[Unapproved draft – subject to change]
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

March 21, 2005

Call to order: Chairwoman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (Commission) to order at 10:09 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairwoman Randolph, Commissioners Phil Blair, Sheridan Downey, Eugene Huguenin, and Ray Remy were present.

Item #1. Public Comment.

Ned Wigglesworth, from TheRestofUs.Org (TROU), encouraged the Commission to join TROU in their legal efforts to stop what he characterized as the illegal fundraising by the Citizen's to Save California Committee (Committee) and Governor Schwarzenegger. On February 7, TROU filed a complaint with the Commission asking for an investigation of fundraising by the Governor and the Committee, which seemed to be under the Governor's control. The next day, the Committee filed a lawsuit against the Commission and its regulation 18530.9. Since then, Mr. Wigglesworth stated, the Governor's control of the Committee and its fundraising over the legal limit have become more clear. TROU filed suit last week to stop the fundraising. Despite the lawsuit, both the Committee and the Governor continue to protest that the Governor does not control the Committee. The Political Reform Act (PRA) states that a candidate controls a committee if, among other things, that candidate has a significant influence on a Committee's actions. It is more obvious with each passing day that the Governor has a significant influence on this committee. When there is a conflict within the Committee about which issues to support, the conflict has been resolved at the Governor's behest in favor of his agenda, whether regarding education, budget, or redistricting. The Governor's control of the Committee is more clear, as is the Committee's fundraising over and above the limits. 25 corporations and individuals have made contributions to the Committee in excess of Proposition 34's limits for candidates for Governor, including one for $1.5 million.

The Commission's efforts to defend California's campaign finance laws will be undermined if candidates and committees are allowed to violate the law, especially when done in such a flagrant and disdainful manner, and especially if done by the Governor of California. Mr. Wigglesworth said that TROU believes that the Commission was right to prevent the evasion of campaign finance laws by passing the regulation and was right in fighting efforts to overturn the regulation in court. He now asks the Commission to join the fight by joining them against illegal fundraising currently underway in California and across the nation.

Item #2. Resolution of the Commission Honoring the Service of Tom Knox to the State of California.

Chairman Randolph presented outgoing Commissioner Tom Knox with a resolution honoring his service to the Commission and the State of California.

Commissioner Blair moved approval of the resolution. Commissioner Huguenin seconded. Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #3. Resolution of the Commission Honoring the Service of Pamela Karlan to the State of California.

Chairman Randolph presented outgoing Commissioner Pamela Karlan with a resolution in honor of her service to the Commission and the State of California.

Commissioner Downey moved approval of the resolution. Commissioner Huguenin seconded. Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #4. Approval of the February 10, 2005, Commission Meeting Minutes.

Commissioner Downey moved approval of the February Commission meeting minutes. Commissioner Blair seconded. Commissioners Blair, Downey, and Chairman Randolph supported the motion, and Commissioners Huguenin and Remy abstained. The motion carried with a 3-0 vote.

Items #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19.

Commissioner Downey asked Enforcement Chief Steven Russo whether there were any sovereignty problems with the La Posta Band of Indians tribe consenting to major donor violations via stipulation under streamlined program, item #17b.

Mr. Russo responded that there were no sovereignty problems with this case. The case was not the first case of its kind, but it was the first one since the pending litigation.

Commissioner Blair moved approval of the following items in unison:

Item #5. In the Matter of David E. Gunn and Friends of David Gunn, FPPC No. 02/630. (2 counts).

Item #6. In the Matter of No Tax Money for Political Campaigns, No on Prop. O and James Sutton, FPPC No. 01/151. (1 count).

Item #7. In the Matter of Douglas Sanders and Committee to Elect Douglas Sanders, FPPC No. 01/640. (1 count).

Item #8. **In the Matter of Foothill-De Anza Community Colleges Foundation, FPPC No. 04/593.** (1 count).

Item #9. **In the Matter of Citizens for Foothill-De Anza, a Committee to Support Measure E, and Robert A. Grimm, FPPC No. 04/595.** (1 count).

Item #10. **In the Matter of C. Terry Brown, Charlene A. Brown, and Atlas Hotels, Inc., FPPC No. 03/514.** (1 count).

Item #11. **In the Matter of Beneto, Inc. and Steve Beneto, Jr., FPPC No. 02/1020.** (1 count).

Item #12. **In the Matter of William A. Robinson, FPPC No. 04/164.** (1 count).

Item #13. **In the Matter of Linda Davis and Linda Davis for State Assembly, FPPC No. 00/163.** (1 count).

