict of interest exists has created a level of complexity that is unreasonable and, more fundamentally, counterproductive.

RECOMMENDATION NO. 14

Notify Filers of Errors and Omissions on Reports

The Secretary of State should be required to review all state candidate and state committee campaign reports upon filing and to notify filers of all omissions or errors observed on the face of the reports. The Secretary of State should have funds adequate for this purpose.

Put Some Teeth in Rule Requiring Occupation/Employer Disclosure

The Bipartisan Commission recognizes the importance of requiring recipient committees to disclose the occupation and employer information of their individual contributors. The Commission also recognizes that the fact that some committees substantially ignore this requirement is of great consternation both to the “users” of the reports as well as to the other committees who do substantially comply. This unfairness should be remedied.

RECOMMENDATION NO. 15

Return Contributions if NoContributor Information

Candidates and committees should be required to return contributions from individuals for whom occupation/employer

information is required to be reported if such information is not received within 60 days of receipt of the contribution.

Conflicts of Interest Under the Act

The Bipartisan Commission recognizes the importance of avoiding both the appearance and the actuality of conflicts of interest in governmental decision-making. However, a set of conflict of interest rules which is overly complex and not readily understandable can be a “cure that is worse than the disease.” If the rules of the game are too difficult or too complicated for the average citizen easily to understand them, that citizen may rationally choose not to volunteer his or her time to public service. Such complexity then runs counter to the important purpose of government to encourage public participation.

This unreasonable level of complexity is present in the Political Reform Act’s conflict of interest provisions. The quarter century crusade to make certain that not a single potential or even theoretical conflict of interest exists has created a level of complexity that is unreasonable and, more fundamentally, coun-

terproductive. The issues faced by those who must walk through the Political Reform Act’s minefield of conflict of interest statutes, regulations and advice letters are so difficult and unclear that some have simply chosen to leave public service (or to not enter public service in the first instance) rather than to risk violating laws they cannot understand and with which they cannot fully comply. The Bipartisan Commission believes these rules are in need of a massive overhaul which must—more than anything else—result in simplification.

The Bipartisan Commission’s study and analysis of the conflict of interest provisions, however, was substantially limited by two factors. First, the Bipartisan Commission recognized both that the FPPC is currently undergoing a far-ranging regulatory overhaul of the conflict of interest provisions of the Political Reform Act. The Bipartisan Commission applauds these much-needed efforts to which the Commission defers. Second, the Bipartisan Commission also recognized that given its own time constraints and given the perceived focus of the Commission’s enabling legislation on

issues of disclosure and enforcement, the Commission should devote a greater proportion of its time and efforts on the latter two areas.

The Bipartisan Commission nonetheless identified numerous reforms which it believes would—if implemented—make the conflict of interest provisions under the Act work more efficiently and effectively. The Bipartisan Commission believes that these reforms are necessary to ensure that the original purposes of the Political Reform Act are carried out without unduly discouraging citizens from participating in the political process due to confusing and unneeded regulatory requirements. The Bipartisan Commission believes that following the conclusion of the FPPC’s conflict of interest overhaul project, the Legislature or a body it appoints should take a serious look at the following Recommendations as a means to clarify and simplify this overly complex area of the law.

Consolidation and Centralization of Conflict Rules

The Bipartisan Commission believes that, for the sake of clarity and consistency in interpretation, the various state and local conflict of interest rules should

be consolidated and centralized under the authority of a single body, the FPPC.

**RECOMMENDATION NO. 16
Consolidation of State Conflict Codes Under One Agency**

All state conflict of interest statutes should be consolidated into a single code or body of law to be interpreted and enforced consistently by a single state agency.

**RECOMMENDATION NO. 17
Centralization of Local Conflict Rules Under the FPPC**

All local conflict of interest codes should be centralized and consolidated under the authority of a single state agency—the FPPC.

**RECOMMENDATION NO. 18
Consolidation of Financial Interest Disqualification With Campaign Contribution Disqualification**

Legislation should be enacted to move Government Code Section 84308—concerning disqualification and campaign contributions—to Chapter 7 of the Political Reform Act where the other conflict of interest provisions are located.

Clarify Conflict Rules and Eliminate Unnecessary Disqualification

The Commission feels strongly that several of the conflict of interest provisions need clarification in order to make the rules more understandable and workable or to eliminate the unnecessary and too frequent disqualification of officials from participating in governmental decisions.

**RECOMMENDATION NO. 19
Clarify Rule of “Reasonable Foresight”**

The element of conflict of interest analysis as to whether a financial effect is “reasonably foreseeable” needs to be clarified and made more workable.

**RECOMMENDATION NO. 20
Provide Fairness and Eliminate Unnecessary Disqualification—Especially in Case of Landowner Public Officials**

The Political Reform Act’s “materiality” rule and “public generally” exception for conflict of interest analysis—particularly as they apply to landowner public officials who must vote on development or rent control related issues—should, after careful study and consideration, be amended to provide basic fairness and to eliminate unreasonable and unnecessary disqualification from participation in governmental decisions.

RECOMMENDATION NO. 21

Eliminate Unnecessary Disqualification for Small Investment Interests

After careful study and review, the Political Reform Act should be amended to apply the “public generally” exception to situations in which the public official owns less than one percent of a business entity.

RECOMMENDATION NO. 22

Allow Public Officials to Vote Against Their Interests

After careful study and review, the Political Reform Act should be amended to further simplify the “materiality” standard by eliminating the “negative effect”

RECOMMENDATION NO. 23

Eliminate “Strict Liability” Concept of Conflict Rules

After careful study and review, the Political Reform Act should be amended to expressly include a “standard of care” element or defense for public officials who make a reasonable and good faith effort to determine whether or not they may have a conflict of interest prior to participating in a governmental decision (thus moving away from a “strict liability” standard for conflict of interest cases).

ment Study, its Public Comment Hearings, and the work of the Commissioners—developed and drafted a Statement of General Enforcement Principles. The Statement emphasizes the importance of distinguishing between the minor and the most egregious violations of the Political Reform Act (as well as those occupying the “middle-ground”), and specifically calibrating both the enforcement resources and the fines applied to such violations to the perceived seriousness of the violation. (See Chapter 4C.)

Statement of General Enforcement Principles

The Bipartisan Commission believes the FPPC should formally adopt a Statement of General Enforcement Principles which is consistent with the Statement set forth in this Report, and that this Statement should be regarded as a guide to structuring and managing the FPPC’s enforcement program as well as to disposing of particular cases.

RECOMMENDATION NO. 24

The FPPC Should Adopt and Apply a Statement of General Enforcement Principles Consistent With This Report

The FPPC should formally adopt a Statement of General Enforcement Principles consistent with the views expressed in Chapter

The Bipartisan Commission also recognized the need to move away from the current unfair “strict liability” concept of conflict of interest rules in favor of a rule that requires reasonable diligence.

rule that would find a conflict of interest even where the public official’s participation in a governmental decision is against his or her financial interests.

Strict Liability Under the Act Is Inconsistent With Basic Fairness

The Bipartisan Commission also recognized the need to move away from the current unfair “strict liability” concept of conflict of interest rules in favor of a rule that requires reasonable diligence.

Enforcement of the Political Reform Act

The Bipartisan Commission believes that strong and effective enforcement of the Political Reform Act requires that the prosecutorial agency conform its enforcement activities to sound and clearly defined enforcement principles.

In this regard, the Bipartisan Commission—making use of the information gleaned from its Focus Groups, its FPPC Enforce-

4C. Legislation should be passed requiring the FPPC to report in writing to the Legislature each two years as to how the FPPC's enforcement program is carrying out its Statement of General Enforcement Principles.

Amend Act to Prevent Abuse of the Private Attorney General Provisions

In addition to the Statement of General Enforcement Principles, the Bipartisan Commission also identified numerous reforms which it believes would, if implemented, make the enforcement of the Act work more efficient. The Bipartisan Commission believes that these reforms are necessary

Central among these reforms is the need to protect against the abuse of the very important private attorney general action provisions contained in the Political Reform Act.

**RECOMMENDATION NO. 25
Private Attorney General Actions Should Be Limited to Serious Violations of the Act**

Private attorney general actions should be limited to serious violations as follows: As a necessary element for the plaintiff to prevail in any action brought by a person other than a civil prosecutor under Sections 91004 or 91005 of the Government Code, either of the following must be shown:

Central among these reforms is the need to protect against the abuse of the very important private attorney general action provisions contained in the Political Reform Act.

to ensure that the original purposes of the Political Reform Act are carried out without unduly discouraging citizens from participating in the political process.

- That the violation was intentional or that because of the political consequences or other circumstances the violation is sufficiently material to justify an action notwithstanding the decision of the civil prosecutor not to act; or

- In the case of a violation that is curable and whose harm to the public would be substantially avoided if cured, that the defendant in the action has been notified of the violation and has failed to cure it within a reasonable time.

**RECOMMENDATION NO. 26
Attorneys Fees Should Be Awarded to Respondents Who Successfully Defend Against a Private Attorney General Action**

Judicial decisions creating asymmetry in the award of attorney's fees between plaintiffs and defendants should be legislatively reversed as follows: Government Code Section 91012 should be amended to read as follows:

- The court may award to a plaintiff or defendant, other than an agency, who prevails in any action authorized by this title his costs of litigation, including reasonable attorney's fees. On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs.
- Criteria used by courts for determining whether or not to award attorney's fees and for determining the amount of attorney's fees, under this sec-

tion and under Section 90003, shall not differentiate between cases in which the plaintiff or the defendant is the prevailing party.

RECOMMENDATION NO. 27

Private Attorney General Actions Should Be Disallowed Where the FPPC is Pursuing the Violation

The possibility of monetary penalties in a private attorney general action should be precluded if the FPPC notifies the complainant that it is investigating the matter and within one year the FPPC has either entered into a stipulation with the respondent or has entered an order of probable cause.

RECOMMENDATION NO. 28

Private Attorney General Actions Should Be Precluded in Instances Wherein the FPPC Has Already Issued a Warning Letter

Government Code Section 83116 should be amended so as to preclude the possibility of monetary penalties in a private attorney general action in instances in which the FPPC, acting as a Commission, has issued a warning letter to the respondent.

RECOMMENDATION NO. 29

Formal Hearings Should Not Be Required in Order to Dispose of Matters

Government Code Section 83116 should be amended to permit informal disposition of cases without a formal hearing.

Limited Criminal Prosecution; Expanded Range of Monetary Penalties

The Bipartisan Commission believes that, in the event that Proposition 208 is restated by the courts, criminal prosecution of violations of the Act by the FPPC should be the exception, and not the rule. The Commission also believes that the existing penalties for violations of the Act should be expanded to more accurately reflect a full range of misconduct and culpability which constitutes a violation.

RECOMMENDATION NO. 30

The Primary Criminal Prosecutor Should Not be the FPPC

In the event that Proposition 208 is reinstated by the courts, criminal prosecutions brought by the FPPC should be at the request of, or when referred by, the regular criminal prosecutors.

RECOMMENDATION NO. 31

Fines Should Range from \$50-\$5,000 Depending on the Seriousness of the Violation

The current maximum fine of \$2,000 that may be levied by the FPPC in administrative proceedings should be changed to \$50-5,000 per count, depending on the seriousness of the offense, with the understanding that excessive multiplication of counts must be avoided.

Enhancement of Due Process

The Bipartisan Commission identified several areas where additional due process rights need to be established in order to create an enforcement system that both is fair to the parties and is conducive to settlement.

RECOMMENDATION NO. 32

Subjects of FPPC Complaints Should Be Promptly Notified and Given Opportunity to Respond

The Political Reform Act should be amended to require that a subject of a formal or informal complaint filed with the FPPC shall be notified of the complaint by the FPPC within 14 days of receipt of the complaint by the FPPC unless the FPPC, in its discretion, determines that such notification would impede the specific investigation.

RECOMMENDATION NO. 33

Respondents in Enforcement Proceedings Should Have an Opportunity to View the Evidence Against Them

The Political Reform Act should be amended to provide that a respondent to an enforcement action, upon service of a Report in Support of Probable Cause, shall have an opportunity to inspect and copy evidence in the possession of the FPPC which is used to support the allegations contained in the probable cause report.

RECOMMENDATION NO. 34

The Franchise Tax Board Should Not Issue Findings that are Inconsistent with FPPC Interpretation

The Franchise Tax Board should not issue findings in campaign and lobby report audits that are in any way inconsistent with the FPPC's interpretation of the Political Reform Act.

Recruitment and Retention of Qualified FPPC Personnel

Lastly, the Commission addressed the need for the FPPC to be able to recruit and retain qualified personnel—including enforcement attorneys and investigators—given the reality that the FPPC must compete with other state agencies for the best and the brightest employees.

RECOMMENDATION NO. 35

Higher Level Positions Should be Created at the FPPC in Order to Recruit and Retain Qualified Personnel

Higher level positions should be created for the FPPC's highest-level attorneys, including enforcement attorneys and investigators (which includes accounting specialists).

BACKGROUND

Creation of the Bipartisan Commission

As the Political Reform Act was approaching its 25 year anniversary, the Legislature—with Governor Pete Wilson's approval—created the Bipartisan Commission and empowered it to investigate and to assess the effects of the Act on: core political speech protected by the First Amendment; candidates for public office and campaign committees; voters; state and local officials; and public employees.

In accordance with the enabling legislation, SB1737 (McPherson), and following the receipt of public comment and the conclusion of its own research and analysis, the Bipartisan Commission was required to report its findings, conclusions and recommendations to the California Legislature no later than June 30, 2000. (See Appendix 2, 3.)

The 14 member Bipartisan Commission is comprised of 7 Democrats and 7 Republicans. The members include two former FPPC Chairmen, three former FPPC Commissioners, a former Assembly Speaker, a former Member of the Assembly, a political consultant, a retired lobbyist, the Executive Director of the California Democratic Party, the former Commissioner of the Department of Corporations, two attorneys who specialize in the Political Reform Act, and a Professor of Law. (See Chapter 2; see also Appendix 1.)

The Commissioners were appointed by various constitutional officers, legislative leaders and the Fair Political Practices Commission. Specifically, Governor Pete Wilson (R) appointed Steven S. Lucas (R) as Chairman of the Bipartisan Commission, and Jim Porter (D), Jesse Choper (D), and Dale Bonner (R) as Commissioners. Attorney General Bill Lockyer (D) appointed Kathy Bowler (D) and Eileen Padberg (R) to the Bipartisan Commission. And Secretary of State Bill Jones (R) appointed Tony Quinn (R) and Jack Crose (D) to the Bipartisan Commission.

Senate President Pro Tempore John Burton (D) appointed Lance Olson (D) to the Bipartisan

Commission. Then-Senate Minority Leader Ross Johnson (R) appointed Curt Pringle (R) to the Bipartisan Commission. Then-Assembly Speaker Antonio Vilaraigosa (D) appointed Joe Remcho (D) to the Bipartisan Commission. And then-Assembly Minority Leader Rod Pacheco (R) appointed Ted Weggeland (R) to the Bipartisan Commission. Lastly, the FPPC appointed Daniel Lowenstein (D) and Ben Davidian (R) to the Bipartisan Commission.

Work of the Bipartisan Commission: Public Hearings, Focus Groups, Empirical Studies

To effectuate the statutory purposes of the Bipartisan Commission, the Commission conducted 14 public meetings soliciting public input and considering the issues raised in this Report and the matters studied by the Commission.

At some of the earliest meetings, the Bipartisan Commission solicited comments and input from the enforcers of the Political Reform Act (including representatives of the FPPC, representatives of the Secretary of State, and local prosecutors), from practitioners of the Act (including political attorneys and political

treasurers), and from campaign reform advocates. Among the later meetings held by the Bipartisan Commission were a series of Public Comment Hearings held throughout the state to solicit public testimony and written submission on all facets of the Political Reform Act, including:

- Campaign finance and disclosure at the state and local level.
- Lobby activity disclosure and other lobby requirements at the state level only.
- Conflict of interest and financial interest disclosure rules applicable to state and local public officials.
- Gift rules applicable to state and local public officials.

Notices and Invitations for Public Comment for the Public Hearings were sent to approximately 7,400 persons and organizations identified as possibly having an interest in the subject matter being considered by the Bipartisan Commission, and were posted on various web sites, including those of the FPPC and the Secretary of State. (See Chapter 3; see also Appendix 4.)

The Bipartisan Commission, working with the Institute of Governmental Studies (“IGS”) at the University of California at Berkeley, also conducted Focus Groups of persons regulated by

the Political Reform Act as well as “users” of the information required under the Act. Specifically, the Bipartisan Commission and IGS conducted Focus Groups of campaign treasurers, candidates, political journalists, and lawyer-practitioners in the area. (See Chapter 5A; see also Appendix 6.)

In addition, the Bipartisan Commission and IGS conducted detailed empirical studies relating to both enforcement and campaign disclosure issues. Specifically, the Bipartisan Commission and IGS (i) conducted a detailed Campaign Report Form Experiment pursuant to which volunteers (some experienced and some inexperienced) were required to complete hypothetical campaign reports which were then evaluated for compliance with the dictates of the Political Reform Act; and (ii) conducted an FPPC Enforcement Study relating to FPPC enforcement practices under the Act. (See Chapters 5B, 5C; see also Appendix 6.) The statute creating the Bipartisan Commission also dictated that the Commission review any ballot measures affecting the Political Reform Act. Because Proposition 208—as adopted by the voters in 1996—has been enjoined by the federal courts and is the sub-

ject of ongoing litigation, the Bipartisan Commission did not undertake a thorough review of its many complex provisions. For similar reasons the Bipartisan Commission did not undertake a detailed review of Proposition 25, which would have substantially amended the Political Reform Act but was rejected by the California voters in March 2000.

Lastly, the statute creating the Bipartisan Commission required that the Commission assess the impact of “independent expenditure committees.” The Bipartisan Commission is of the view that the significance of independent expenditure committees is largely dependent on the existence of campaign contribution

its—and the relationship between the limits and the independent expenditures and how both affect campaigns.

However, the statute creating the Bipartisan Commission expressly precludes the Bipartisan Commission from addressing contribution limits. Because of this limitation, the Bipartisan Commission is of the view that any detailed and meaningful study of independent expenditure committees would conflict with its statutory charter. The Bipartisan Commission nonetheless did address independent expenditure committees in other contexts, such as disclosure requirements,

in governmental decision-making, and (iii) enforcement of the Act.

After compiling all oral and written comments received from the public into 231 Proposed Recommendations for the Commission’s consideration, each of the Sub-Committees reviewed and considered the proposals relating to its specific subject matter. (See Appendix 5.) Following this review, the Sub-Committees each prepared a Report and specific Recommendations for consideration by the full Commission. The Bipartisan Commission reviewed the Sub-Committee Reports and voted on the proposed Recommendations put forward by each of the Sub-Committees in their three substantive areas.