Item #14. **In the Matter of Robert C. Kagle, FPPC No. 04/144.** (1 count).

Item #15. **In the Matter of Wallace Bill Moore, FPPC No. 01/628.** (2 counts).

Item #16. **In the Matter of Newsom for Mayor, Gavin Newsom, and Laurence Pelosi, FPPC No. 03/844.** (1 count).

Item #17. **Failure to Timely File Major Donor Campaign Statements**.

a. **In the Matter of Cardinal Capital LLC, FPPC No. 04/805.** (1 count).

b. **In the Matter of La Posta Band of Mission Indians, FPPC No. 04/808.** (1 count).

c. **In the Matter of Devito Family Trust, FPPC No. 04/812.** (1 count).

d. **In the Matter of Global Marketing & Technical Services, FPPC No. 04/814.** (1 count).

e. **In the Matter of St. Ann Hospice Home Care, Inc., FPPC No. 04/816.** (1 count).

f. **In the Matter of Asian Pacific American Legal Center of Southern California, FPPC No. 05/077.** (1 count).

g. **In the Matter of Best, Best & Krieger, LLP, FPPC No. 05/106.** (1 count).

Item #18. **Failure to Timely File Late Contribution Reports – Proactive Program.**

a. **In the Matter of Katherine Alden, FPPC No. 04/761.** (1 count).

b. **In the Matter of Hispanic Democratic Organization, FPPC No. 04/764.** (1 count).

c. **In the Matter of Gary Dillabough, FPPC No. 04/770.** (1 count).

d. **In the Matter of Intuit Company, FPPC No. 04/773.** (1 count).

e. **In the Matter of Desert Valley Medical Group, FPPC No. 04/776.** (2 counts).

Item #19. Failure to Timely File Statements of Economic Interests.

a. **In the Matter of Thomas Kravis, FPPC No. 02/935.** (1 count).

b. **In the Matter of J.P. Patel, FPPC No. 04/636.** (1 count).

c. **In the Matter of Bob Barnhouse, FPPC No. 05/081.** (1 count).

d. **In the Matter of Jay Howell, FPPC No. 03/057.** (2 counts).

e. **In the Matter of Kenneth K. Nishi, FPPC No. 04/539.** (3 counts).

Commissioner Downey seconded the motion. Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

ACTION ITEMS

Item #20. Adoption of Proposed Regulatory Amendments to the "Gift Cluster" Regulations 18941.1, 18946, 18946.1, 18946.2, and 18946.4; and adoption of regulation 18640.

Commission Counsel Bill Lenkeit explained that this item involves proposed amendments to the gift valuation methods under regulations 18946 through 18946.4. The proposed amendments intend to resolve certain issues in valuation methods for several types of gifts and to provide guidance to the regulated community in determining the value of such gifts. These are contained in decision points (DP) 1 through 4.

Mr. Lenkeit outlined the decision points. DP 1, option 1 addresses the “face value” rule in regulation 18946.1, which establishes the value of a ticket to certain events at the “face value.” DP 1, option 1 would establish a basic rule that the ticket be valued at the donor’s cost of the ticket. It also includes alternative language that would modify the basic “cost to the donor” rule by creating a presumption that the donor purchased the ticket at face value if an equivalent ticket was available to the public at face value at the time the gift was received. This alternate

language would reduce the recipient's burden of contacting the donor in every case to determine the donor's cost. DP 1, option 2 adds language clarifying the recipient's duty of inquiry depending on the nature of the event itself. The recipient would have a duty to determine the actual cost of the ticket to the donor only for certain events where an informed buyer would be aware that a ticket was not available for purchase at "face value." DP 1, option 3 leaves the regulation in its current form.

Mr. Lenkeit further explained that DP 2 adds language that clarifies that service charges and handling fees are not to be included in determining value. DP 3 and 4 involve the "no value" rule for tickets to 501(c)(3) fundraising events. The language of these two decision points is the same as that which was discussed at the January meeting, except that a second alternative has been added to each decision point, providing that no ticket shall be valued under the reduced valuation methods proposed if more than 2 tickets are accepted.

Mr. Lenkeit said that two comments were received on this matter. One was from Assembly Speaker Nunez, who opposes all four decision points. The second comment came from Mike Martello, from the City of Mountain View, who supports staff's suggestions on each decision point and specifically supports the alternate language of decision points 3 and 4. Mr. Lenkeit also cited an error in regulation 18946.4 and said that the floating language on lines 12 and 13 should be stricken.

Anne Bailey, from the Senate Ethics Committee, said she was appearing not on behalf of the Senate Ethics Committee but on behalf of herself as one who gives a lot of advice in this area. She associated herself with Speaker Nunez's comments and explained that often a member will receive tickets to an event and cannot go, so he or she will pass that ticket on to a staff member. If deviating from the face-value means of valuation, then people who go to the same event and even the same physical ticket will be evaluated differently depending on how it moves down the chain of donorship. In this scenario, the value is the value to the donor, not the value to the recipient. She understood the purpose of the Commission adopting regulations for charitable fundraisers was to encourage participation by elected officials. Often these tickets are handed down to staff because the charity wants bodies to fill the tables and the official wants his or her office represented. Ms. Bailey explained that previously, when the Commission adopted these regulations, the late Assemblymember B.T. Collins appeared not for the Assembly, but for WEAVE, because it was important to them to use these kinds of events to generate public support. Lastly, these regulations apply to thousands of employees throughout the state, but the proposed changes are major regulatory changes that will affect an enormous number of people in order to deal with a problem that currently affects only a small group of people.

Ben Davidian, with Sweeney, Davidian, and Greene, said he was not appearing on behalf of a particular client but as someone with history on this issue as former Chairman of the Commission when these regulations were adopted. In solidarity with Speaker Nunez and also with Nancy Reagan, Mr. Davidian urged the Commission to "just say no." He explained that the Commission adopted these regulations in 1993 or so and at that time, the Commission went through a long process after staff had issued many advice letters and such. The Commission understood that every so often, an elected official would get a perk, like a round of golf, a ticket to a fundraiser, etc, but it was not worth adopting a regulation since these perks are so minor.

Mr. Davidian explained that yes, some officials push the envelope, but is that "round of golf" enough to buy the public official? In 1993, the Commission did not feel that it was. The number of people affected by these regulations is in the thousands, and it would make it virtually impossible for all of these people to accurately determine the cost of the ticket unless he or she tracks down the donor and asks what they paid for it. Mr. Davidian said he has no problem with adopting some things into a regulation, but he thinks it is important that 501(c)(3) organizations continue to prosper from participation by public officials. He urged the Commission to "just say no," and added that the other decision points are not worth dealing with by the Commission in the proposed manner; these decision points will not cure the problem but will create additional problems.

Scott Hallabrin, from the Assembly Ethics Committee, said he was speaking in his own capacity as one who advises staff and members of the Assembly. He advises about 1,000 Assembly staff and 80 members who must file Statements of Economic Interests. Given the questions and confusion that he sees in his role, he advocates that the Commission take the simplest method possible. He urged the Commission to keep the existing face value rule for tickets (DP 1, option 3). Due to term limits, there is a large amount of staff turnover which means that every two years there is an infusion of new staff who need to figure out the rules. Mr. Hallabrin said that when he returns to his office after the meeting, he will likely have fifteen phone calls from staff about how to fill out their SEI forms.

Chairman Randolph suggested leaving the face value rule as it is.

Commissioner Blair commented that there are a few issues that the Commission needs to think about. First, elected officials and staff really try to do the right thing. They are not all looking for loopholes. The Commission owes it to them to keep the regulation simple and clear. Requiring a duty of inquiry would force people to find out the value at every event. The high dollar events are the exception. One of an elected official's duties is to be out in the public as much as possible in order to meet people and be accessible. That includes going to 501(c)(3) events as much as they can. If an official must inquire about the cost at every event, then he or she will simply not go. Commissioner Blair explained that when he was in public office, he took no tickets because of the "hassle factor," or else he paid for himself. But, a lot of people are not able to do that. He thought the current face value rule is fine, and he supported not adding on service fees. He supported keeping the rules as they are, but he said that reviewing the rule has been a good exercise for the Commission.

Commissioner Downey added that he agreed with Commissioner Blair and Chairman Randolph. Changing the current face-value method of valuation will deter elected officials from accepting tickets. Imposing a presumption that the face value is the fair value is not an irrebuttable presumption; it may not make the Enforcement division happy and may make the cautious recipient ask about the value in every case. He supported keeping the rule as it is, which is more simple and fair in the vast majority of cases. He was impressed that three members of the regulatory community and Speaker Nunez's office made comments on the issue.