In each of these three areas, the Bipartisan Commission has assessed whether statutory, administrative, regulatory, procedural, and/or clarifying changes would provide for a more efficient and effective implementation of the Political Reform Act. The Recommendations approved by the Bipartisan Commission are identified above. The Recommendations are also discussed in detail—together with the Commission’s Findings in support of the Recommendations based upon the Public Hearings, the Empirical Studies, and the Focus Groups—in Chapter 4 of the Report.

In each of these three areas, the Bipartisan Commission has assessed whether statutory, administrative, regulatory, procedural, and/or clarifying changes would provide for a more efficient and effective implementation of the Political Reform Act.

limits. More specifically, independent expenditure committees tend to be significant as a political tool most often when campaign contribution limits are in place. Because of this relationship, the Bipartisan Commission viewed any substantial investigation of independent expenditure committees to essentially require that the Commission also investigate campaign contribution lim-

The Three Discreet Subject Areas: Disclosure, Conflicts of Interest, and Enforcement

In order to address discreet subject areas of the Political Reform Act in a detailed and organized manner, the Chairman appointed three Sub-Committees to consider and study: (i) campaign, lobby and public official financial disclosure, (ii) conflicts of interest

BACKGROUND OF THE COMMISSION

The Bipartisan Commission was created on September 30, 1998 when Governor Pete Wilson signed into law SB1737 (McPherson), which took effect on January 1, 1999. (See Appendix 2.) Pursuant to SB1737, the Bipartisan Commission was empowered to investigate and assess the effects of the Political Reform Act:

- on core political speech protected by the First Amendment;
- on candidates for public office and campaign committees;
- on voters;
- on state and local officials and public employees.

In addition, the Bipartisan Commission was required to assess whether administrative, regulatory, procedural, and/or clarifying changes would provide for a more efficient and effective implementation of the Political Reform Act. Lastly, the Bipartisan Commission was directed to review any ballot measures affecting the Political Reform Act, and to assess the impact of independent expenditure committees. The Bipartisan Commission was prohibited from drafting or proposing campaign finance reform provisions.

After receiving public comment and input, and after conducting its own research and analysis, the Bipartisan Commission was originally required to report its findings, conclusions and recommendations to the California Legislature no later than October 1, 1999. That due date was extended to June 30, 2000 by the passage of SB342 (McPherson). (See Appendix 3.) Pursuant to SB342, the Bipartisan Commission will cease to exist as of January 1, 2001.

Appointing Authorities

Pursuant to SB 1737, the following public officials and public agency were empowered to appoint the 14 Commissioners comprising the Bipartisan Commission:

The Governor was empowered to appoint four Commissioners, two of whom were required to be members of the Democratic Party and two of the Republican Party. The Governor was required to designate one of these members to serve as Chairperson of the commission. One of the members appointed by the Governor was also required to be a public member who is a representative of a nonprofit public interest organization.

The President Pro Tempore of the Senate, the Minority Floor Leader of the Senate, the Speaker of the Assembly, and the Minority Floor Leader of the Assembly were each empowered to appoint one Commissioner.

The FPPC was empowered to appoint two Commissioners from among former FPPC Chairpersons, one of whom was required to be a member of the Democratic Party and one of the Republican Party.

The Secretary of State was empowered to appoint two Commissioners, one of whom was required to be a member of the Democratic Party and one of the Republican Party. One of the members appointed by the Secretary of State was also required to be a former registered lobbyist. Lastly, the Attorney General was empowered to appoint two Commissioners, one a member of the Democratic Party and one of the Republican Party.

Pursuant to SB1737, no more than three Commissioners may be attorneys at law who devote more than 10 percent of their professional practice time to legislative, political campaign, or other politically related activities. Pursuant to SB342, this limitation to three “political attorneys” was itself restricted so as to exclude from the calculation any Commissioners appointed by the FPPC.

A brief background on each of the fourteen Commissioners as

Chairman Steven S. Lucas (R) was appointed by former Governor Pete Wilson (R). Mr. Lucas is a partner at the government and political law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, specializing in political law.

Commissioner Dale Bonner (R) was appointed by former Governor Pete Wilson (R). Mr. Bonner, currently Counsel in Hogan & Hartson's Los Angeles office, where he manages the firm's California health care practice, is the former Commissioner of the California Department of Corporations.

Commissioner Kathy Bowler (D) was appointed by Attorney General Bill Lockyer (D). Ms. Bowler is the Executive Director of the California Democratic Party.

Commissioner Jesse Choper (D) was appointed by former Governor Pete Wilson (R). Mr. Choper, the former Dean of the Boalt Hall School of Law, University of California at Berkeley, is presently the Earl Warren Professor of Public Law at Boalt Hall.

Commissioner Jack Crose (D) was appointed by Secretary of State Bill Jones (R). Mr. Crose is the former Chief Assistant to the late California Assembly Speaker Jesse Unruh and, before his retirement, was a registered state lobbyist.

Commissioner Ben Davidian (R) was appointed by the Fair Political Practices Commission, of which he is a former Chairman. Mr. Davidian is a partner in the government and political law firm of Bell, McAndrews, Hiltachk & Davidian, LLP, specializing in political law.

Commissioner Dan Lowenstein (D) was appointed by the Fair Political Practices Commission, of which he is a former Chairman. Mr. Lowenstein, the principal drafter of Proposition 9 (the Political Reform Act of 1974), is a Professor at the UCLA Law School, where he specializes in election law.

well as an identification of their appointing authorities follows:

Commissioner Lance Olson (D) was appointed by Senate President Pro Tempore John Burton (D). Mr. Olson is the managing partner of Olson, Hagel, Leidigh, Waters and Fishburn, LLP, specializing in political law.

Commissioner Eileen Padberg (R) was appointed by Attorney General Bill Lockyer (D). Ms. Padberg is the president of Eileen E. Padberg Consulting, specializing in public affairs management, political campaign consulting and corporate public relations.

Commissioner James Porter (D) was appointed by former Governor Pete Wilson (R). Mr. Porter, a former FPPC Commissioner, is the senior partner in the law firm of Porter*Simon.

Commissioner Curt Pringle (R) was appointed by then-Senate Minority Leader Ross Johnson (R). Mr. Pringle, the former Speaker of the California Assembly, is the principal of Curt Pringle & Associates, LLC, a public relations, governmental affairs and consulting firm.

Commissioner Tony Quinn (R) was appointed by Secretary of State Bill Jones (R). Mr. Quinn, a former FPPC Commissioner, is vice president of Goddard Claussen Porter Novelli, a public relations firm.

Commissioner Joe Remcho (D) was appointed by then-Assembly Speaker Antonio Villaraigosa (D). Mr. Remcho, a former FPPC Commissioner, is a partner in the law firm of Remcho, Johansen & Purcell.

Commissioner Ted Weggeland (R) was appointed by then-Assembly Minority Leader Rod Pacheco (R). Mr. Weggeland, a former Member of the Assembly, is the president of Entrepreneurial Hospitality Corporation and a Senior Vice President of Entrepreneurial Capital Corporation.

* For complete biographies on the 14 Members of the Bipartisan Commission, please refer to Appendix 1.



Following the appointment of the Commissioners in January 1999 by various appointing officers and agencies, the Bipartisan Commission held a series of public organizational meetings in the State Capitol in Sacramento.

Between January and July 1999, the Bipartisan Commission focused its efforts primarily on undertaking preliminary information gathering. Between October 1999 and January 2000, the Bipartisan Commission held a series of statewide Public Hearings during which the Commission solicited public comment and recommendations. Following the conclusion of the statewide Public Hearings, the Bipartisan Commission, working through three Sub-Committees on three discreet subject areas of the Political Reform Act (disclosure, enforcement and conflicts of interest), began the drafting and consideration of its Report and Recommendations. Minutes of each of the Bipartisan Commission's 14 public meetings are contained in Appendix 4.

Preliminary Information Gathering

In order to refine the tasks at hand, the Bipartisan Commission invited various speakers and organizations to address the Commission with their suggestions as to the areas that the Bipartisan Commission should investigate and the methods for such investigation.

In this regard, the Bipartisan Commission received presentations from and questioned numerous panels and speakers, including an enforcement panel comprised of FPPC Enforcement Division Chief Darryl East, San Diego Deputy City Attorney George Ramos, and San Francisco Assistant District Attorney Tom Bogott and a compliance panel comprised of then-FPPC General Counsel Steve Churchwell, FPPC Technical Assistance Division Chief Carla Wardlow, and Deputy Division Chief of the Secretary of State's Office (Political Reform Division) John Keplinger. The Bipartisan Commission also heard from Jim Knox representing California Common Cause, Cary Davidson representing the California Political Attorneys Association, Rich Eichman representing the California Political Treasurers Association, and political reformer Tony Miller.

Research Projects: Empirical Investigations and Focus Groups

The Bipartisan Commission engaged IGS to work with the Commission to conduct several research projects relating primarily to enforcement and campaign disclosure under the Political Reform Act. These research projects included two empirical investigations, one an FPPC Enforcement Study (see Chapter 5C) and the other a Campaign Report Form Experiment. (See Chapter 5B.) They also included several Focus Groups of various categories of persons who come into contact with the Political Reform Act, including candidates, campaign treasurers, political attorneys, and journalists. (See Chapter 5A.) Chapter 5 includes a full summary of the research projects and outlines the major findings of the Bipartisan Commission's research.

Public Hearings Soliciting Comment

After the Bipartisan Commission successfully received funding for the 1999-2000 fiscal year, the Commission held a series of Public Hearings throughout the state to solicit the input of the public. Specifically, the Bipartisan

Commission held such meetings in San Diego, Los Angeles (Burbank), San Francisco, and Sacramento. The purpose of the statewide Public Hearings was to solicit public input as to all substantive areas of the Political Reform Act, including:

- Campaign finance and disclosure at the state and local level.
- Lobby activity disclosure and other lobby requirements at the state level.
- Conflict of interest and financial interest disclosure rules applicable to state and local public officials.
- Gift rules applicable to state and local public officials.

In order to solicit public attendance and public comment at the four Public Hearings, the Bipartisan Commission mailed and/or e-mailed a Notice, an Agenda, and an Invitation for Public Comment to approximately 7,400 persons and organizations identified as possibly having an interest in the subject matter being considered by the Bipartisan Commission. (See Appendix 4.) Postings of such information was also made on various web sites, including those of the FPPC and the Secretary of State.

The comments of the members of the public who addressed the Bipartisan Commission are summarized in the Minutes of the Meetings contained in Appendix 4, as well as the written submissions of the speakers contained in Appendix 6. In addition to the comments and suggestions received at the statewide Public Hearings, the Bipartisan Commission also received numerous written comments from the public, all of which are also included in Appendix 6.

Work of the Sub-Committees

In order to address discreet subject areas of the Political Reform Act in an in-depth manner, the Chairman appointed the following Sub-Committees:

The Enforcement Sub-Committee was chaired by Commissioner Lowenstein, and included Commissioners Davidian, Quinn, and Remcho. The Conflict of Interest Sub-Committee was chaired by Commissioner Davidian, and included Commissioners Olson, Porter, Pringle, and Wegeland. The Disclosure Sub-Committee was chaired by Commissioner Bonner, and included Commissioners Crose, Olson and Padberg.

The Bipartisan Commission compiled all oral and written comments received from the

public into several volumes of “Proposed Recommendations” for the Commission’s consideration. In addition, the Commissioners were each requested to draft their own Proposed Recommendations for the consideration of the Bipartisan Commission. In total, the Commission compiled over 230 Proposed Recommendations (categorized by author and subject area) in various subject areas. The Proposed Recommendations considered by the Bipartisan Commission are included in Appendix 6.

Each of the Sub-Committees considered the Proposed Recommendations which related to the subject area of the Sub-Committee. From this basis and from the Commissioners own ideas, the Sub-Committees each prepared a Report and specific Recommendations for consideration by the full Commission. The Bipartisan Commission reviewed the Sub-Committee Reports and voted on the proposed Recommendations put forward by each of the Sub-Committees. A proposed Recommendation was included in this Report only if at least two-thirds of the Commissioners present voted in favor of it. The approved Recommendations are contained in Chapter 4.

REPORT AND RECOMMENDATIONS

In conducting its various research projects and preparing this Report and Recommendations, the Bipartisan Commission limited its investigation and assessment of the effects of the Political Reform Act to the areas that the Commission's enabling legislation dictated (see Appendix 2), namely the effects of the Act on:

- core political speech protected by the First Amendment;
- candidates for public office and campaign committees;
- voters;
- state and local officials and
- public employees.

To satisfy these directives, the Bipartisan Commission conducted public hearings on all facets of the Political Reform Act, conducted focus groups of campaign treasurers, candidates, political journalists, and practitioners in the area, and conducted empirical investigations relating to both enforcement and campaign disclosure issues.

The Bipartisan Commission's enabling legislation also dictated that the Commission review any ballot measures affecting the Political Reform Act. However, because Proposition 208—adopted by the voters in 1996 as a substantial amendment to the Political Reform Act—has been enjoined by the federal courts since Janu-

ary 1998 and is the subject of ongoing litigation, the Bipartisan Commission did not substantially address its many complex provisions. Similarly, because Proposition 25—another attempt to substantially amend the Political Reform Act—was rejected by the voters in March 2000, the Bipartisan Commission also chose not to undertake a detailed review of its many provisions.

Lastly, the Bipartisan Commission's enabling legislation dictated that the Commission assess the impact of independent expenditure committees. It is the view of the Bipartisan Commission that the significance of independent expenditure committees is largely related to the application of campaign contribution limits. That is, independent expenditure committees tend to be significant as a political tool most often when campaign contribution limits are in place. Because of this relationship, the Bipartisan Commission viewed any substantial investigation of independent expenditure committees to essentially require also an investigation of campaign contribution limits—and the relationship between the limits and the independent expenditures and how both affect campaigns. However, because the enabling legislation specifically dictates that the Bipartisan

Commission is not to address or propose contribution limits, the Commission felt that any detailed study of independent expenditure committees was beyond its charge. The Bipartisan Commission did nonetheless address independent expenditure committees in other contexts, such as disclosure requirements.

After concluding its public hearings, the empirical investigations and the focus group studies, the Bipartisan Commission divided its subject matter into the three major subject areas of the Political Reform Act: (i) enforcement of the Act; (ii) campaign, lobby and financial interest disclosure; and (iii) conflicts of interest. In each of these three substantive areas, the Bipartisan Commission has assessed whether statutory, administrative, regulatory, procedural, and/or clarifying changes would provide for a more efficient and effective implementation of the Political Reform Act. In doing so, the Bipartisan Commission has developed this Report which contains various Recommendations in each of the three substantive areas, and has supported these Recommendations with Findings based upon the public hearings, the empirical studies and the several focus groups.

In preparing this Report and these Recommendations, the Bipartisan Commission has reviewed the original stated purposes of the Political Reform Act, as adopted by the voters over a quarter century ago, including those outlined in Sections 81001 and 81002 of the Act:

§ 81001. Findings and Declarations.

The people find and declare as follows:

- (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;
- (b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;
- (c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;
- (d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;

- (e) Lobbyists often make their contributions to incumbents who cannot be effectively challenged because of election laws and abusive practices which give the incumbent an unfair advantage;
- (f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions;
- (g) The influence of large campaign contributors in ballot measure elections is increased because the ballot pamphlet mailed to the voters by the state is difficult to read and almost impossible for a layman to understand; and
- (h) Previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities.

§ 81002. Purposes of Title. The people enact this title to accomplish the following purposes:

- (a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- (b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

- (c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.
- (d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.
- (e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.
- (f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.

The Recommendations and Findings follow in Chapters 4A (Disclosure), 4B (Conflicts of Interest), and 4C (Enforcement). Summaries of the supporting research collected from the empirical studies and the focus groups follow in Chapters 5A (Focus Group Studies), 5B (Campaign Report Form Experiment), and 5C (FPPC Enforcement Study).

DISCLOSURE UNDER THE POLITICAL REFORM ACT

Disclosure is the cornerstone of the Political Reform Act. Although the Political Reform Act contains many other significant provisions—including conflict of interest provisions, enforcement provisions, and contribution limits (which have been severely restricted by court decisions on First Amendment grounds)—disclosure is certainly the primary focus of the Political Reform Act both today and over a quarter century ago when it was first adopted by the voters of California.

However, because of the Act’s complexity—both its inherent complexity and its “earned” complexity—disclosure is also seen by some as the Achilles’ heel of the Political Reform Act.

In order to study the complexities of the disclosure provisions of the Political Reform Act, the Bipartisan Commission examined the three primary areas of disclosure found within the Political Reform Act: campaign disclosure, public official financial disclosure, and lobby disclosure. The Bipartisan Commission explored disclosure through various means.

First, as set forth earlier, the Bipartisan Commission held a series of Public Hearings throughout the state requesting public

input including specifically with respect to disclosure under the Political Reform Act.

Second, the Bipartisan Commission and IGS conducted Focus Group Studies—including Focus Groups of candidates and campaign treasurers, journalists, and political attorneys—which also specifically included disclosure issues, among others. (See Chapter 5A.)

Third, the Bipartisan Commission and IGS conducted a Campaign Report Form Experiment related exclusively to campaign disclosure under the Political Reform Act. (See Chapter 5B.)

Fourth, the Bipartisan Commission’s Disclosure Sub-Committee (comprised of a former lobbyist, a former public official, a campaign consultant and a political attorney) studied disclosure issues, including all recommendations and proposals submitted by the public (in writing and in testimony) and prepared a Report on Disclosure for the consideration of the Bipartisan Commission.

The Bipartisan Commission found in its investigations a broad consensus that the complexities of the Political Reform Act in the area of disclosure so

seriously burden those who are regulated by the Act that they, in fact, threaten the Act’s effectiveness.

The Bipartisan Commission found this in its public hearings where, for example, a math teacher, who is a volunteer PAC treasurer and mother, took time off from her job and called in favors to have her children cared for so that she could travel nearly two hours to address the Bipartisan Commission. Her compelling testimony included vivid statements of her ongoing anxiety over not knowing whether she is correctly completing her disclosure forms and filing them at the correct intervals. Her stated fear: the possibility of enforcement action taken against her for unknowing and unintentional violations of the Act that may occur despite her diligence—or as she puts it, “who will take care of my kids when they lock me up?”

The Bipartisan Commission also found this sense of unnecessary complexity throughout its Focus Groups where, for example, the comments ranged from the complexity of the forms, to the complexity of the time lines and filing triggers, to the confusion created by the intersection of state and local law. (See Chapter 5A, Focus Group Findings 1, 2, 4,



13, 14.) Additionally, the Bipartisan Commission found direct evidence of these complexities in its Campaign Report Form Experiment. (See Chapter 5B.)

Because of this broad consensus that there exists a need to simplify the disclosure requirements of the Political Reform Act, the Bipartisan Commission proposes herein a series of Recommendations which would eliminate some of the complexity of the Act.