Commissioner Remy wondered about compliance. For example, when he was working for Mayor Bradley, he would have had to know whether the organization was a 501(c)(3), and then

he would have to determine whether tickets to the finals of some championship game would actually go beyond market price. Also, the mayor may get a ticket or two and then bring some staff. The mayor might leave, and then the staff would stay. In this scenario, he thought it was troublesome to see how to administer the proposed regulation. Staff wanted to get the mayor to as many events as possible, especially 501(c)(3) events which are good for the community and good for politics.

Commissioner Huguenin said that this seems to create a virtual mine field where people must refer to other people to determine the amount to report. This seems like a time consuming matter from an enforcement perspective. He asked for an opinion from Enforcement Division Chief Steve Russo.

Enforcement Chief Steve Russo said that the issue of whether a ticket should be valued at face value or the cost to the donor would not have much impact on Enforcement resources. The face value rule is easiest for Enforcement, and determining what the donor paid for a ticket is relatively easily. But, going beyond that to determine what presumptions may be effective at a given time and whether the ticket was otherwise available on the market adds additional complexity to an enforcement case. In looking at the purpose or the heart of this process, the danger is not in the one or two tickets given to the individual but in blocks of tickets that are given to a public official to distribute. They might get a block of 100-200 tickets which would be distributed freely, yet this is not considered a gift because they have no value. But these tickets do become a type of currency. In trying to make the regulation more precise, the Commission must decide whether the added complexity is worth it.

Chairman Randolph explained that the Commission is presented with several regulatory amendments. It appears that the consensus is to leave the face value and 501(c)(3) ticket rules the way they are in the current regulations.

Commissioner Downey suggested taking the regulations one at a time.

Regulation 18946

Commissioner Downey moved to adopt the proposed amendments to regulation 18946.

Commissioner Blair seconded the motion.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Regulation 18946.1

Chairman Randolph said that the consensus seems to be to go with DP 1, option 3. Under DP 2, it seems unnecessary to add any statement about fees.

Commissioner Downey said that if the face value rule stands, then the addendum would not be needed.

Commissioner Blair moved to adopt option 3 of DP 1.

Commissioner Downey seconded the motion.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Regulation 18946.2

Commissioner Downey moved to adopt proposed amendments to regulation 18946.2.

Commissioner Blair seconded, but added a comment. He was concerned about the value of food or beverage consumed at the event and asked whether a set value could be assigned to each thing that might be consumed in order to avoid requiring one to inquire about the cost of the glass of wine.

Chairman Randolph responded that the problem with picking a value is that it will be in the regulations which would need to be changed on a regular basis. As a practical matter, that is the rule that everyone is used to.

In response to a question, Mr. Hallabrin said that generally, members are advised to decline from eating or experiencing the entertainment and should notify the donor in advance. If a member eats, then the rule is to value the amount received at what a reasonable value would be. He does not receive a lot of complaints about that rule. Normally, these events are provided by lobbyist employers, who later notify the members of the value of their portion of what was consumed. If the member does not want to receive that entire value, then the duty of inquiry is on the member.

Chairman Randolph added that if it is a relatively low value event, then the value will not be much.

Mr. Hallabrin added that specific amounts would be simple, but likely impractical. In response to a question, he added that if the event sponsor is a lobbyist employer, then the member would receive a form. But, if the sponsor was not a lobbyist employer, then the member does not receive anything and the member has a duty to determine the amount.

Commissioner Huguenin commented that those who sponsor these types of events know that officials need this information and make it part of the process to send the official this information after the event.

Chairman Randolph stated that she is concerned about assigning values, which would add yet another level of complexity.

Commissioner Downey added that placing dollar amounts in a regulation means that it would have to be revisited over time.

Assistant General Counsel John Wallace remarked that the intent behind the current language is that the official stays only for minimal appetizers, and this would likely not reach the disclosure threshold, which is $50. As drafted, the regulation is not really burdensome.

Mr. Hallabrin added that from a public official's perspective, if one does not want to report any value, then he or she should affirmatively take these steps and the burden is on the official.

Mr. Davidian pointed out an issue with regulation 18946.2 subsection (d). This provision says that when an official performs an official or ceremonial function at an invitation-only event in which the official is invited, the value to be reported is the cost of food or beverage given to the official. He said that this subsection conflicts with the "speaker" rule that if one attends a function and participates by giving a speech or presents an award, then it is a "nothing," where official does not need to report it. If an official goes to an invitation-only event, then it should be a "nothing." So, this subsection is problematic.

Mr. Lenkeit responded that this language was taken from the language relating to ceremonial functions at ticketed-type events in order to make it consistent with invitation-only events.