The Commission recognizes that in some real or hypothetical circumstances the Recommendations would, if adopted, result in some modest “loss of disclosure” of nonessential information. However, the Commission

believes strongly that the gains resulting from simplification greatly outweigh any such modest loss of disclosure. These gains include the lessening of the costs and other burdens of compliance, the creation of consistencies and simplified rules that further the users’ understanding and comfort level with the Act, and the reduction of some of the First Amendment intrusions that all political regulations entail.

Many of the disclosure reforms proposed by the Bipartisan Commission relate to campaign disclosure. Although there is certainly a strong sense that campaign disclosure under the Political Reform Act is hopelessly complex, the Bipartisan Commis-

sion identified numerous reforms which it believes would, if implemented, make the campaign disclosure provisions under the Act work more efficiently. The Bipartisan Commission believes that these reforms are necessary to ensure that the original purposes of the Political Reform Act are carried out without unduly discouraging citizens from participating in the political process due to confusing and unneeded regulatory requirements.

In addition, the Bipartisan Commission notes that for the most part the disclosure thresholds have not been adjusted in many years—in some circumstances in the 26 years since the Political Reform Act was adopted. The Commission believes that raising these thresholds to account generally for inflation would serve the purposes of the Act without posing any significant public harm in terms of adequate disclosure.

The Bipartisan Commission presents these Recommendations to provide for a more efficient and effective implementation of the Political Reform Act in order to carry out the original purposes of the Act as adopted by the voters of California over 25 years ago.

The Bipartisan Commission would also like to note that because of the recent and ongo-

ing implementation of the electronic filing requirements under the Political Reform Act—and more importantly because that implementation is occurring just as the Commission is required to draft and finalize its Report and Recommendations—the Commission concluded that it was not able to adequately and substantially address electronic filing and internet disclosure. The Commission recognizes that electronic filing and internet disclosure may solve some of the problems of the Political Reform Act. It may also either create new problems or exacerbate existing problems. Nonetheless, because of the timing of the Commission’s work and the very recent and ongoing implementation of the new electronic filing requirements, the Commission concluded that it would be both unhelpful and unfair to review these new requirements at this early date.

The following are the Bipartisan Commission’s specific Recommendations with respect to disclosure under the Political Reform Act, along with the Findings which support the Recommendations. The Bipartisan Commission believes that these Recommendations are worthy of serious consideration by the Legislature, the Fair Political Practices Commission, and the Secretary of State.

A Threshold Issue: The Importance of the FPPC’s Education Efforts

As a threshold matter, the Bipartisan Commission has addressed the need for the FPPC to increase its efforts to educate persons regulated by the Political Reform Act, including specifically those with complicated disclosure requirements under the Act. Without proper education, widespread compliance with the Act—including its many and complex disclosure provisions—cannot be expected.

RECOMMENDATION NO. 1 Increase FPPC Education Efforts

The Bipartisan Commission recognizes the critical importance of educating persons that have disclosure duties under the Political Reform Act, as well as other persons who are regulated by the Act, and that such educational activities should be a priority of the FPPC. The FPPC should have funds adequate to increase its educational programs for persons regulated under the Political Reform Act.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testi-

mony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that educating persons who are regulated by the Political Reform Act is of critical importance and that not enough education is presently conducted. Education is an issue with respect to disclosure generally, as well as with respect to other areas of the Political Reform Act including, notably, conflicts of interest. (See also Chapter 5B, Campaign Report Form Experiment.)

The Need to Adjust Disclosure Thresholds to Account for Inflation

The Bipartisan Commission has also identified numerous campaign and public official financial interest disclosure thresholds that are in need of adjustment to account for inflation. These disclosure thresholds have not been adjusted for many years, and in some instances, much longer. These thresholds should be adjusted immediately, as well as periodically thereafter in order to eliminate some of the burden of unnecessary reporting.

RECOMMENDATION NO. 2

Raise Committee Qualification Threshold

The Political Reform Act should be amended to increase the annual threshold for qualification as a recipient committee or independent expenditure committee from \$1,000 to \$5,000.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current thresholds for qualification as a recipient committee or an independent expenditure committee have not been adjusted for inflation during the past 15 years and are too low. A \$5,000 threshold for such committees would also be consistent with federal law establishing campaign committee qualification.

While the Bipartisan Commission certainly recognizes that differences exist between local and state campaign committees, no such distinction was created in the original Political Reform Act, and the Commission does not believe that such a distinction should now be created. Raising the committee qualification thresholds would permit “grass

roots” activities without triggering complicated disclosure requirements that are likely otherwise to discourage political participation. The Bipartisan Commission specifically considered public testimony and the results of the Focus Group Studies that the current system was too complicated. Raising the committee qualification thresholds would address some of these concerns. (See Chapter 5A, Focus Group Finding No. 2.)

RECOMMENDATION NO. 3

Raise Major Donor Qualification Threshold

The annual threshold for qualification as a “Major Donor” committee should be raised from \$10,000 to \$100,000. After the Secretary of State fully implements electronic disclosure and creates a database that permits adequate data searches based on contributors, the requirement for Major Donor committee disclosure should be eliminated.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current

threshold for qualification as a “Major Donor” committee has not been adjusted for inflation during the past 15 years, imposes an onerous burden on certain campaign contributors, and is too low. The Bipartisan Commission was guided in part by the proposed measure, Proposition 25, drafted by campaign reform advocate Tony Miller that would have raised the Major Donor threshold to \$100,000.

California is quite unique in its requirement for Major Donor filings, including the Late Contribution Reports that Major Donor committees are required to file. This has led to many unintentional violations of the Political Reform Act, with little public harm resulting due to the fact that the recipients of the Major Donor’s contributions provide reciprocal disclosure. The Bipartisan Commission also concludes that Major Donor reporting will become unnecessary once electronic filing has been fully implemented by the Secretary of State. Specifically, the Bipartisan Commission believes that the current purpose of Major Donor disclosure—easily locating all contributions by a single contributor—could be readily and efficiently accomplished by data searches of candidate and committee reports filed electronically.

RECOMMENDATION NO. 4

Raise Receipt and Expenditure Reporting Threshold

The thresholds for disclosing receipts and disbursements on campaign reports should be raised from \$100 to \$200.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the threshold for disclosing receipts and disbursements on campaign reports should be raised to generally reflect inflation. The \$100 threshold has not been increased in two decades. This proposal is consistent with federal law as well as with public testimony received asking that the Political Reform Act's reporting requirements be simplified.

RECOMMENDATION NO. 5

Raise Financial Interest Disclosure Thresholds

The thresholds for disclosure by public officials of certain financial information should be increased as follows:

Interests in real property—\$2,000
Investments—\$2,000
Source of income—\$500

Investments and real property—
\$2,000-\$10,000; \$10,000-\$100,000;
\$100,000-\$1,000,000; over
\$1,000,000
Sources of income—\$500-\$1,000;
\$1,000-\$10,000; \$10,000-\$100,000;
over \$100,000

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current thresholds for disclosure of financial interests are in need of adjustment to account generally for inflation. The Bipartisan Commission believes that the thresholds contained in AB1864 (Papan) as passed by the Legislature in the 1997-98 session but vetoed by Governor Wilson (on unrelated grounds) establish a workable minimum level for disclosure and should be implemented.

RECOMMENDATION NO. 6

Raise Disqualification Threshold

The threshold for acceptance of contributions and disqualification under Government Code section 84308 should be raised from \$250 to \$500.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the present threshold relating to the acceptance of campaign contributions and disqualification resulting from having accepted contributions for certain public officials who serve on appointed Boards and Commissions should be raised to \$500 to account generally for the effects of inflation, again as was proposed in AB1864 (Papan).

The Elimination of Burdensome and Unnecessary Disclosure Requirements

The Bipartisan Commission has also identified several burdensome disclosure requirements that provide little or no meaningful disclosure. These unnecessary and costly filing requirements should be eliminated in their entirety.

RECOMMENDATION NO. 7

Eliminate Unnecessary or Redundant Filings

The threshold for filing supplemental independent expenditure reports should be raised from \$500 to \$1,000. In addition, a supplemental independent expenditure report should not be

required where the filer already files a regular campaign disclosure report in the same jurisdiction.

The purpose of such special filing is to alert jurisdictions where the expenditure is being made and where the filer does not normally file its regular cam-

In some instances, the schedules reflecting the sub-vendor payments can completely dwarf the remainder of the report and can themselves require more time to prepare than all other parts of the campaign report combined.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current requirement of filing a supplemental independent expenditure report—with a \$500 reporting threshold—is confusing and largely redundant to other required reporting. Presently, any committee which makes independent expenditures in support or opposition to a candidate or ballot measure of \$500 or more must file—in addition to its regular campaign report—an additional report known as a supplemental independent expenditure report. This additional report duplicates the information contained on the filer’s regular campaign report.

paign report. However, in many instances the filer is already required to file its regular campaign report in that jurisdiction. This creates unneeded duplicate reporting. Filing supplemental independent expenditure reports should be limited to those situations where the filer is not already required to file a regular campaign report in the same jurisdiction. In addition, the threshold for triggering the supplemental independent expenditure report should be raised from \$500 to \$1,000 to create consistency and to eliminate confusion. (See also Chapter 5B, Campaign Report Form Experiment.)

RECOMMENDATION NO. 8
Eliminate Unnecessary “Sub-Vendor” Reporting

The requirement of reporting “sub-vendor” expenditures should be eliminated for (i) all sub-vendor expenditures to petition-sig-

nature gatherers, (ii) all broadcast media sub-vendor expenditures, and (iii) all expenditures to sub-vendors of under \$1,000. However, all broadcast media sub-vendor expenditures shall be coded generally by form or category of media (either broadcast television, cable television, radio, or internet) and total amount spent per category.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that much of the currently required “sub-vendor” reporting is extremely burdensome and provides little or no beneficial public disclosure. In some instances, the schedules reflecting the sub-vendor payments can completely dwarf the remainder of the report and can themselves require more time to prepare than all other parts of the campaign report combined. The Bipartisan Commission finds that this is especially the case with respect to three areas of sub-vendor disclosure, each of which is typically a source of great burden: disclosure of sub-vendor payments to petition-signature gatherers, disclosure of sub-vendor payments

for broadcast media, and disclosure of relatively small sub-vendor payments (under \$1,000). (See also Chapter 5B, Campaign Report Form Experiment.)

RECOMMENDATION NO. 9

Eliminate Unnecessary Travel Schedules

The requirement should be eliminated that candidates must prepare a travel schedule reflecting their in-state travel paid for by their campaign committees.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that preparing lengthy and detailed travel schedules reflecting in-state political and governmental travel by candidates is both unnecessary and extremely burdensome without providing sufficient benefits to the public, and the requirement should therefore be eliminated. (See also Chapter 5B, Campaign Report Form Experiment.)

RECOMMENDATION NO. 10

Eliminate Unnecessary Reports of "No Activity"

Public officials should not be required to file campaign reports

in the circumstances in which they do not maintain a political committee and have not received any campaign contributions or made any campaign expenditures.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that it is an unreasonable burden to require that public officials file campaign reports (including reports of no activity) in the circumstances in which the public officials do not maintain campaign committees and do not receive campaign contributions or make campaign expenditures. (See Chapter 5A, Focus Group Finding No. 5; Chapter 5B, Campaign Report Form Experiment.)

RECOMMENDATION NO. 11

Eliminate Unnecessary Reporting of Irrelevant "Gifts"

For purposes of public official financial interest disclosure, the Political Reform Act should be amended to exclude from the definition of "gift" sources not located in, doing business within, planning to do business within,

or having done business within the jurisdiction of the public official. In addition, and consistent with federal gift rules, the term "gift" should be amended to expressly exclude food and beverages and incidental expenses provided at "widely attended events" such as conventions, conferences, symposiums, forums, panel discussions, dinners and receptions.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that public officials currently are required to disclose all gifts of \$50 or more from any source regardless of whether the source of the gift is located within the public official's jurisdiction or has any intention of doing business within the jurisdiction. On the other hand, the rule for disclosure of sources of income is tied to the official's jurisdiction and excludes sources not located within or doing business within the jurisdiction of the public official. The Bipartisan Commission believes that gifts and income should be treated the same for purposes of public official financial disclosure.

Creation of a Simple and Understandable Filing Schedule

The Bipartisan Commission believes that it is important that the campaign filing schedule should be simplified and streamlined in order to create a better understanding of this critical component of the Act and in order to create certainty for campaign filers as to when reports are due (as is the case already for lobby filers).

**RECOMMENDATION NO. 12
Create Simple Quarterly Filing Schedule and Eliminate Other Special Reports That Are Not Well Understood**

The schedule for filing campaign disclosure reports should be reformed and simplified as follows. “General purpose committees” should be required only to file quarterly campaign reports (in addition to late contribution reports) and should not be required to file pre-election campaign reports. In addition, for all committees—including general purpose committees, primarily formed committees, and Major Donor committees—the requirements to file “supplemental pre-election reports” and “odd-year quarterly reports” should be eliminated in their entirety.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the current reporting schedule is entirely too complex and as such, seriously discourages participation in the political process. More specifically, the Bipartisan Commission finds that one of the most complicated aspects of the Political Reform Act’s disclosure requirements is the determination of when reports must be filed, based upon certain triggering events.

There are many events that can trigger a campaign report, and many committees and candidates are unaware of some of these requirements. This leads to missed filings, potential enforcement action, and unnecessary and counter-productive “fear” of the Political Reform Act. The Bipartisan Commission concludes that if reporting deadlines were easier to understand, better compliance, better public disclosure, and greater public participation would result. The Bipartisan Commission specifically notes that much of the public testimony called for simpler filing requirements.

Year in and year out quarterly campaign reporting—with no special pre-election deadlines—for all recipient committees other than those that are on the ballot (that is, primarily formed committees), would provide consistency and confidence in and understanding of the Political Reform Act. Such a change would thereby further the purposes of the Political Reform Act.

Similarly, supplemental pre-election reports should be eliminated in their entirety. Such reports are currently required by committees which make contributions of \$5,000 or more in connection with any election including state, local or special elections. The reports must be filed 12 days prior to the election. For purposes of determining the \$5,000 threshold, committees must look back 6 months in time. These reports are in addition to a committee’s regularly required reports filed semi-annually, pre-election and quarterly in odd-years. This provision is little understood and often violated. It also duplicates reporting because the candidates and committees receiving the contributions are already required to report and disclose the contributions by the contributing committee. More-

over, the committee filing the supplemental report does not have to file the report in the jurisdiction where it made contributions unless it is otherwise required to do so.

Lastly, special “odd year” quarterly campaign reports should also be eliminated in their entirety for all committees, including Major Donors. They are currently required for all committees who make \$5,000 in contributions to state elected officials during a calendar quarter. These reports are confusing and of negligible value. To the extent the public is interested in who might be contributing to state elected officials and lobbying at the same time, the Bipartisan Commission notes that lobbyist employers are required to disclose campaign contributions on their lobbyist disclosure reports which are filed quarterly. (See also Chapter 5A, Focus Group Finding No. 14.)

Place Burden of Notification on the Government

The Bipartisan Commission feels strongly that if the government is going to impose a complicated disclosure system on those persons who are politically active,

the government should assist in the compliance function by notifying filers both of their upcoming filing obligations and of any errors or omissions on the face of their campaign filings.

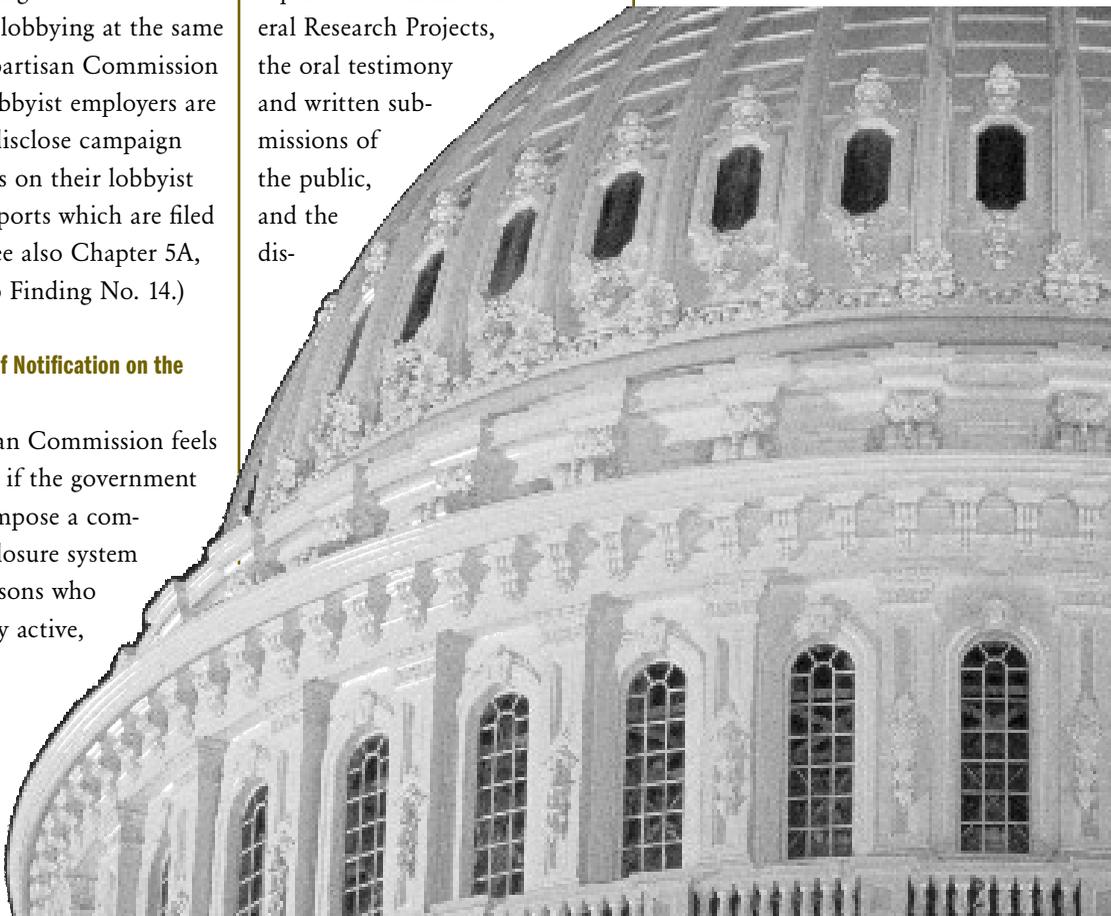
RECOMMENDATION NO. 13 **Notify Candidates/Committees of Filing Requirements**

The Secretary of State should be required to affirmatively notify registered state candidates and registered state recipient committees of their disclosure requirements on at least an annual basis.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the dis-

cussions and deliberations of the Commission, the Bipartisan Commission finds that it would be in the best interests of the public to supplement the existing system for regular notification of filing requirements by the Secretary of State directly to candidates and committees. The Bipartisan Commission commends the Secretary of State’s recent informative notifications, and believes that such communications should be made as a regular practice in order to fully inform the regulated community. (See also Chapter 5A, Focus Group Finding No. 14; Chapter 5B, Campaign Report Form Experiment.)



RECOMMENDATION NO. 14

Notify Filers of Errors/Omissions on Reports

The Secretary of State should be required to review all state candidate and state committee campaign reports upon filing and to notify filers of all omissions or errors observed on the face of the reports. The Secretary of State should have funds adequate for this purpose.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that it is in the interests of better disclosure to have all campaign reports timely reviewed for facial accuracy and completeness. The Secretary of State currently provides such compliance review for all lobby reports and for many campaign reports. The Bipartisan Commission believes the Secretary of State should be provided adequate funds in order to provide this compliance review for all campaign reports. The Secretary of State's current lobby compliance review system has proved itself to be of great

value and could be used as a model to apply to all campaign reports. The Bipartisan Commission believes this is especially important in light of the difficulties in preparing campaign reports, as evidenced by the Commission's Campaign Report Form Experiment. (See Chapter 5B, Campaign Report Form Experiment.)

Put Some Teeth in Rule Requiring Occupation/Employer Disclosure

The Bipartisan Commission recognizes the importance of requiring recipient committees to disclose the occupation and employer information of their individual contributors. The Commission also recognizes that the fact some committees substantially ignore this requirement is of great consternation both to the "users" of the reports as well as to the other committees who do substantially comply. This unfairness should be remedied.

RECOMMENDATION NO. 15

Return Contributions if No Contributor Information

Candidates and committees should be required to return contributions from individuals for whom occupation/employer

information is required to be reported if such information is not received within 60 days of receipt of the contribution.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that there is substantial merit to the argument that full disclosure of occupation and employer information is important. The Bipartisan Commission, however, does not agree that contributions should be returned without first giving the candidate or committee a full opportunity to obtain such information. The Bipartisan Commission believes that a 60 day period provides a fair opportunity. (See Chapter 5A, Focus Group Finding No. 3.)

Lobby Disclosure

As stated above, the Bipartisan Commission heard considerable testimony at its public meetings regarding the campaign disclosure provisions as well as the public official financial disclosure provisions of the Political Reform



Act, and received numerous recommendations and proposals from interested persons who submitted written comments and public testimony. In addition, the Focus Group Studies, as well as the Campaign Report Form Experiment, provided an abundance of thought and analysis relating to these disclosure issues.

On the other hand, no public testimony was received proposing changes with respect to lobby disclosure. More specifically, despite the fact most of the Bipartisan Commission's meetings were held in Sacramento—which is largely the home of the lobbying com-

munity regulated by the Political Reform Act—the Bipartisan Commission did not hear from either the regulated lobbying community, the reform community or the regulators that any lobby disclosure reforms were required. In addition, the Bipartisan Commission considered carefully the opinions of its one member who is a retired lobbyist, who was also a member of the Sub-Committee on Disclosure. That Commissioner, who was required to comply with the Political Reform Act for many years and is

very familiar with the disclosure provisions, was also of the opinion that the current regulatory scheme works and that the public is adequately informed. While one commentator did suggest several minor changes in lobbying disclosure, the Bipartisan Commission was not persuaded that changes were needed.

Therefore, the Bipartisan Commission makes no recommendations for changes to the current lobbying disclosure provisions of the Political Reform Act.

CONFLICTS OF INTEREST UNDER THE POLITICAL REFORM ACT

Nothing discourages the citizenry from participating in the political process more quickly or completely than a political system that is permitted to become unduly complex and incomprehensible. If the rules of the game are too difficult or complicated for the average citizen to readily understand them, the citizens are naturally repelled by that complexity. The average citizen may then rationally choose to opt out of the process rather than attempt to maneuver through the difficulties and expense of obtaining the necessary legal or technical assistance. Such complexity then runs counter to the purpose of government to encourage public participation.

The Bipartisan Commission has recognized this factor in considering both its enforcement Recommendations and its disclosure Recommendations. However, the Bipartisan Commission, comprised of numerous members who have firsthand experience with all facets of the Political Reform Act, recognizes that this factor is even more relevant in the area of conflicts of interest. This is so

because no area of the Political Reform Act is more difficult to understand than the provisions of the Act concerning purported “conflicts of interest.”

The issues faced by those who must walk through the Political Reform Act’s minefield of statutes, regulations and advice letters in this area are so difficult and unclear that some have simply chosen to leave public service rather than to risk violating laws they cannot understand. The Bipartisan Commission believes these rules are in dire need of a massive overhaul which must—more than anything else—result in simplification.

It is the conclusion of the Bipartisan Commission that the tireless efforts over the past quarter of a century to make certain that not a single potential or even theoretical conflict of interest remains hidden have created a level of complexity that is entirely counterproductive to the basic purposes of the conflict of interest provisions of the Political Reform Act. Not entirely unlike a case of the “exceptions swallowing the rule,” the conflict of interest scheme seems to be a matter of the rules and sub-rules completely overwhelming the original

rationale for the basic concept created by the Political Reform Act: that a public official should not participate in a governmental decision in which he or she has a financial interest.

The Bipartisan Commission understands that its core directive is to explore the Political Reform Act and its effects on the First Amendment and various categories of persons, and that an emphasis on campaign issues certainly exists in the Commission’s enabling legislation. This directive clearly requires the Bipartisan Commission to focus primarily on the major issues discussed earlier, disclosure (primarily campaign disclosure) and enforcement. However, the Bipartisan Commission also recognizes that an analysis of the conflict of interest concept is necessary to paint a complete picture of the Political Reform Act’s effects on California’s citizenry, particularly as those effects apply to the First Amendment and its protections.

In examining the conflict of interest provisions of the Political Reform Act, the Bipartisan Commission solicited information, input and ideas through various means, including:

First, as referenced previously, the Bipartisan Commission held a series of Public Hearings throughout the state requesting

public input including specifically with respect to the conflict of interest provisions contained in the Political Reform Act.

Second, the Bipartisan Commission’s Conflict of Interest Sub-Committee (comprised of two former public officials, a former FPPC Chairman, and a former FPPC Commissioner) studied conflict of interest issues, including all recommendations and proposals submitted by the public (in writing and in testimony) and prepared a Report on Conflicts of Interest for the consideration of the Bipartisan Commission.

Although, as stated above, there is certainly a strong sense that the conflict of interest provisions of the Political Reform Act are unnecessarily and dangerously complicated, the Bipartisan Commission’s study and analysis of these provisions was substantially limited by two factors. First, the Bipartisan Commission recognized both that the FPPC is currently undergoing a far-ranging regulatory overhaul of the conflict of interest provisions of the Political Reform Act, and that the Bipartisan Commission needed to respect and defer to the FPPC in this regard. Second, the Bipartisan Commission also recognized that given its own time constraints and given the per-

ceived focus of the Commission’s enabling legislation on issues of disclosure and enforcement, the Commission needed to devote more of its time and efforts on the latter two areas.

The Bipartisan Commission nonetheless identified numerous reforms which it believes would—if implemented—make the conflict of interest provisions under the Act work more efficiently and effectively. The Bipartisan Commission believes that these reforms are necessary to ensure that the original purposes of the Political Reform Act are carried out without unduly discouraging citizens from participating in the political process due to confusing and unneeded regulatory requirements.

Specific Recommendations

The following are the Bipartisan Commission’s specific Recommendations with respect to the conflict of interest provisions contained in the Political Reform Act, along with the Findings which support the Recommendations. The Bipartisan Commission believes that these Recommendations are worthy of serious consideration by the Legislature and the Fair Political Practices Commission.

Consolidation and Centralization of Conflict Rules

The Bipartisan Commission believes that for the sake of clarity and consistency in interpretation the various state and local conflict of interest rules should be consolidated and centralized under the authority of a single body, the FPPC.

RECOMMENDATION NO. 16

Consolidation of State Conflict Codes Under One Agency

All state conflict of interest statutes should be consolidated into a single code or body of law to be interpreted and enforced consistently by a single state agency.

Findings Supporting Recommendation

Based upon the discussions and deliberations of the Commission, the Bipartisan Commission finds that the existence of multiple conflict of interest provisions sprinkled throughout various Codes creates unnecessary confusion in the minds of public officials who strive to obey the law but who often have no idea what Code to review or whom to ask for advice.

For example, a public official wondering whether he or she has a conflict of interest in a particular governmental decision must individually consider the Political Reform Act, Government Code Section 1090, the conflict of

The Bipartisan Commission therefore recommends that the Legislature consolidate all conflicts of interest laws into one Code, presumably the Political Reform Act, to be interpreted and enforced consistently by a single authority.

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interest provisions of the Public Contracts Code, and a number of other agency-specific and local conflict of interest provisions. These provisions are administered or enforced by different agencies such as the FPPC, the California Department of Justice, the courts, and numerous local agencies. The public official must determine for himself or herself what agency to approach for an answer to a conflict of interest question. For example, a question about the Political Reform Act conflict of interest rules must be addressed to the FPPC while a question about a Section 1090 contract issue must be addressed to the Department of Justice.

RECOMMENDATION NO. 17
Centralization of Local Conflict Rules Under the FPPC
All local conflict of interest codes should be centralized and consolidated under the authority of a single state agency—the FPPC.

Findings Supporting Recommendation
Based upon the discussions and deliberations of the Commission, the Bipartisan Commission finds that the Political Reform Act’s conflict of interest provisions (Government Code Section 87300 et seq.) should be amended to centralize and consolidate all state and local conflicts of interest codes under the authority of a single state agency, the FPPC. The current concept, which dates

back to the Political Reform Act’s adoption by the voters in 1974, decentralizes responsibility for the formulation and adoption of the conflicts of interest codes to individual jurisdictions and agencies. Although the FPPC is empowered, pursuant to Government Code section 87312, to provide technical assistance to agencies in the preparation of conflict of interest codes, the FPPC has no authority to direct these efforts in a standard and uniform manner. The existing decentralization can lead to a myriad of inconsistent results.

For example, one local government entity may designate a public defender as a position with decision-making authority, while another entity may not. Moreover, the FPPC’s present lack of authority to examine and direct the conflict of interest efforts of local government agencies undermines the role of the FPPC, which is the one agency with the technical expertise to administer this highly technical area of law.

The Bipartisan Commission urges the Legislature to consider legislation to give the FPPC more authority to ensure that all conflict of interest codes for all agencies and all jurisdictions are properly regulated and administered.

RECOMMENDATION NO. 18

Consolidation of Financial Interest Disqualification With Campaign Contribution Disqualification

Legislation should be enacted to move Government Code Section 84308—concerning disqualification and campaign contributions—to Chapter 7 of the Political Reform Act where the other conflict of interest provisions are located.

Findings Supporting Recommendation

Based upon the discussions and deliberations of the Commission, the Bipartisan Commission finds that, in order to consolidate all conflict of interest provisions in one area of the Code, legislation should also be passed to move Government Code Section 84308 to Chapter 7 of the Political Reform Act.

Government Code Section 84308 was added to the Political Reform Act by legislation in 1982, following reports in the Los Angeles Times in 1980 that several members of the California Coastal Commission received campaign contributions from persons who had applications pending before their Commission. Section 84308 pertains to the disqualification of appointed members of boards and commissions who receive campaign contributions under certain circum-

stances. However, this provision, which clearly is in the nature of a conflict of interest statute, is isolated from the rest of the conflict of interest provisions of the Political Reform Act. Its isolation is so complete that some public officials may be totally unaware of its presence. The Bipartisan Commission urges the Legislature to enact legislation to move Section 84308 to Chapter 7 of the Act, where the other conflict of interest provisions are located.

Recommended Areas of Further Inquiry

As discussed above, due to time constraints and out of deference to the FPPC’s simultaneous and ongoing review and regulatory overhaul of the conflict of interest provisions of the Political Reform Act, the Bipartisan Commission did not have the opportunity to conduct the full investigation and review of the conflict of interest rules that is warranted by this very complex area of the law.

The Bipartisan Commission believes that following the conclusion of the FPPC’s conflict of interest regulatory overhaul, the Legislature and/or another body should conduct a fundamental top-to-bottom review of the conflict of interest provisions contained in the Political Reform Act and its authoritative interpretations (including FPPC regulations

and advice letters) and should consider, among others, the following possible reforms.

Clarify Conflict Rules and Eliminate Unnecessary Disqualification

The Commission feels strongly that several of the conflict of interest provisions need clarification in order to make the rules more understandable and workable or to eliminate the unnecessary and too frequent disqualification of officials from participating in governmental decisions.

RECOMMENDATION NO. 19

Clarify Rule of “Reasonable Foresight”

The element of conflict of interest analysis as to whether a financial effect is “reasonably foreseeable” should be clarified and made more workable.

Findings Supporting Recommendation

Based upon the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the element of conflict of interest analysis as to whether a financial effect is “reasonably foreseeable” is too vague and far-reaching.

There is a great deal of concern that the FPPC’s recent efforts to overhaul the conflict of interest regulations will not go far enough

to cure the problems associated with this important issue, given that it must be conducted within the constraints of the present statute. The Bipartisan Commission believes serious consideration should be given to the possibility of a statutory correction to the vague and far-reaching concept of whether a financial effect is “reasonably foreseeable” for conflict of interest analysis purposes. (See Appendix 6.)

RECOMMENDATION NO. 20
Provide Fairness and Eliminate Unnecessary Disqualification—Especially in Case of Landowner Public Officials

The Political Reform Act’s “materiality” rule and “public generally” exception for conflict of interest analysis—particularly as they apply to landowner public officials who must vote on development or rent control related issues—should, after careful study and consideration, be amended to provide basic fairness and to eliminate unreasonable and unnecessary disqualification from participation in governmental decisions.

Findings Supporting Recommendation

Based upon the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds

that the element of “materiality” and the “public generally” exception for conflict of interest analysis have been applied in ways that do not further the purposes of the Political Reform Act, do not provide basic fairness to either public officials or their constituents, and often result in unnecessary and unreasonable disqualification from participation in a governmental decision.

For example, the Bipartisan Commission received a number of comments relating to the “public generally” exception and whether it should apply in certain circumstances to public officials who own rental properties and who—because of that ownership—are otherwise prevented from voting on rent-related issues, notwithstanding the fact that tenant-public officials are not similarly disqualified. This issue generally arises in the context of voting on rent control or development issues.

Of equal significance is the complexity of the “materiality” rules. Consideration should be given to whether, in order to simplify the rules, the same “materiality” threshold for indirectly involved real property should be applied in all cases, regardless of the proximity of the public official’s property to the subject property. (See Appendix 6.)

RECOMMENDATION NO. 21
Eliminate Unnecessary Disqualification for Small Investment Interests

After careful study and review, the Political Reform Act should be amended to apply the “public generally” exception to situations in which the public official owns less than 1% of a business entity.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the failure to apply the “public generally” exception to circumstances in which the public official has only a very small relative ownership interest in an entity leads to unnecessary and unreasonable disqualification of public officials from participation in governmental decisions that do not further the purposes of the Political Reform Act and do not provide basic fairness to either public officials or their constituents. Consideration should therefore be given to expanding the “public generally” exception to include cases in which a public official owns less than 1% of a business entity, regardless of what financial effect the decision may have on that business entity.

Alternatively, this issue may be resolved with equal force and result by addressing a different element of the conflict of interest analysis. (See Appendix 6.)

RECOMMENDATION NO. 22 **Allow Public Officials to Vote Against Their Interests**

After careful study and review, the Political Reform Act should be amended to further simplify the “materiality” standard by eliminating the “negative effect” rule that would find a conflict of interest even where the public official’s participation in a governmental decision is against his or her financial interests.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that it is illogical to find that a public official has a conflict of interest in a decision where his or her participation in that decision runs contrary to the official’s financial interest. In such cases, the official’s participation in the government decision—by definition—cannot possibly be motivated by either financial gain or protection of the official’s financial interest. (See Appendix 6.)

Strict Liability Under the Act Is Inconsistent With Basic Fairness

The Bipartisan Commission also recognized the need to move away from the current unfair “strict liability” concept of conflict of interest rules in favor of a rule that requires reasonable diligence.

RECOMMENDATION NO. 23 **Eliminate “Strict Liability” Concept of Conflict Rules**

After careful study and review, the Political Reform Act should be amended to expressly include a “standard of care” element or defense for public officials who make a reasonable and good faith effort to determine whether or not they may have a conflict of interest prior to participating in a governmental decision (thus moving away from a “strict liability” standard for conflict of interest cases).

Findings Supporting Recommendation

Based upon the discussions and deliberations of the Commission, the Bipartisan Commission finds that the present system of apparent “strict liability” for conflict of interest violations is lacking in basic fairness, chills political participation, and does not further the purposes of the Political Reform Act.

The Bipartisan Commission recommends serious consideration to the creation of a “standard of care” element or defense for public officials who make a reasonable and good faith effort to determine whether or not they may have a conflict of interest prior to participating in a governmental decision. A number of FPPC enforcement matters over the years have involved government officials who—despite making a good faith effort and obtaining advice from their agency’s legal counsel—nonetheless inadvertently violate the Act by participating in a governmental decision in which they are later found to have a conflict of interest. There currently exists no defense for such good faith conduct in an FPPC enforcement action. Alternatively, the Bipartisan Commission believes that the FPPC could reasonably and fairly interpret the conflict of interest provisions of Government Code sections 87100 et seq. (which contains the language “knows or has reason to know”) to establish a violation only if a reasonable person would know (i) that they have a financial interest, and (ii) that it is reasonably foreseeable that the governmental decision will materially affect that interest.

ENFORCEMENT OF THE POLITICAL REFORM ACT

The Bipartisan Commission believes that strong and effective enforcement of the Political Reform Act requires that the prosecutorial agency conform its enforcement activities to sound and clearly defined enforcement principles.

The Bipartisan Commission's purpose in this Report is not to rate the current performance of the FPPC in comparison with the principles set forth herein. The Bipartisan Commission does not believe it has information to do so, nor did it seek such information, as it believes such an "audit" is not within the purview of the Bipartisan Commission. Nonetheless, the Bipartisan Commission does believe as a general matter that the FPPC's current enforcement program comes considerably closer to carrying out the principles set forth in this Report than has been the case at other times in the FPPC's history.

Threshold Enforcement Recommendation

However, as discussed below, the Bipartisan Commission believes the FPPC should consider the Statement of General Enforcement Principles set forth in this Chapter and further should

formally adopt a statement of enforcement principles that is consistent with this Chapter. The Bipartisan Commission also believes the FPPC should then treat the Statement of General Enforcement Principles as a guide to structuring and managing its enforcement program as well as to disposing of particular cases.