Technical Assistance division Chief Carla Wardlow added that it is a "nothing" where an official makes a speech, participates on a panel, or provides a similar service. This may not be the same as standing behind an award presenter or cutting a ribbon.

Mr. Davidian questioned where the line would be drawn between cutting a ribbon and making a comment and giving a speech. The purpose is to encourage the official's participation, and if they are performing an official function, then that is tantamount to the speech or panel discussion. If the official is doing something at the event, then it should be a "nothing." In response to a question, Mr. Davidian said that he did not think subdivision d is needed at all.

Chairman Randolph said that Mr. Davidian acknowledged that there is a continuum where an official may be at an event in his or her official capacity but not giving a speech, etc so that the official does not fit under the gift exception. Then, the regulation itself is not a problem, rather it is an interpretation question of which regulation applies to the official.

Mr. Davidian said that it seems clear that to fit under the exception, there must be some act, or positive thing, not simply attending or applauding. This issue is not a big deal. Receiving a ham sandwich is not going to turn a vote. But, if an official attends an event and does something, then it should be encouraged as a "nothing."

Mr. Hallabrin advised that when Mr. Davidian was Chairman, the Commission adopted regulation 18944.1, which has a ceremonial function exception and says that food, admission, etc. does not count against an official who performs a ceremony. There is a distinction between an invitation-only event and a public event. Mr. Hallabrin opined that the invitation-only event language should be consistent with the public/ceremonial event in order to allay confusion.

Commissioner Remy questioned how subdivision (d) and (e) would work for a mayor who brings staff and security with him to an event.

Mr. Lenkeit responded that the mayor would have to report the pro-rata share of the cost of the event, and also the cost of food and beverage, but if the mayor made a speech, then he would not need to report anything. So, he would need to determine at what point an activity becomes a speech or is simply a ceremonial function. The exception under subdivision (d) creates a lesser value for ceremonial function, which is the same as the exception under 18944.1, relating to officials who attend ticketed events and perform a ceremonial function. Those officials do not have to count the cost of the ticket. Since there is no ticket here, it is the same type of thing, so the official pays only the cost of the food and beverage. So, the rules are parallel.

In response to a question, Mr. Lenkeit said that staff and security would have to report what they received on their own statements, cumulative for each event.

Chairman Randolph opined that if this rule is consistent with the existing ticketed event rule, then she does not see a problem applying this rule to invitation-only events as well.

Mr. Davidian said he does not see how these rules are consistent. Regulation 18944.1(d) says "passes or tickets which provide admission or access to facilities, goods, or services, or other tangible or intangible benefits… are not gifts to the official, if… the tickets or passes are provided to the official of the agency for use by the official and his or her immediate family because the official has an official or ceremonial role or function to perform on behalf of the agency at the event in question." Thus, if an official has a ceremonial role, then any additional or tangible items, like a bag of popcorn, is a "nothing" under 18944.1(d). Under the proposed regulation 18946.2(d), one would have to report the value of the cost of food or beverage plus the value of any additional items provided to the official. So, the rules are not consistent.

In response to a question, Mr. Lenkeit said that as he interprets regulation 18944.1, it only addresses the value of the ticket. If an official has a ceremonial function at a ticketed event, the official gets the ticket to enter and does not need to report the cost of that ticket. But, if the official is given food or beverage while inside, then the official must report that.

Mr. Wallace added that the new regulation allows free admission to perform the ceremonial function, but to the extent that any additional food is given on the side, the official would have to account for that.

Chairman Randolph suggested resolving the problem by making the language in 18946.2 more closely parallel 18944.1, which would result in an official reporting some food and beverage, but it would eliminate the question of what "act" we are talking about. We should use the same language, such as "if the official is invited to participate by the event sponsor to perform an official or ceremonial role or function, the value received is the cost of any food or beverages…" This way, the two rules are consistent.

Commissioner Blair hypothesized that if a councilperson attends a black tie event and gives the keynote speech, then the ticket to the event would be free, as is his meal. But, if the official attends and is not speaking, then the official would pay his or her pro-rata share of the cost of the event.

Mr. Lenkeit confirmed that was true.

Commissioner Downey withdrew his previous motion and moved to adopt regulation 18946.2 with the inclusion of the Chairman's proposed language in subdivision (d).

Commissioner Blair seconded the motion.

Chairman Randolph repeated her suggested language, which will read, "when an official is invited to participate by an event sponsor or organizer, by virtue of the official's position, to perform an official or ceremonial role or function, the value received is the cost of any food or beverages… provided to the official, plus the value of any specific item that is presented to the official at the event."