RECOMMENDATION NO. 24 **The FPPC Should Adopt and Apply a Statement of General Enforcement Principles Consistent With This Report**

The FPPC should formally adopt a Statement of General Enforcement Principles consistent with the views expressed below. Legislation should be passed requiring the FPPC to report in writing to the Legislature each two years as to how the FPPC's enforcement program is carrying out its Statement of General Enforcement Principles.

Proposed Statement of General Enforcement Principles

The goal of enforcement should be to bring about optimal compliance with the Political Reform Act while minimizing intrusion into the political process. Enforcement should be sufficient (i) to deter serious or intentional violations and to detect and punish those who are

not deterred, and (ii) to encourage conscientious and diligent effort on the part of those who have no intent to violate the Political Reform Act. Enforcement procedures and penalties that go beyond what is required to attain these primary objectives are not only unfair to those who are directly affected but also counterproductive to the Political Reform Act's most general goal of assuring an honest and freely competitive political process.

To achieve this, the enforcement resources and processes applied must be calibrated to the nature and seriousness of the offense. This is accomplished by first categorizing the cases or matters, and then applying both the prosecutorial resources and the penalty structure to the cases by category.

Categorization of Enforcement Matters

The Bipartisan Commission believes, generally speaking and without great oversimplification, enforcement cases can be divided into three broad categories.

First, there exists the category of the most egregious conduct wherein someone intentionally violates the Political Reform Act to seek political advantage. If enforcement is reasonably efficient, such violations should be relatively unusual. Furthermore, because it is in the nature of such

cases that the responsible persons will seek to conceal the violations, the number of such cases that come to the attention of the FPPC is likely to be very small. It is the seeking out and pursuit of that small number of cases that should command a disproportionate amount of the FPPC's enforcement resources, and warrant the most serious penalties.

Second, and at the other end of the spectrum, exists the category consisting of inadvertent violations committed by persons who have diligently attempted to comply with the Political Reform Act and have no desire to conceal anything or otherwise to violate the law. Given many factors—including the complexity of the law; the vastly different levels of experience and sophistication on the part of those subject to the law; the ad hoc nature of most election campaigns and the time pressure under which they operate; and the onerous burden of compliance—such violations are likely to be common. In fact, the Bipartisan Commission found direct evidence of this in its Campaign Report Form Experiment, wherein both experienced and inexperienced persons were asked to diligently prepare a campaign report using the instructions provided and were, without exception, unable to pre-

pare the report accurately. (See Chapter 5B.)

Moreover, with no attempt to conceal the violation, often the violation will be clear on the face of the report or will be discovered in audits. A large portion of the cases that come to the attention of the FPPC are likely to fall into this category. Yet, a well-structured enforcement program will handle these cases expeditiously and efficiently, so that they consume—on a relative basis—few enforcement resources.

And third, there is the category of cases that constitutes the “middle ground” of the spectrum, consisting of conduct which does not amount to diligent conduct but also does not entail intentional misconduct. This category comprises both negligent and grossly negligent conduct. This category may also be quite large, and requires enforcement activity sufficient both to provide an incentive for future diligence by the violator and to deter others from acting with negligence.

Certainly, within each category there can be a considerable range in the seriousness of violations. Moreover, to distinguish the minor from the moderate from the most serious cases is certainly no easy task. It

requires the careful consideration of numerous factors including, for example, the amount of the money not properly reported, the relative nature of the violation to the total activity, the frequency of violations, the proximity of the violation to a significant event such as an election or a governmental decision, and the sophistication of the respondent.

Nevertheless, the Bipartisan Commission believes it is generally possible to single out those cases, few in number, that involve the most egregious conduct. It is these matters that merit serious punishment and the use of extensive investigative resources as compared with the “minor” cases or the “middle-ground” cases.

The Importance of Case Categorization

This general breakdown of enforcement cases has important implications for managing enforcement. To the maximum extent possible, the minor and middle-ground cases should be handled administratively and routinely. Where the facts seem clear—whether from the face of the disclosure forms, from audit findings, or from other documentary evidence—the matter should be dealt with, expeditiously. In some cases, a warning letter notifying the respondent of the specific violation will suffice. Some

minor and probably many middle-ground violations nonetheless would warrant a modest fine.

However, wherever possible, such cases should be handled like parking tickets. The initial letter should give the respondent the option of closing the matter by correcting the error(s) and returning payment in a specified amount. The respondent should be afforded the opportunity to correct, clarify, or supplement the information upon which the FPPC proposes the modest fine. The amounts should be no higher than necessary to encourage people subject to the law to comply, both as a matter of fairness and to encourage the acceptance of routine disposition of these cases.

Some minor and middle-ground cases will require somewhat higher fines than can be arranged through “parking ticket” procedures. Nevertheless, if possible, they should still be subjected to expeditious resolution. Of course, in all such cases the respondents would have the option of refusing to cooperate with the FPPC.

Calibrating Fines to the Level of Misconduct

For the reasons stated above, the Bipartisan Commission believes modest penalties in all but the most egregious cases—combined with audits and aggressive educational and technical assistance efforts—are both just and sufficient to achieve the true goals of enforcement of the Political Reform Act.

Following this approach, the Bipartisan Commission would expect the largest number of fines to be modest, possibly under \$1,000. When routine cases involving no egregious misconduct are disposed of with minimal expenditure of resources, fines in this range may seem more appropriate than has been the case in the past—wherein more substantial prosecutorial resources were required. The Bipartisan Commission believes that such modest fines in cases involving minor or many of the middle-ground violations would be fair and would advance the purposes of the Political Reform Act.

As alluded to above, a final advantage of expeditious disposition of routine matters is to be able to direct a disproportionate amount of the FPPC’s investigative and legal resources to the

small number of major cases – the most egregious misconduct which requires the most extensive investigation and the most serious fines. The occasional occurrence of such serious enforcement matters—combined with the modest but steady pressure from swift, efficient administrative handling of more routine cases—would effectively deter violation of the law while assuring the public that the law is being enforced.

Specific Recommendations

In addition to studying the general principles of enforcement of the Political Reform Act, the Bipartisan Commission also examined enforcement more generally in order to develop and refine specific Recommendations regarding enforcement rules and procedures. In considering and developing these Recommendations, the Bipartisan Commission studied enforcement of the Political Reform Act through various means:

First, as set forth later, the Bipartisan Commission and IGS conducted an extensive FPPC Enforcement Study. (See Chapter 5C.)

Second, the Bipartisan Commission and IGS conducted Focus Group Studies—including focus groups of candidates and cam-

paign treasurers, journalists, and political attorneys—which also specifically included enforcement issues, among others. (See Chapter 5A.)

Third, as set forth earlier, the Bipartisan Commission held a series of public meetings throughout the state requesting public input including specifically with request to enforcement of the Political Reform Act.

Fourth, the Bipartisan Commission’s Enforcement Sub-Committee (comprised of two former Chairmen of the FPPC and two former FPPC Commissioners) studied enforcement issues, including all recommendations and proposals submitted by the public (in writing and in testimony) and prepared a Report on Enforcement for the consideration of the Bipartisan Commission.

Although there is certainly a sense that enforcement of the Political Reform Act is a difficult and complex area, the Bipartisan Commission identified numerous reforms which it believes would, if implemented, make the enforcement of the Act work more efficiently. The Bipartisan Commission believes these reforms are necessary to ensure that the

original purposes of the Political Reform Act are carried out without unduly discouraging citizens from participating in the political process.

The following are the Bipartisan Commission’s specific Recommendations with respect to enforcement of the Political Reform Act, along with the Findings which support the Recommendations. The Bipartisan Commission believes that these Recommendations are worthy of serious consideration by the Legislature and the Fair Political Practices Commission. The Bipartisan Commission further believes that each of the Recommendations, if adopted, would further the original purposes of the Political Reform Act by providing for a more efficient and effective implementation of the Act.

Reform Act to Prevent Abuse of the Private Attorney General Provisions

Central among the reforms in the area of enforcement is the need to protect against the abuse of the very important private attorney general action provisions contained in the Political Reform Act.

RECOMMENDATION NO. 25 **Private Attorney General Actions Should Be Limited to Serious Violations of the Act**

Private attorney general actions should be limited to serious violations as follows: As a necessary element for the plaintiff to prevail in any action brought by a person other than a civil prosecutor under Sections 91004 or 91005 of the Government Code, either of the following must be shown:

(1) That the violation was intentional or that because of the political consequences or other circumstances the violation is sufficiently material to justify an action notwithstanding the decision of the civil prosecutor not to act; or

(2) In the case of a violation that is curable and whose harm to the public would be substantially avoided if cured, that the defendant in the action has been notified of the violation and has failed to cure it within a reasonable time.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the private attorney

general provision of the Political Reform Act should be clarified to restore its original intent.

Government Code Section 81001 as contained in the Political Reform Act declares “[p]revious laws regulating political practices have suffered from inadequate enforcement by state and local authorities.” To address this problem, the Political Reform Act created a new agency, the FPPC, whose sole responsibility would be the implementation and enforcement of the Political Reform Act. To provide an additional backup, the Political Reform Act, while giving the FPPC primary civil enforcement authority, permits private citizens to bring civil actions and to collect half of any financial penalty. (See Government Code Section 91009.) Government Code Section 91012 provides that in such a case brought by a private citizen, the court may award attorney’s fees to the prevailing party and may require the plaintiff to post a bond to guarantee payment of costs in the event the defendant prevails.

The Bipartisan Commission concludes that to further the purposes of the Political Reform Act, private attorney general actions should be limited to serious violations. These private attorney

general provisions should be read against the background of the Political Reform Act’s finding of inadequate enforcement of prior laws. Enforcement is not “inadequate” when the FPPC declines to initiate enforcement proceedings in routine cases of negligence (or where diligence was present but a violation nonetheless resulted) for the reasons described above in the Statement of General Enforcement Principles.

The type of case most obviously contemplated by the private attorney general provisions is one in which there is an intentional, serious violation that the FPPC declines to pursue out of excess timidity or for even less desirable reasons. Other instances in

evidence but that the private plaintiff is able to substantiate; or (iii) a case that—although not necessarily very serious when considered in isolation—can be demonstrated by the private plaintiff to represent a class of violations that is not being adequately dealt with by the FPPC and that, considered in the aggregate, results in a serious failure of the Political Reform Act to accomplish its purposes.

Although cases in which a private attorney general action is warranted for these or similar reasons may be rare, that does not mean the availability of such actions serves no purpose. The very possibility of a private attorney general action is likely to provide an incentive to the FPPC

The type of case most obviously contemplated by the private attorney general provisions is one in which there is an intentional, serious violation that the FPPC declines to pursue out of excess timidity or for even less desirable reasons.

which a private attorney general action might be desirable could include (i) a case that the FPPC cannot bring because the FPPC’s investigative and legal resources are being devoted to other serious cases; (ii) a case involving serious allegations for which the FPPC has concluded there is insufficient

to pursue cases vigilantly. And when there is a breakdown, the private attorney general action may bring about a just result.

On the other hand, the use of private attorney general actions by individuals seeking to profit from minor but easily detected

violations that the FPPC – in the sound exercise of its prosecutorial discretion—has declined to pursue, certainly does not promote the purposes of the Political Reform Act. In fact, for the reasons discussed in the Statement of General Enforcement Principles above, such private prosecutions may be harmful and may deter public participation in the political process. The Bipartisan Commission therefore proposes that a new paragraph (b) be added to Government Code Section 91009, as set forth above, limiting the use of the private attorney general action to serious cases. The language of the proposed paragraph (b)(1) leaves considerable discretion in the court to set the threshold of seriousness that the plaintiff must cross in order to prevail. Potential private attorney generals who are confident that a violation has occurred might face some uncertainty whether a court would find that the threshold was satisfied, and would face financial risk if their predictions turn out to be incorrect. This would have the beneficial effect of discouraging private attorney general actions other than in plainly serious matters. (See Chapter 5A, Focus Group Finding No. 4.)

RECOMMENDATION NO. 26
Attorneys Fees Should Be Awarded to Respondents Who Successfully Defend Against a Private Attorney General Action

Judicial decisions creating asymmetry in the award of attorney’s fees between plaintiffs and defendants should be legislatively reversed as follows: Government Code Section 91012 should be amended to read as follows:

(a) The court may award to a plaintiff or defendant, other than an agency, who prevails in any action authorized by this title his costs of litigation, including reasonable attorney’s fees. On motion of any party, a court shall require a private plaintiff to post a bond in a reasonable amount at any stage of the litigation to guarantee payment of costs.

(b) Criteria used by courts for determining whether or not to award attorney’s fees and for determining the amount of attorney’s fees, under this section and under Section 90003, shall not differentiate between cases in which the plaintiff or the defendant is the prevailing party.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that judicial decisions creating asymmetry in the award of attorney’s fees between plaintiffs and defendants should be legislatively reversed. The problem of the asymmetry in the award of attorneys fees in private attorney general actions has been created by the courts.

More specifically, the Political Reform Act contains two provisions for attorney’s fees. Government Code Section 91003(a) permits the court to award attorney’s fees to the prevailing party in an action seeking injunctive relief. Government Code Section 91012 permits the court to award attorney’s fees to the prevailing party in any action brought under the Political Reform Act, unless the prevailing party is a government agency. Neither of these provisions of the Political Reform Act contains any suggestion that the award of attorney’s fees should be affected by whether the prevailing party is the plaintiff or the defendant.

Nevertheless, in a series of cases decided in the 1980s, California appellate courts relied on these sections to make the award of attorney’s fees almost automatic when the prevailing party is the plaintiff, but to deny the award of attorney’s fees in most cases when the prevailing party is the defendant. (See *Thirteen Committee v. Weinreb*, 168 Cal.App.3d 528, 214 Cal.Rptr. 297 (1985); *People v. Roger Hedgecock for Mayor Committee*, 183 Cal.App.3d 810, 228 Cal.Rptr. 424 (1986); *Community Cause v. Boatwright*, 195 Cal.App.3d 562, 240 Cal.Rptr. 794 (1987).) Under these decisions, attorney’s fees are awarded to a prevailing plaintiff “in the absence of overriding special circumstances,” even when the violation was committed by a defendant who acted in good faith. (*Thirteen Committee*, 214 Cal.Rptr. at 303.) However, a prevailing defendant receives attorney’s fees only when the plaintiff’s action is found to be “frivolous, unreasonable, or groundless.” (*Community Cause*, 240 Cal.Rptr. at 803.)

The courts have reached these asymmetric results, despite the absence of any statutory requirement of support for them, on the ground that the purpose of the attorney’s fee provisions is

to encourage private litigation enforcing the Political Reform Act. The Bipartisan Commission believes that such reasoning is fallacious. As in the case of enforcement generally, the Bipartisan Commission believes the purpose of the attorney’s fee provisions is to encourage private litigation over serious matters where action by the FPPC would have been desirable but for one reason or another did not occur, and to discourage private litigation in all other cases. This conclusion is strengthened by the provision in Government Code Section 91012 requiring a plaintiff to post a bond and thereby evidencing intent to protect the interests of defendants as well as plaintiffs in such matters. It is true, as the courts in the above-cited cases have noted, that the Political Reform Act gives the courts discretion to decide under what criteria attorney’s fees should be awarded, and the Bipartisan Commission does not propose to remove that discretion. However, those who drafted the Political Reform Act could have and would have specified asymmetric criteria if that had been their intent, and the Bipartisan Commission believes they were correct not to do so. To restore the symmetry that the Political Reform Act on its face seems to call for, the Bipartisan Com-

mission recommends that Government Code Section 91012 be amended as set forth above. (See also Chapter 5A, Focus Group Finding No. 4.)

RECOMMENDATION NO. 27 **Private Attorney General Actions Should Be Disallowed Where the FPPC is Pursuing the Violation**

The possibility of monetary penalties in a private attorney general action should be precluded if the FPPC notifies the complainant that it is investigating the matter and within one year the FPPC has either entered into a stipulation with the respondent or has entered an order of probable cause.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that monetary penalties in private attorney general actions should be precluded under circumstances in which the FPPC notifies the complainant that it is investigating the matter and within one year the FPPC has either entered into a stipulation with the respondent or has entered an order of probable cause.

Under Government Code Section 91007(a), a private person wishing to recover monetary penalties from a violator of the Political Reform Act must first notify the civil prosecutor which, in state cases, is the FPPC. If the civil prosecutor brings a civil action within a specified period, the private attorney general action is precluded. The Bipartisan Commission believes that the FPPC and the respondent should be provided adequate time prior to commencement of a private attorney general action either to attempt to resolve the allegations or, at least, to allow the FPPC to determine whether probable cause exists to pursue the allegations. (See also Chapter 5A, Focus Group Finding No. 4.)

RECOMMENDATION NO. 28
Private Attorney General Actions Should Be Precluded in Instances Wherein the FPPC Has Already Issued a Warning Letter

Government Code Section 83116 should be amended so as to preclude the possibility of monetary penalties in a private attorney general action in instances in which the FPPC, acting as a Commission, has issued a warning letter to the respondent.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that it is not in the interests of the Political Reform Act to permit private attorney general actions in instances in which the FPPC has issued a warning letter or other administrative penalty.

As set forth above, under Government Code Section 91007(a) of the Political Reform Act, a private person wishing to recover monetary penalties from a violator of the Political Reform Act must first notify the civil prosecutor; if the civil prosecutor brings a civil action within a specified period, the private attorney general action is precluded. The Bipartisan Commission believes that private attorney general actions should be obviated in state cases even if the FPPC declines to bring a civil action, so long as the FPPC either initiates administrative proceedings or sends a warning letter to the respondent, on account of the fact that such action demonstrates that the FPPC has given the matter consideration and thereby serves the purpose of the private attorney general pro-

visions. (See also Chapter 5A, Focus Group Finding No. 4.)

RECOMMENDATION NO. 29
Formal Hearings Should Not Be Required in Order to Dispose of Matters

Government Code Section 83116 should be amended to permit informal disposition of cases without a formal hearing.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the Political Reform Act should be amended to permit informal disposition of cases by FPPC staff without a formal hearing and order voted upon by the five member FPPC. This Recommendation is a corollary of the Statement of General Enforcement Principles set forth above which call for "parking meter violation" procedures in some cases.

Currently, the FPPC believes it can, consistent with Government Code Section 83116, dispose of cases without penalty, such as by sending the alleged violator a warning letter, without a finding of probable cause or other formal procedure. Government Code Section 83116 should be amended to make it clear that the FPPC

can use similar informal procedures to impose and collect fines, in order to facilitate the expeditious and routine handling of the many cases that involve neither intentional, serious wrongdoing nor significant contested facts. Of course, the respondent should retain the option of denying wrongdoing and contesting the allegations in an administrative hearing. All notices sent by the FPPC proposing expeditious treatment should be required to disclose this option.

Limited Criminal Prosecution; Expanded Range of Monetary Penalties

The Bipartisan Commission believes that criminal prosecution of violations of the Act by the FPPC should be the exception, and not the rule. The Commission also believes that the existing penalties for violations of the Act should be expanded to more accurately reflect a full range of misconduct and culpability which constitutes a violation.

RECOMMENDATION NO. 30
The Primary Criminal Prosecutor Should Not be the FPPC

In the event that Proposition 208 is reinstated by the courts, criminal prosecutions brought by the FPPC should be at the request of, or when referred by, the regular criminal prosecutors.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that any criminal prosecutions brought by the FPPC should be at the request of, or with the authorization of, the regular criminal prosecutors. Although the Political Reform Act gives the FPPC a variety of administrative and civil enforcement functions, authority to prosecute criminal cases under the original provisions of the Political Reform Act is limited to the Attorney General, district attorneys, and elected city attorneys of charter cities. (See Government Code Sections 91001(a), 91001.5.) Section 91000(d) of Proposition 208—which was approved by the voters in 1996 but whose implementation has been preliminarily enjoined by the United States District Court for the Eastern District of California—amends these provisions to permit the FPPC to prosecute criminal cases.

There may be a variety of reasons why, under particular circumstances, the FPPC may be better situated to prosecute a criminal case than the regular criminal prosecutors. However,

the Bipartisan Commission does not believe it is in the interest of either the FPPC or the public for the FPPC to have unbridled criminal enforcement powers on top of its general responsibilities for administering and implementing the Political Reform Act. The Bipartisan Commission believes it is important as a general matter to keep prosecutorial power in the hands of officers with responsibility in a broad array of cases, so that priorities and prosecutorial discretion can be exercised without the distortion inherent in considering only a narrow class of prosecutions in isolation.

The advantages sought by Proposition 208 of giving criminal prosecutorial power to the FPPC, in cases where circumstances make it appropriate, can be obtained without the problems of distortion that might otherwise occur by making the FPPC’s prosecutorial power effective only when one of the officers with criminal prosecutorial power under the Political Reform Act either requests or authorizes the FPPC to prosecute.

RECOMMENDATION NO. 31
Fines Should Range from \$50-\$5,000 Depending on the Seriousness of the Violation

The current maximum fine of \$2,000 that may be levied by

the FPPC in administrative proceedings should be changed to \$50-5,000 per count, depending on the seriousness of the offense, with the understanding that excessive multiplication of counts must be avoided.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that like many other dollar amounts set forth in the Political Reform Act, the \$2,000 per violation maximum for administrative monetary penalties has not been changed since the voters approved the Political Reform Act. The Bipartisan Commission recommends that the fine amount be changed to a range of \$50 to \$5,000—depending on the seriousness of the offense—and with the express understanding that excessive multiplication of counts must be avoided. The increase in the maximum fine should perhaps be included as part of a legislative package increasing many of the other dollar thresholds in the Political Reform Act to account for inflation since 1974.

However, as should be clear from the Statement of General

Enforcement Principles set forth above, the Bipartisan Commission does not intend that the proposed increase in the maximum penalty should result in an across the board increase of 150 percent in the size of penalties levied. The maximum penalty should be seen as a maximum, not as the normal penalty. Similarly, the minimum penalty should be seen as a minimum, and not the normal penalty. Actual fines imposed should be within this broad range and should, in each instance, accurately reflect the relative seriousness of the violation of the Political Reform Act. (See also Chapter 5A, Focus Group Finding Nos. 12, 13.)

Enhancement of Due Process

The Bipartisan Commission identified several areas where additional due process rights need to be established in order to create an enforcement system that both is fair to the parties and is conducive to settlement.

**RECOMMENDATION NO. 32
Subjects of FPPC Complaints Should Be Promptly Notified and Given Opportunity to Respond**

The Political Reform Act should be amended to require that a subject of a formal or informal complaint filed with the FPPC shall be notified of the complaint by the FPPC within 14 days of

receipt of the complaint by the FPPC unless the FPPC, in its discretion, determines that such notification would impede the specific investigation.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission’s several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that—except in circumstances in which the FPPC concludes that such notification would impede investigation (for example, illegal reimbursement cases that might include ongoing misconduct or possible attempts to conceal or destroy evidence)—the respondent of a complaint filed with the FPPC should receive timely notice of the allegations against him or her in order to be able to respond. The Bipartisan Commission believes this is necessary as a matter of basic fairness and due process, and that this amendment will also aid the enforcement process by promoting the prompt resolution of many complaints. (See also Chapter 5A, Focus Group Finding No. 11.)

RECOMMENDATION NO. 33

Respondents in Enforcement Proceedings Should Have an Opportunity to View the Evidence Against Them

The Political Reform Act should be amended to provide that a respondent to an enforcement action, upon service of a Report in Support of Probable Cause, shall have an opportunity to inspect and copy evidence in the possession of the FPPC which is used to support the allegations contained in the probable cause report.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that as a matter of basic fairness and due process, a respondent to an enforcement action should have an opportunity to inspect and copy evidence in the possession of the FPPC which is used to support the allegations against the respondent, upon service of a Report in Support of Probable Cause. The Bipartisan Commission believes this reform will also aid the enforcement process by promoting the prompt resolution of many complaints. (See also Chapter 5A, Focus Group Finding No. 11.)

RECOMMENDATION NO. 34

The Franchise Tax Board Should Not Issue Findings that are Inconsistent with FPPC Interpretations

The Franchise Tax Board should not issue findings in campaign and lobby report audits that are in any way inconsistent with the FPPC's interpretation of the Political Reform Act.

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testimony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that as a matter of basic fairness and consistent implementation of the Political Reform Act the Franchise Tax Board should be required to issue findings in campaign and lobby report audits that are consistent with the FPPC's interpretation of the Political Reform Act. The Bipartisan Commission finds that given the Political Reform Act's bifurcation of audit duties on the one hand and interpretation and enforcement duties on the other, it is both confusing and counter-productive to permit the auditors to interpret provisions of the Act in

a manner that is inconsistent with the Legal and Enforcement Divisions of the FPPC. (See Chapter 5A, Focus Group Finding No. 10.)

Recruitment and Retention of Qualified FPPC Personnel

Lastly, the Commission addressed the need for the FPPC to be able to recruit and retain qualified personnel—including enforcement attorneys and investigators—given the reality that the FPPC must compete with other state agencies for the best and the brightest employees.

RECOMMENDATION NO. 35

Higher Level Positions Should be Created at the FPPC in Order to Recruit and Retain Qualified Personnel

Higher level positions should be created for the FPPC's highest-level attorneys, including enforcement attorneys, and investigators (which includes accounting specialists).

Findings Supporting Recommendation

Based upon the results of the Bipartisan Commission's several Research Projects, the oral testi-

mony and written submissions of the public, and the discussions and deliberations of the Commission, the Bipartisan Commission finds that the higher level positions should be created for the FPPC’s highest-level attorneys and investigators. The Bipartisan Commission recognizes that, for a long time, the FPPC has had difficulty recruiting and retaining

because there are few positions available into which one may hope to advance and there exists a relatively low wage “ceiling” that can only be exceeded by transferring to another state agency. An excellent comparison can be found in the staffing of the Department of Justice. Rank

sel both were recruited from the Department of Justice and either had to take salary cuts or become the subjects of a complicated civil service staffing adjustment to assume their new supervisory and managerial duties. For the remainder of their tenure at the FPPC, they will enjoy no possibility of a pay increase, other than cost of living adjustments.

The Commission addressed the need for the FPPC to be able to recruit and retain qualified personnel—including enforcement attorneys and investigators—given the reality that the FPPC must compete with other state agencies for the best and the brightest employees.

The FPPC’s investigator series is limited to Investigator I-III. Three of their eleven investigators are Investigator III’s. Two of the FPPC’s best Investigator III’s recently left for other agencies because they had no opportunity for advancement if they stayed. Because the FPPC’s investigator series does not have peace officer status, many investigators have left the FPPC to secure positions in agencies that do enjoy that status. FPPC investigators are paid less than analysts in state service. Many investigators leave investigation altogether to become Associate Governmental Program Analysts (AGPA) in other agencies. The AGPA is practically an entry-level position in the analyst series but the position pays more than does a position as an Investigator I or II. FPPC investigators require accounting, analytical and inves-

experienced attorneys and investigators. The problem is not uncommon in small agencies but is a larger problem for the FPPC because its attorney and investigator salary structures are linked to the Attorney I-IV and Special Investigator/Investigator III classifications used by larger state agencies. Because of its relatively small size, the highest attorney staffing level at the FPPC is Attorney Level III. The highest investigator staffing level is a non-peace officer status Investigator III.

Because of these classifications, there is little opportunity for advancement in the FPPC

and file attorneys in that department are classified Deputy Attorney General (DAG) I-IV. The supervisory and managerial attorney positions are paid above that range. In stark contrast, the FPPC’s attorney classifications are comparable only to DAG I-III salary ranges. FPPC division chiefs are compensated at lower levels than are rank and file attorneys (DAG IV) at the Department of Justice, even though DAG IV attorneys have no supervisory or managerial responsibilities.

The FPPC’s present Chief of Enforcement and General Coun-

tigative skills, yet they are not paid accordingly.

As illustrated above, the FPPC has difficulty competing with other, larger state agencies that enjoy higher and better paying attorney and investigator staffing positions and more possibilities for advancement. Once a particularly capable person begins to rise within the civil service system, or reaches the higher salary levels at the FPPC, he or she can easily be lured to another state agency that enjoys a higher salary range, peace officer status, or greater possibilities of further advancement. The staffing situation being what it is, the FPPC cannot effectively compete with other agencies or hope to retain its best people in either its attorney or investigator positions. The real losers in this scenario are the regulated public and the citizens who want and expect the FPPC to do its job efficiently and effectively. The public is deprived of the obvious value they would otherwise enjoy if the Enforcement

Division could retain its highly trained and experienced attorneys and investigators.

The Bipartisan Commission therefore recommends that the FPPC be granted a special “senior” level category for its most qualified enforcement attorneys and an Investigator IV category for its most qualified investigators. This recommendation should be addressed initially to the State Personnel Board but, if necessary, it should be sent to the Legislature for a statutory remedy. Similar adjustments should be made for other positions within the FPPC.

“It’s getting to the point where people have to hire campaign treasurers, and it ought to not be that way.”

The Bipartisan Commission, working with IGS, undertook several research projects on behalf of the Commission. Specifically, the Bipartisan Commission and IGS undertook the following research projects:

- focus group studies and interviews (the “Focus Group Studies”) with local campaign treasurers, journalists, and political law attorneys with the goal of providing a better understanding of what these groups think about the present system created by the Political Reform Act and how the system might be improved (see Chapter 5A);

- a campaign finance report “form experiment” (the “Campaign Report Form Experiment”) designed to evaluate how easy or difficult these forms are to fill out for both the experienced consultant as well as the layperson (see Chapter 5B); and

- an empirical investigation of FPPC enforcement practices (the “FPPC Enforcement Study”) with the goal of providing a better understanding of how the Political Reform Act is enforced (see Chapter 5C).

For the sake of clarity, each Research Project is discussed separately in this Chapter as well as (more fully) in Appendix 5, which contains the report of IGS to the Bipartisan Commission.

“If I don’t find it, I’m scattering through papers trying to find that small \$6 or whatever it is . . .”

As part of its research and investigation, the Bipartisan Commission commissioned IGS to conduct a number of Focus Groups on critical categories of filers and users of the data generated by the Political Reform Act. The purpose of this research was to gain some insight into the experiences of those who prepare the campaign reports and analyze the data required by the Political Reform Act.

Specifically, the Bipartisan Commission conducted formal Focus Groups through IGS for both local candidates and treasurers (the filers) and journalists (the users), as well as with practitioners—political attorneys—who tend to be both filers and users. All comments gleaned from the Focus Groups have been edited to remove any names or references that might compromise the anonymity of the participants. Appendix 5 contains the full report drafted by IGS of the several Focus Groups conducted.

THE FILERS’ PERSPECTIVE: LOCAL CANDIDATES AND TREASURERS

The filer Focus Groups included candidates who filed their own campaign reports, volunteer treasurers and professional treasurers. The major findings of the local candidate and treasurer Focus Groups, as well as representative comments from the Focus Groups, follow.

FOCUS GROUP FINDING NO. 1

Many of the filers felt that the campaign report forms were overly complex and confusing and that the FPPC advice was not always helpful.

Representative Comments

VOICE: I mean the biggest problem for me really was just having to fill it out and not having the software. The only thing that I find confusing about the forms is the section where you record outstanding loans. Either payable or due to you. Because I’m used to ... a balance sheet and an income statement, and the ... form sort of combines those things in sort of one lump. And it’s not very

logical, because ... your only asset really is your cash. So it’s not very logical where you’re recording the loans that you have outstanding or that you owe.

(February 10, 2000 Focus Group, pp. 35-36.)

VOICE: I don’t know if they can make, like you said, have some form of an EZ form where these things don’t apply. I did not have any bank loans, no loans, no extra money coming in from here. Just check them off so you don’t need these forms. All you need from me is the one that said I had this much interest on my bank account which I opened for my campaign. I probably made the mistake of putting interest on that bank account, which means now I have to declare a small amount of interest every six months. If I don’t find it, I’m scattering through papers trying to find that small \$6 or whatever it is ...

(February 15, 2000 Focus Group, pp. 14-15.)

FOCUS GROUP FINDING NO. 2

The overlay of state and local laws is a source of major complexity. Since the laws vary at each level and across jurisdictions, it is not always easy to obtain the correct rules that pertain to a particular race. Some of the confusion that filers face is caused by the multiple layers of regulations placed by different jurisdictions.

Representative Comments

VOICE: The political format is complicated. It's getting more complicated. Every time you pass another campaign reform act, it throws the whole thing in turmoil. It's getting to the point where people have to hire campaign treasurers, and it ought to not be that way.

MODERATOR: Even at the local level?

VOICE: Absolutely at the local level. Even at the local level I think they're raising somewhere in the neighborhood of \$50,000 to \$200,000. When you start becoming aware of all of those laws, and then overlaid on top of that are a large number of local campaign ordinances. It just gets to the point here in [City]—the city ... now has probably spent \$225,000 on special counsels to adjudicate the complaints. Basi-

cally the complaints are made because people read this ordinance and they don't understand it. So they file these complaints and your ethics commission doesn't know anything about campaigning, so they hire a special counsel.

(February 15, 2000 Focus Group, pp. 25-26.)

VOICE: There's a problem with that. That is that often times the local jurisdictions don't understand these rules. So you've got your board of [supervisors] or your city council, whatever, they will pass a campaign reform ordinance. Then depending upon the jurisdiction—for instance, I was doing a campaign in [County]. At that time [Proposition] 73 had been thrown out but you had this ordinance that had fiscal year contribution ... limits, it had on year, off year. They required reporting of \$25 contributions and [in-kinds], and expenditures. It was this horrible thing. Well, when I went into talk to the county clerk about some of these provisions, he looked at me and said, I just hold people to the high points. He said, I don't know what's in it and I don't care. I happen to think it's silly. I said, okay.

VOICE: But they've got a state attorney's office who kind of oversees it a little bit. But both [County] and [City] never registered their ordinances with the state, which is what they are supposed to do.

(February 15, 2000 Focus Group, pp. 58-59.)

FOCUS GROUP FINDING NO. 3

A common problem that many filers face is that donors do not complete all the information needed for the disclosure forms. A particularly hard piece of information to get is the contributor's occupation and employer information. The dilemma then is whether to take the money and risk the violation or forego the money and risk not having enough money to win the election.

Representative Comments

VOICE: No, they... "Here, here's my check." And maybe they'll give their employer, but getting the other piece of the information, what's their occupation, a lot of times is just a pain to have to follow up and try to... "Okay, what do you do?" It's like, it's an invasion of my privacy. You've got my name, you've got my address.

(February 10, 2000 Focus Group, p. 24.)

VOICE: It depends on the rules... I mean pretty typically the state allows that you make your best effort at getting the information, but of course, you take the money. I mean [City] had very strict rules, which I now think have been changed. They used to say if you can't get it within a certain amount of time you've got to return it.

VOICE: [City] is different, though, because [candidate's], half his contributions say "information requested."

VOICE: I mean state law says that you make your best effort and then you say on the form "information requested." They say you're supposed to amend when you do get the information, but no one does.

(February 10, 2000 Focus Group, p. 25.)

FOCUS GROUP FINDING NO. 4

Some of the more conscientious filers worried about the possibility of making mistakes and having to pay fines for their errors. This was less of a concern for the veteran and paid treasurers, who worry more about the audits. The private attorney general provision introduces another source of potential threat.

Representative Comments

VOICE: So yeah, I did worry. The first thing that the FPPC sent me was their latest newsletter, which was all full of the latest fines, right. And I think it was like

have mailed? And they'll ask you all these questions that in the original reporting you don't need to report. So that's frustrating.

(February 10, 2000 Focus Group, p. 50.)

“Any treasurer who tells you they don't make mistakes is lying to you or themselves.”

[public official], who happened to be working ... upstairs from us in the same building. And they were like letting us use their phones. I'm going, "Oh my God, they fined this man all this money." And really, you don't have a whole lot of recourse.

(February 10, 2000 Focus Group, pp. 37-38.)

VOICE: Any treasurer who tells you they don't make mistakes is lying to you or themselves. We all make mistakes. All it takes is to misspell somebody's name. When you go to get a second contribution, you'll never find them to get it.

(February 15, 2000 Focus Group, p. 50.)

VOICE: And you're required to do things that we know we have to do now, but it took years of experience. Like you're supposed to keep a sample of literature of your guys' mailings. How are you supposed to say how many you

VOICE: So yeah, I worried, but I didn't worry that much, because we raised and spent \$385,000. I thought that given that it was a very high profile event, high profile election, and that people would probably come after us, I did worry a little bit that everything had to be squeaky clean because people were going to be looking at it. But I didn't worry because we weren't doing anything wrong. So I didn't think that there would be any problems. As it turned out, one of the organizations that gave us a good size chunk of money—because there were no limits, because it was a ballot measure—failed to file their major donor committee form. And the other ones all did. And I had sent them a letter and everything, and they were friends of mine and they said "oh, yeah". And then the person who was responsible left and in the interim

they forgot. So [a private attorney] went to the FPPC and said, “I want you to fine this organization for failing to file their report.” And the FPPC said, “Well, you know what? We’re going to pass on that.” And so he’s suing them

(February 10, 2000 Focus Group, p. 37.)

FOCUS GROUP FINDING NO. 5

An unusual problem that was brought up was the prospect that someone might only raise money to pay the filing fees for an office, but that amount of the filing fee then requires filing a disclosure form. This seemed to all present at the Focus Group to be unfair and unnecessary.

Representative Comments

VOICE: Or maybe you leave it at \$1,000 but you say, any filing fee doesn’t apply to that. So then let the filing fee go as high as you want, not that that would be particularly good, but I’m still not getting sucked into that regardless of what number you put on that paper. I just don’t apply that. I’m sorry I didn’t mention that.

VOICE: No, I like that thought because this is for—granted, somebody else could have fronted that money for you to run but if you don’t campaign somebody’s going

to front that money to put you on the ballot—you’re going to run a campaign, they’re going to run a campaign for you. A filing fee is there to cover the cost, as I understand it, of the election and other stuff. It’s gotten pretty outrageous when the filing fee is already at the limit here. If all you’re going to do is file, the [short form] should be adequate.

(February 15, 2000 Focus Group, pp. 82-83.)

FOCUS GROUP FINDING NO. 6

The Internet and electronic filing holds much promise but several of the treasurers who are reporting campaign activities electronically over the Internet under the current law have complaints about the expense and inconvenience.

Representative Comments

VOICE: Then my other concern is the cost, and access for smaller campaigns, smaller organizations. For example, my organization happens to have a DSL connection to the Internet because we use it so much, and that’s great. There are going to be campaigns that don’t want to spend that kind of money, and so they’re going to be sitting there with their 56k modem trying to enter information.

VOICE: Unless they go to a public institution like a library.

VOICE: Yeah, but who wants to be sitting there with their campaign contributions and their checks in the library? You want a little bit of privacy.

(February 10, 2000 Focus Group, pp. 86-87.)

VOICE: Well, there are huge glitches. I don’t have so much of a problem with the filing online as I do with the equity. That is, I’m not sure that if you are a single committee—if they’re going to make you file online, the least they can do is pay for the lousy web server. The data is no longer on my computer. It is on their web site.

VOICE: But trying to get stuff out of it is a bear. It will get better. I find it hard because I’m not able to do some things that I’m normally able to do. Like I can’t access an address. I’m responsible for aggregated contributions but I can’t aggregate my address. I can’t aggregate by the business name unless the check came from the business.

(February 15, 2000 Focus Group, pp. 34-35.)

VOICE: But the people I work [with] are very frugal, we're very targeted, and we try to spend our money wisely. But when you look at these forms, here's a \$500 filing for electronic filing fee. It's ridiculous. If you want electronic filing then the government should be up front and say we'll pay for it. I'm not a very big advocate of the Internet because not everybody's on it—for various reasons.

(February 15, 2000 Focus Group, p. 46.)

THE USERS' PERSPECTIVE: JOURNALISTS

The Bipartisan Commission, through IGS, conducted two Focus Groups consisting, in total, of eleven journalists. The journalist Focus Groups invited journalists who had worked on campaign finance stories to share their experiences in using the data generated by the Political Reform Act. Those who attended represented a broad spectrum of newspapers and covered politics at either or both the local and state levels.

In general, their perspectives were understandably very different from that of the treasurers and candidates who complete and file the campaign report forms. Of course, journalists do

not have to bear the costs and inconveniences of providing more information, and the more data they can get and the easier they can get it, the better their stories will be and the easier their jobs will be. In addition, an important theme that comes out of the journalist Focus Groups is the need to pay attention to the back-end of disclosure: namely, the ease or difficulty of use of the data to uncover the connections between money and political action.

The first journalist Focus Group, which was conducted in Sacramento, consisted of six political reporters who knew each other and regularly investigated and wrote about the campaign finance system—although their perspectives on the system were varied. The second journalist Focus Group, conducted in Berkeley, consisted of 5 reporters participating along with two academic users of campaign finance data. In contrast to the Sacramento group, these reporters had more experience with reporting on local level campaign finance issues. In addition, eight other journalists were interviewed by phone.

The major findings of the journalist Focus Groups, as well as representative comments from the Focus Groups, follow.

FOCUS GROUP FINDING NO. 7

It is difficult to trace the sources of funding, the officers and members of committees, and bundled contributions. Furthermore, data analysis, including under the new electronic filing system, could be assisted in various ways.

Representative Comments

VOICE: The flip-side really quick, one thing that I found is a frustration ... that the Good Government Committees, you know ... Californians for Good Government, and you can find out who's giving the money to them ... the only thing you have to file about who's running it is the treasurer, and that could be anybody. And there was a particular ... on the local level, there was a committee I was trying to (investigate) ... but because the treasurer wouldn't talk to me and wouldn't tell me who else was on the committee, I had to sort of track it back. There was no way for me to find out who was running the committee, which to me is fairly problematic, if the treasurer could just say, 'Well, I just deal with the money. You have to deal with the other people running the committee.' 'Well, who's running the committee?' 'Well, I can't tell you.'

(January 28, 2000 Focus Group, p. 30.)

VOICE: But what happens is ... all the candidate sees is that they got it from this PAC. But where does the money come from, okay? An example of this is a union that was taking money from developers. The money was going from developers to the police officers' association, which reports at the county level on the county schedule and then dumps it into the city election on the city cycle. So what's happened is that you have a shield ... you have basically laundered the money from the developer. Okay? And you don't know during the election where the money's coming from. It's a serious problem. It's becoming more widespread.

(February 7, 2000 Focus Group, p. 37.)

VOICE: The data is not always, you know, in the most useful form. I think some of the employer ID's and tying people to industry or occupation is very difficult. And, you know, it certainly would be nice to have that more systematized and concrete so it could be used. Especially if one of these reform measures passes. And the beauty of no limits on campaign contributions is that the big contributions are very obvious. If somebody gives you ... or \$100,000, it's not very

hard to figure out who that is in five minutes, but if we get \$1,000 or \$5,000 limit and people start spreading their money around or bundling contributions, it's going to be much harder to track where all that money is coming from. So it will then be more important to know people's employers and occupations

(January 28, 2000 Focus Group, pp. 4-5.)

“So what's happened is that you have a shield. . . you have basically laundered the money from the developer. Okay?”

VOICE: Every active contribution needs to be a separate event that appears in a data base that you can search and slice and dice the data on every field. And you can conglomerate it and disaggregate it, and the rest, so that you can look ... for people who want to look by zip codes, you know, that you can look by zip codes you want to look by contributor, you find all the contributions to all the different campaigns. Or you want to look by date, you know, for instance, in the week after a committee passes X bill, you know, how many contributions in the succeeding week did the committee members get from trial lawyers, for instance. The system,

if the contributions were reported timely and they were in a database so that you can—we don't have to put them in. Because we don't have the resources.

(January 28, 2000 Focus Group, p. 39.)

VOICE: Yeah. Yeah. Their search engine works in certain times. But when you want to search

across campaigns, or you want to really do some analysis, you want the database yourself. And it seems to me that the next logical step, and I hope that this is going to be part of the other information they provide is, you know, downloadable Excel files. Because the data is coming in some sort of field format to begin with, it should be simply a matter of a simple conversion. I hope they're going that way. If they're not, I'm going to be greatly disappointed after all this buildup to it.

VOICE: Right. Yeah. Because we want to manipulate it, you know, we want to search it. And ... their search engines are only as fast as

your modem and their modem, and their site.

(February 7, 2000 Focus Group, p. 12.)

FOCUS GROUP FINDING NO. 8:

There are problems concerning aggregation of contributions. Many of the stories that journalists write look at the total amount of money that certain individuals or interest groups contribute to political campaigns. This is difficult when the names of contributors vary in small ways or when there are other small discrepancies in how the forms are filled out. This led them to push for standardized industry and occupation codes and for a better system of contributor identification.

Representative Comments

VOICE: [What] also makes it worse is ... the contributors Every time the contributor ... changes their committee name or changes their name slightly, or even uses for no real reason, a variation of their name, it gets inputted in with a different contributor code. So for a big contributor, you might have to plow through 15 or 20 different contributor codes

(January 28, 2000 Focus Group, p. 8.)

VOICE: And if you've got a contributor ... if you have (Bob Jones) contributes some money, and then the next time it's (Bob and Jill Jones) contributes some money, and the next time it's (Robert M. Jones) contributes some money, and the next time it's (B. Jones), every one of those will be a separate listing. And one of those may be, you know, an incredible amount of money, and you just lose it in the mess. So there has to be a way to kind of consolidate those things.

VOICE: But when the data is collected on the other end, though, I mean, if it's not a major donor, it's just a \$500 contributor, the contributor doesn't do anything in the reporting system, it's reported by the recipient. So if recipient A gets it from (Bob Jones) and recipient B gets it from (Robert Jones), they have no

ture, you want to be able to find out how many attorneys or how many of a particular group. And, particularly, on the occupations and identifiers, it might say attorney, it might say lawyer, it might say self-employed. So it can be difficult to run that, unless you know the names of all the attorneys and you can cross-reference something like that, which theoretically, you can do now, but it's difficult I think one of the things that would be beneficial would be to have some sort of uniform identifiers in occupations and things like that, so then you can't say self-employed if you are an attorney, and you're a prominent attorney.

(January 28, 2000 Focus Group, p. 11.)

FOCUS GROUP FINDING NO. 9

On the whole, the FPPC investigations do not provide much useful material for reporting.

“So for a big contributor, you might have to plow through 15 or 20 different contributor codes...”

way of knowing that that's the same person and record it.

(January 28, 2000 Focus Group, p. 9.)

VOICE: And one of the problems, frustrations, we've had with that has been that the identifiers, basically. If you're trying to analyze it on looking at the big pic-

Representative Comments

VOICE: The FPPC is generally the end of the process. By the time you hear anything about what they're doing, they've already reached an agreement with the person who is alleged to commit the violation. Generally, if there's a violation, we're either

going to see it ourselves and write about it, or you're going to have a campaign that files a complaint with the FPPC, and then you won't hear anything from the FPPC for five, ten years.

(January 28, 2000 Focus Group, p. 15.)

there's not a lot of stuff, you know, that's out in the open in court. It's always ... stipulated agreement stuff, and lawyers meeting, and ... coming to some arrangement.

(January 28, 2000 Focus Group, p. 25.)

SUMMARY OF REPRESENTATIVE COMMENTS

For example, the FPPC said it was acceptable not to include the addresses of radio stations

“And another problem is . . . ironically, the FPPC, a lot of its enforcement stuff is done behind closed doors.”

VOICE: [Candidate] was eventually fined by the FPPC, but I think he was in Congress by then. I mean the penalties, the swiftness of them, they have no relationship to the seriousness of the offenses. I think if you use the game analogy with politics, in that campaign finance violations are treated in politics ... like traveling in basketball—you lose one possession, or something, it's not even a technical foul, it's not even ejection from the game. So you can ... in [candidate's] case ... you can make an argument that what he did allowed him to win an election he wouldn't have otherwise won.

(January 28, 2000 Focus Group, p. 17.)

VOICE: And another problem is ... ironically, the FPPC, a lot of its enforcement stuff is done behind closed doors. I mean,

THE PRACTITIONERS' PERSPECTIVE: POLITICAL ATTORNEYS

The Bipartisan Commission, again through IGS, conducted a small Focus Group of practitioners—political attorneys who practice in the area of the Political Reform Act. The major findings of the political attorneys Focus Group, as well as a summary (as opposed to excerpts from actual transcripts, as was the case above) of the representative comments from the Focus Group, follow.

FOCUS GROUP FINDING NO. 10

The Franchise Tax Board sometimes interprets the laws or regulations in ways that are directly contradictory to the interpretations given by the FPPC. When presented with FPPC written opinions, the FTB claims they do not have to follow the FPPC's opinions because they are separate agencies.

on campaign finance reports, and the FTB claimed the lack of addresses constitute a “material finding” in an audit.

FOCUS GROUP FINDING NO. 11

There should be more “due process” present in FPPC enforcement procedures, and enforcement should be meted out fairly.

Summary of Representative Comments

At times in past years FPPC enforcement has been “heavy-handed and one-sided.” The agency has a lot of resources, and they try to catch people they are investigating at home in the evenings, or on the weekends, so those people will make incriminating statements off the cuff. The current FPPC Chief of Enforcement is trying to make improvements in this regard. Some Enforcement staffs have

simply wanted maximum counts and maximum fines. And to get this the staff may ignore prece-

and they know that few people have the resources to oppose them. You get little or no practical benefit from cooperating with

roots democracy and have essentially professionalized politics so that you have to have lawyers and accountants on your campaign staff. First time violators should be given a warning.

Right now, it's a strict liability system.

“...one of the things that would be beneficial would be to have some sort of uniform identifiers in occupations and things like that...”

FOCUS GROUP FINDING NO. 14

dent (i.e., previously-decided cases with similar fact patterns) in order to get the maximum fines. Over the past few years, however, the FPPC has become better at treating like cases alike. This change is due to good personnel changes. The present Chief of Enforcement really does believe in due process. Also, the FPPC has come up with a standardized fine mechanism (such as with major donor violations and as a result of private attorney general actions).

the FPPC. It makes their lives easier if you cooperate, but the client gets very little in the way of fine reduction. There are always aggravating and mitigating factors in any case. But the mitigating factors don't help you, because the FPPC staff can always come up with aggravating factors to counterbalance them. It's a tit-for-tat approach that the enforcement staff uses to neutralize the mitigating factors.

The Political Reform Act has created a system which requires too much and overly complex filing—different amounts of disclosure at different intervals.

Summary of Representative Comments

Not even the experts can understand it. The present reporting system is too fragmented with different amounts of reporting at different intervals, with filing dates all over the place. This is especially hard for general-purpose committees which give to different campaigns at different times. Filing dates should be consolidated. Just have monthly or quarterly filings and one pre-election report. It would be more consistent and require less paperwork. It would be less volume of reporting each time and easier to keep up with.

FOCUS GROUP FINDING NO. 12

There exists a lack of incentives to cooperate with the FPPC in enforcement investigations and proceedings.

FOCUS GROUP FINDING NO. 13

People who get hit the hardest are those new to politics, especially local candidates, who are making simple mistakes.

Summary of Representative Comments

The unintended consequence of this is that the price of admission into politics becomes too high. People do not want to become candidates or treasurers because of the potential liability. Thus the regulations have injured grass-

Summary of Representative Comments

If you don't accept a deal on the FPPC's terms, the FPPC will simply load up charges against you. It's a take-it-or-leave-it approach on their part,

CAMPAIGN REPORT FORM EXPERIMENT

The Bipartisan Commission and IGS designed and conducted a Campaign Report Form Experiment that attempted to determine the difficulty campaign treasurers face when they seek to complete campaign reporting forms as required by the Political Reform Act.

Participants in the Experiment

The primary subjects in the experiment were graduate and undergraduate students affiliated with IGS. In addition, a few staff members from IGS also participated. Many participants had little campaign finance experience, although graduate students were more likely to have had some exposure to campaign work in the past. The group was split fairly evenly between men and women. At least one participant did not speak English as a native language.

Parameters of the Experiment

For this study, participants were provided with a Form 460 “Recipient Committee Campaign Report” together with the instructions provided by the FPCC along with the form, sample data about a campaign,

and a short questionnaire about their experience, if any, working with political campaigns. Using this information, participants were asked to complete the Form 460 to the best of their ability. As discussed above, participants with experience in campaigns and those with no campaign experience were recruited. The Campaign Report Form Experiment compared the performance of the two groups using the same campaign data.

Data for the sample campaign was based upon a hypothetical race for a nonexistent local office. Participants were provided with a list of contributions, some sent by mail and others generated from a fund-raising party held at a personal residence. In addition, the hypothetical candidate was provided a personal campaign loan, and received a non-monetary contribution in the form of opposition research. Finally, to complete the Form 460 report schedules, participants were provided with a completed check register containing memos for each purchase.

Summary Results of the Experiment

As expected, participants who had worked in previous campaigns were more likely to fill out the forms correctly. On every Schedule (contributions, loans, non-monetary contributions, and expenditures) and in almost every data field, participants with campaign finance experience were more likely to provide accurate information. These differences were especially dramatic on the summary page, the contributions schedule (Schedule A), and the non-monetary contributions schedule (Schedule C).

The time it took to complete the experiment varied dramatically, from approximately 45 minutes to three hours. Those with past campaign experience were slightly more likely to complete the study quickly. There was no noticeable correlation between the time taken to complete the study and overall accuracy of the results.

Summary Page

Beginning with the Summary Page, almost all participants attempted to identify the reporting period, but only participants with experience in campaigns did so correctly. In addition, participants with experience were much more likely to supply the election date required on the summary page. While most participants identified the type of committee (an officeholder or candidate committee) appropriately, a number of inexperienced participants failed to complete the form by providing an

address for a candidate, identifying a treasurer, and/or signing the verification form. The most common errors, however, were on the page where participants attempted to summarize contributions and expenditures. Participants with campaign experience were more likely to complete these fields accurately, but only managed to fill out one field accurately in every case.

A number of participants noted in their comments that the Summary Page double-counts non-

monetary contributions which the participants found confusing. In addition, making correct calculations on the Summary Page resulted in the Summary Page data failing to match the accounts kept by the campaign. A complete review of the accuracy of responses for the Summary Page is provided in Table 1. The data for all participants is provided first, followed by the results for participants with campaign experience, and then the results for participants who lack campaign experience.

TABLE 1: PERCENTAGE OF CORRECT RESPONSES FOR SUMMARY PAGE DATA

Form 460: Summary Page	All Participants <i>(percent)</i>	Campaign Experience <i>(percent)</i>	No Experience <i>(percent)</i>
Reporting period noted	80	100	67
Reporting period correct	30	75	0
Date of election supplied	60	75	50
Type of committee identified correctly	90	100	83
Type of statement identified correctly	80	75	83
Committee information given	80	100	67
Treasurer information given	90	100	83
Officeholder/candidate address included	100	100	100
Verification signed	90	100	83
Contributions totaled accurately	60	75	50
Expenditures totaled accurately	50	50	50
First non-monetary adjustment	70	100	50
Second non-monetary adjustment made	30	75	0
Ending cash balance correct	60	75	50

Participants were then asked which Schedules and pages were the most difficult to complete. Participants without campaign experience usually chose the Summary Page as the hardest form. In contrast, those with experience felt that Schedule B (loans) or Schedule A (monetary contributions) was the hardest.

Schedule A—Monetary Contributions

Schedule A, which lists monetary contributions to candidates, was the form that inexperienced participants felt was easiest. However, it was also the form on which the inexperienced participants made the most errors.

All participants successfully reported the amount that each contributor gave. However, very few participants identified, included, and summarized two contributions of less than \$100 from the same person, which totaled over \$100 for the reporting period. Inexperienced participants only included these contributions when they incorrectly listed all contributions, including those contributions of less than \$100, on Schedule A. Only participants with campaign experience consistently provided cumulative totals for contributions.

In addition, the experienced participants were more likely to correctly identify the contributor code of each contributor. Only

experienced participants provided identification codes for political action committees, though inexperienced participants were slightly more likely to indicate the occupation of the contributor, or note that such information was not available.

Most of the inexperienced participants totaled contributions incorrectly on the summary, failed to make the distinction between itemized and unitemized contributions, and totaled all contributions inaccurately. In contrast, all of the experienced participants did total all contributions correctly. The responses for Schedule A are summarized in Table 2.

TABLE 2: PERCENTAGE OF CORRECT RESPONSES FOR CONTRIBUTIONS DATA

Form 460: Schedule A (Contributions)	All Participants (percent)	Campaign Experience (percent)	No Experience (percent)
Two-part contribution summarized	40	50	33
Candidate contributions listed	100	100	100
Cumulative totals for contributors given	70	100	50
PAC ID number included on form	20	50	0
Amount received from contributors correct	30	50	17
Unitemized contributions noted	30	50	17
Total contributions correct	70	100	50
Contributions of less than \$100 left out	70	75	67
<hr style="border-top: 1px dashed #000;"/>			
Contributor code correct (of 12)	10.3	10.8	10.0
Occupations given/Info not available (of 7)	5.9	5.8	6.0

Schedule B—Loans

Schedule B, which contains loan data, is one of the only Schedules on which inexperienced participants did not appear to be disadvantaged in their ability to complete the data entry correctly. Schedule B contained a very simple personal loan made by the candidate to the campaign committee. Because this form was fairly

simple (participants only had to identify the lender, the amount, and the interest rate), most participants completed it correctly. A majority of participants completed Schedule B accurately in full. Results for Schedule B are summarized in Table 3.

TABLE 3: PERCENTAGE OF CORRECT RESPONSES FOR LOANS DATA

Form 460: Schedule B (Loans)	All Participants <i>(percent)</i>	Campaign Experience <i>(percent)</i>	No Experience <i>(percent)</i>
Lender noted	90	100	83
Lender identified as lender, not guarantor	90	75	100
Amount of loan correct	100	100	100
Contributor code accurate	90	75	100
Interest rate given	100	100	100
Total amount of loan correct	100	100	100
Net loans accurate	90	100	83
Annual report NOT completed	60	75	50

Schedule C—Non-Monetary Contributions

Participant comments and reviews of Schedule C, which details non-monetary contributions, were quite varied.

Some participants felt Schedule C was the hardest form to complete, while others felt it was the easiest. In a follow-up discussion, most participants felt that the issue of non-monetary contributions was initially quite confusing,

though the instructions resolved the question that arose with the sample data. In the case presented to participants, a lawyer had done opposition research for the candidate for free. All of the participants with previous experience completed this form correctly in nearly all fields. The only exception was the failure to provide the occupation and employer of the

contributors (or to write “information not available”)—an omission that was made several times on Schedule A. Participants who had no experience with campaigns were much less successful, though a majority of them did complete the Schedule accurately in full. Table 4 summarizes responses made on Schedule C.

TABLE 4: PERCENTAGE OF CORRECT RESPONSES FOR NON-MONETARY CONTRIBUTIONS

Form 460: Schedule C (Non-Monetary)	All Participants (percent)	Campaign Experience (percent)	No Experience (percent)
Non-Monetary contributor identified	89	100	83
Contributor code correct	78	100	67
Occupation/employer supplied	67	67	67
Description of goods offered	89	100	83
Fair market value stated	78	100	67
Cumulative fair market value given	67	100	50
Summary/total completed	78	100	67

Schedule E—Expenditures

In contrast to inexperienced participants, most of the experienced participants felt that the expenditures data (Schedule E) was the easiest to complete. However, like the experience with Schedule A, the perception that it was easier to complete did not lead to more accurate responses.

No single participant managed to finish Schedule E without making at least three errors. Inexperienced participants were more likely to list payees correctly, although that was due in part to incorrectly including expenditures of less than \$100 (similar to the error many inexperienced participants made on Schedule A). Expe-

rienced participants were more likely to code the expenditures correctly, and to include unitemized expenditures in the summary statement at the bottom of the form. In many cases, participants failed to total expenditures correctly. Responses for Schedule E are summarized in Table 5.

TABLE 5: PERCENTAGE OF CORRECT RESPONSES FOR EXPENDITURES DATA

Form 460: Schedule E (Expenditures)	All Participants (percent)	Campaign Experience (percent)	No Experience (percent)
Unitemized expenditures not listed	78	100	67
Payments totaled correctly	67	67	67
Unitemized expenditures included in summary	89	100	83
Total accurate	56	67	50
<hr style="border-top: 1px dashed #ccc;"/>			
Payees listed (of 6)	4.9	3.3	5.7
Payees coded correctly (of 6)	4.6	4.7	4.5

General Comments and Conclusions

Overall, results of the Campaign Report Form Experiment conducted by the Bipartisan Commission and IGS suggest that participants with campaign experience find the forms much easier to complete and are more likely to complete the forms accurately than participants with no experience. Interestingly, the forms that participants felt were the easiest (Schedule A for the inexperienced, and Schedule E for the inexperienced) were the two that contained the greatest number of errors. Even participants with backgrounds in campaigns—using a fairly simple set of mock campaign data—could not generate a Form 460 without making multiple mistakes.

Previous experience in campaigns also meant that participants could spend less time completing the forms. While those with a campaign background could complete the campaign report in as little as 45 minutes, people without campaign experience spent much longer (up to 3 hours), unless they gave up in frustration part of the way through. Those who did complete the campaign reports felt that the instructions had allowed them to do so with reasonable accuracy. However, in later discussion, all of the participants felt uncomfortable and uncertain about some of their responses.

Working with and through IGS, the Bipartisan Commission conducted a detailed study and analysis of the FPPC's enforcement practices. The FPPC Enforcement Study focused on two principal areas:

- matters in which the FPPC declined to take any action in response to a complaint filed with the FPPC; and
- matters that were pursued by the FPPC, whether commenced by a complaint filed by a third party or commenced as an FPPC-initiated matter.

Matters Declined

The Bipartisan Commission and IGS studied all matters (during a defined time period) in which the FPPC determined not to initiate an administrative proceeding or civil suit against an alleged violator, including instances in which the FPPC (i) dismissed a complaint without investigation, (ii) dismissed a complaint following an investigation, or (iii) dismissed a complaint after having sent the alleged violator a formal warning letter.

As is the case with all regulatory or prosecutorial agencies, the FPPC does not pursue every matter that it is offered. Although some observers (such as the California Auditor's report) have in the past questioned the FPPC's declination rate, the Bipartisan Commission believes that a robust declination policy is necessary in any prosecutorial body. That is, innocuous violations or good faith mistakes should not be pursued so that resources can be concentrated on more serious violations, thereby enhancing future deterrence of violations of the Political Reform Act. (See Chapter 4C.)

Working with the staff at the FPPC, IGS was able to examine redacted copies of letters sent in 154 matters that were declined between January 1998 and May 1999, coding them for respondent (the individual or group against whom the allegation was alleged), alleged violation, time to clearance (time between receipt of the complaint and the issuance of the declination letter) and reason for declination. Because not all information sought was available in every declination letter, the universe of cases for this particular section varies with each topic discussed.

Although the FPPC Enforcement Study includes many other findings (see Appendix 5), the Bipartisan Commission believes the most important findings are identified below.

The Bipartisan Commission and IGS examined the types of alleged violations declined, the results of which are offered in Table 1, below. Table 1 does not compare violations declined to vio-

lations pursued—for many times an alleged violation was declined precisely because its facts were insufficient to prove the underlying violation. That is, in many instances the FPPC found that the alleged violations did not in fact happen. Instead, the Bipartisan Commission draws the reader’s attention to the percentage of “nonjurisdictional violations” declined.

TABLE 1: TYPES OF ALLEGED VIOLATIONS DECLINED

Alleged Violation	Total	Declinations (percent)
Reporting Violations	48	33
Nonjurisdictional Violations	30	21
Conflict of Interest	20	14
Campaign Use of Funds	16	11
Statement of Economic Interest Violations	14	10
Disclaimer Violations	4	3
Proposition 208 Violations	4	3
Illegal Reimbursement Violations	3	2
Personal Use Violations	1	1
Lobbying Violations	1	1
Other	3	2
TOTAL	144	100

As is evident, the “non-jurisdictional” violations—those matters over which the FPPC does not have legal jurisdiction to investigate or enforce—accounted for 21 percent of all declinations. In addition, alleged violations of Proposition 208—which currently has been enjoined against enforcement—accounted for another 3 percent of declinations. Thus, many complainants have had their requests for FPPC action “turned down” simply because they mistook the scope of FPPC authority. Table 2 further analyzes those matters that were declined for lack of jurisdiction.

TABLE 2: BREAKDOWN OF NON-JURISDICTIONAL DECLINATIONS

Nature of Non-Jurisdictional Violation	Number
Brown Act Violation	6
Content Based Objection	5
Other Impropriety by Government Official	5
Improper Use of Government Funds	3
Election Code Violation	3
Local Ordinance Violation	2
Federal Campaign Finance Violation	1
Activities of Non-Elected Official	1
Could Not Be Determined	4
TOTAL	30

Perhaps the two most important factors in case declination are “time-to-clearance” and reason for declination. Table 3 analyzes the time-to-clearance of the declinations.

TABLE 3: TIME-TO-CLEARANCE OF DECLINATIONS

Time-to-Clearance	Total	Percentage	Cumulative (percentage)
0-1 month	24	19	19
1-2 months	33	27	46
2-3 months	28	23	69
3-6 months	20	16	85
6-9 months	3	2	87
9-12 months	5	4	91
12-18 months	3	2	93
18-24 months	2	2	95
24 or more months	6	5	100
TOTAL	124	100	100

As Table 3 indicates, 46 percent of declined matters are cleared within two months, almost 70 percent are cleared within three months, and 85 percent are cleared within six months. As a point of general comparison, previous research conducted by IGS found that the Federal Election Commission (“FEC”) takes appreciably longer to clear its declinations.¹ The FPPC’s comparative efficiency in clearing declinations is likely due to two factors.

First, unless a complaint is filed formally (i.e. sworn under penalty of perjury), FPPC staff have the ability to decline a case without the approval of the Commission. On the other hand, every matter before the FEC must be considered by the Commissioners themselves, thus extending the clearance time.² Second, as discussed previously, a large percentage of FPPC declinations involve matters over which the FPPC has no jurisdiction; these matters may be disposed of quickly simply by writing a letter to that effect.

The Bipartisan Commission also studied the reasons why particular matters were declined. According to the FPPC Enforcement Division Briefing Book, FPPC staff ask two questions when deciding whether a case should be pursued: “Assuming the alleged facts are true, could this case be successfully pursued, and even if the case could be prosecuted, should it be?” Table 4 aggregates the data as to the reasons why the matters were declined.

TABLE 4: REASONS FOR DECLINATION

Reason	Total	Declinations (percent of)
No Jurisdiction	29	19
No Violation	28	18
Weak Evidence	28	18
Mitigation	13	9
De Minimus Violation	7	5
Alternate Resolution (handled by other agency/individ.)	6	4
No History of Violations	5	3
208 Violation	4	3
Lack of Resources	3	2
No History of Violations AND De Minimus Violation	8	5
No History of Violations AND Lack of Resources	6	4
Lack of Resources AND De Minimus Violation	5	4
Mitigation AND De Minimus Violation	5	3
Mitigation AND No History of Violations	3	2
Mitigation AND Weak Evidence	1	1
Mitigation AND Lack of Resources	1	1
Weak Evidence AND De Minimus Violation	1	1
TOTAL	153	100

As discussed above, roughly 19 percent were declined due to the fact that the FPPC simply did not have jurisdiction to pursue the claim.³ Another 18 percent were declined due to the fact that the alleged actions were not in fact violations of the law. Other prominent reasons for declination included some combination of weak evidence, respondent mitigation, no prior history of violations, and the de minimus nature of the violation.

To summarize the findings with respect to matters declined:

1. The FPPC was able to clear the cases that it chose to decline fairly quickly, with almost half of these matters disposed of in two months

and 85 percent of these matters disposed of within six months.

2. A sizeable proportion of FPPC declinations were due to the fact that the agency had no jurisdiction over the subject matter (19 percent of all declinations) or no violation had in fact occurred (18 percent of all declinations). Mitigation, weak evidence, the de minimus nature of the violation, and lack of previous enforcement history also were important factors in the declination decision.

Matters Pursued

To analyze those matters that the FPPC did pursue, 518 enforcement cases were coded for such variables as respondent, violation, manner

of resolution, and fine imposed. Analyzing the types of violations that were pursued by the FPPC since 1980, roughly 46 percent were some type of reporting violation, 17 percent involved illegal reimbursement, 15 percent involved conflicts of interest, 9 percent involved Statements of Economic Interest, 8 percent involved disclaimer violation (i.e., disclaimers on political mass mailing), 2 percent involved lobbying violations, 2 percent involved personal use of campaign funds, and 2 percent involved other infractions. Table 5 shows how the composition of violations pursued changed over time both in terms of quantity and category.

TABLE 5: ALL MATTERS PURSUED—VIOLATIONS BY YEAR

Violation	1980-82	1983-85	1986-88	1989-91	1992-94	1995-97	Total
Total Cases	33	25	71	111	115	163	518
	<i>(percent)</i>						
Illegal Reimb.	6	12	7	7	21	29	17
Reporting	58	28	55	57	47	34	46
Disclaimer	15	16	7	15	4	4	8
Personal Use	0	4	0	0	3	3	2
Conflict	9	12	14	12	16	17	15
SEI	3	16	13	6	9	8	9
Lobbying	9	8	4	2	1	1	2
Other	0	4	0	1	0	4	2

In the 1980-1982 period, illegal reimbursements constituted only 6 percent of those matters pursued, but increased dramatically, constituting 29 percent of all matters pursued by the 1995-1997 time period. Reporting violations have fluctuated over time, though comparatively fewer were pursued in the 1995-1997 period than previously. Pursuit of disclaimer violations has decreased over time, whereas conflict of interest cases have slightly increased. These changes could be

due to any number of factors, such as changes in the underlying incidence of the infractions, the referral rates for particular infractions to the FPPC, or the prioritization of particular infractions by the FPPC. This said, it is unquestionably true that the FPPC has recently focused its attention on the pursuit of illegal reimbursement cases, consonant with the FPPC's stated strategy to pursue these violations.

Table 6 compares fines levied by the FPPC over time, including any fine reached in a stipulation, an administrative law judge hearing, a default judgment, or a civil suit.

Table 6 shows that the level of fines has increased rather dramatically over time. Fines of less than \$1,000 became increasingly rare over time, while fines between \$3,000 and \$7,000 became much more common. At the other end of the spectrum, large fines (in excess of \$50,000) increased substantially over time.

TABLE 6: ALL MATTERS PURSUED—FINES BY YEAR

Amount	1980-82	1983-85	1986-88	1989-91	1992-94	1995-97	Total (percent of all)
\$0-1,000	12	6	13	12	6	4	53 (10)
\$1,001-3,000	11	10	27	39	32	37	156 (30)
\$3,001-7,000	5	2	15	32	27	40	121 (23)
\$7,001-11,000	1	1	8	12	15	24	61 (12)
\$11,001-20,000	4	4	7	11	16	23	65 (13)
\$20,001-30,000	0	1	0	0	4	12	17 (3)
\$30,001-50,000	0	0	0	2	7	13	22 (4)
\$50,001-100,000	0	0	1	0	3	6	10 (2)
\$100,001-200,000	0	0	0	3	2	1	6 (1)
\$200,000+	0	0	1	0	3	3	7 (1)
TOTAL	33	24	72	111	115	163	518 (100)

TABLE 7: TIME TO RESOLUTION BASED UPON MANNER OF DISPOSITION

Table 7 examines how long it took the FPPC to close cases—that is, the time from the receipt of a complaint to its ultimate disposition, based upon a dataset of cases that were pursued and closed during the years 1994-1998.

Disposition	Stipulation	ALJ Hearing	Civil Suit	DefaultJudg.	TOTAL
0-1 year	53	0	0	2	55 (29%)
1-2 years	59	2	1	4	66 (35%)
2-3 years	41	3	1	3	48 (25%)
3-4 years	11	0	0	0	11 (6%)
4 or more	7	1	1	1	10 (5%)
TOTAL	171	6	3	10	190 (100%)

A further examination of the resolution of matters pursued by the FPPC found that 88 percent of all matters resulted in a stipulation, 6 percent resulted in a

hearing by an Administrative Law Judge, 2 percent resulted in a civil suit, and 4 percent resulted in a default judgment.

TABLE 8: TIME TO RESOLUTION BASED UPON FINE LEVIED

Fine	0-1 year	1-2 years	2-3 years	3-4 years	4+ years	TOTAL
0-\$3,000	13	18	12	1	1	45
\$3,000-\$7,000	11	21	12	1	1	46
\$7,000-\$15,000	14	12	14	6	3	49
\$15,000-\$25,000	7	6	2	1	3	19
\$25,000-\$50,000	6	5	4	1	2	18
\$50,000-\$100,000	3	3	2	1	0	9
\$100,000-\$200,000	0	0	1	0	0	1
\$200,000+	1	1	1	0	0	3
TOTAL	55	66	48	11	10	190

Table 8 compares the time to ultimate disposition with case severity. As there is no objective definition of case “severity”, a proxy was used—specifically, the fine that the respondent eventually paid.

Although we would expect that cases in which large fines were imposed would generally (though not always) take longer to finalize than cases with comparatively small fines, this did not appear to be the case.

To summarize the findings with respect to matters pursued by the FPPC:

1. Of the violations pursued by the FPPC, roughly 46 percent were some type of reporting violation, 17 percent involved illegal reimbursement, 15 percent involved conflicts of interest, 9 percent involved statements of economic interest, 8 percent involved disclaimer violation (i.e. disclaimers on mass mailings), 2 percent involved lobbying violations, 2 percent involved personal use of campaign funds, and 2 percent involved other infractions.
2. Pursuit of illegal reimbursement cases increased dramatically over time, pursuit of disclaimer violations generally decreased over time, and pursuit of reporting violations fluctuated over time.
3. Ten percent of all matters pursued ended with a fine less than \$1,000 while 30 percent ended with a fine between \$1,000 and \$3,000 and another 23 percent ended with a fine between \$3,000 and \$7,000. 25 percent ended with a fine between \$7,000 and \$20,000 while 7 percent resulted in fines between \$20,000 and \$50,000, and 4 percent resulted in fines in excess of \$50,000.
4. Fines increased over time, with smaller fines becoming less common and larger fines becoming more frequent.
5. Slightly less than one-third of all matters were resolved within one year, roughly another third were resolved in one to two years, one-quarter of all matters were resolved in two to three years, and roughly 10 percent of all matters took three or more years to conclude.
6. Most of the cases with the lowest level of fines (\$1,000 to \$3,000) took between one and three years to settle, as did most of the cases with fines between \$3,000 and \$7,000.

Footnotes

¹ See Todd Lochner and Bruce E. Cain, “Equity and Efficacy in the Enforcement of Campaign Finance Laws,” 77 Texas Law Review 1891 (1999).

² Id. at 1905-08.

³ Table 4 notes that 19 percent of matters were declined due to lack of jurisdiction whereas Table 1 notes that 21 percent of all claims involved nonjurisdictional matters. The reason for this discrepancy is due to the fact that the universe of cases for Table 4 was slightly larger than that of Table 1.