Mr. Lenkeit commented that he thought the beginning language was to be retained, so that it reads, "when an official performs an official or ceremonial function at an invitation-only event as set forth in subdivision (b) of this regulation, in which the official is invited to participate by the event sponsor or organizer," and then the Chairman's language would be inserted here, "to perform an official or ceremonial function, the value received is the cost of any food and beverage provided to the official, plus the value of any specific item that is presented to the official at the event."

Chairman Randolph agreed that is how the regulation should read.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 5-0 vote.

Regulation 18640

Commissioner Downey moved to approve regulation 18640.

Commissioner Blair seconded.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 5-0 vote.

Regulation 18946.4

Chairman Randolph explained that the phrase, "or other admission privilege" will be added to lines 7 and 8, and a few other minor changes are being made. She said that the consensus seems to be that the Commission should not go with any of the decision points that would limit the number of tickets an official can receive under the regulation.

Commissioner Downey clarified that the current strikeout of subdivision (b) on line 17 will actually be retained, resulting in no change.

Commissioner Downey moved to adopt regulation 18946.4 with the changes indicated in lines 1-16, and no change in lines 17-19.

Commissioner Blair seconded the motion.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 5-0 vote.

Regulation 18941.1

Mr. Lenkeit advised that he did not think any change was needed on this one. The Commission could strike regulation 18946.4 and leave it at 18946.2, since no changes were adopted to regulation 18946.4.

Commissioner Blair moved to adopt the regulation as suggested by Mr. Lenkeit.

Commissioner Downey seconded the motion.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 5-0 vote.

Item #21. Pre-notice Discussion of Amendments to Regulation 18705.5-Materiality Standard: Economic Interest in Personal Finances.

Executive Fellow Theis Finlev explained that regulation 18705.5 contains standards for determining whether a governmental decision has a disqualifying material financial effect on a public official's economic interests. Under the PRA, public officials are prohibited from participating in governmental decisions that may have a material financial effect on their economic interests, including the public official's personal finances. Under the current language of regulation 18705.5, the financial effect of a decision is not material and not a disqualifying interest unless the decision is to hire, fire, promote, demote, or suspend without pay or take any other disciplinary action that has a financial sanction, or to set a salary for the official or a member of his or her family which is different from salaries paid to other employees in the same classification in the same government agency. Staff proposes amendments to the regulation that would declare the material financial effects of a decision by a public official that has a unique financial effect on member of that official's family. Amendments would also include appointments as decisions that would have a material financial effect on the public official or a member of his or her immediate family.

Commissioner Blair opined that this situation likely happens rarely and that it may be difficult to define the term "unique."

Mr. Finlev responded that the issue is that currently, the regulation mentions the setting of salary that is different for others in that same position. If there is only one position, then it is not different from other salaries but unique to that person. Commission advice letters say that if the

change is “unique,” then it cannot be done. The new regulation would codify the advice letters into a regulation.

Chairman Randolph clarified that if we were talking about a teacher, and there were hundreds of teachers in that category, then it would be okay to make a decision to increase teacher salary. However, if the person was a purchasing manager and the official made a decision to increase the salary of that position, then that would be a problem under the proposed regulation.

Commissioner Blair clarified that here, “unique” means one-of-a-kind, rather than “interesting.” He further questioned whether we are only referring to decisions with positive material financial effects. He said that often, serving on a commission or board costs more money than the compensation, so it is not really a positive material financial effect but rather a negative one.

Mr. Wallace said that there is an exception if there is no financial effect whatsoever. But, the PRA does not distinguish between a positive or negative financial effect. The concern is about bias caused by any movement in an official’s financial situation, because even a loss of money may create bias in the decision-making. The regulation would never prohibit the spouse from serving, it would only prohibit the official from appointing his or her spouse.

Commissioner Blair hypothesized that a small town with one mayor may have difficulty with this prohibition. For example, the town may have to set up approval bodies to allow raises when his wife may work in a particular department.

Mr. Wallace suggested that many cities have the ability to delegate certain decisions when the mayor is unavailable. This is what we would ask during further discussions of this option. We only ask that the official does not participate in the appointment.

Commissioner Downey said he has no problem with the regulation, which appears to be a technical amendment filling a few loopholes that have arisen.

Commissioner Huguenin said there is a problem that he is aware of in school districts, where statute governs the progression of employees through various classifications, ultimately to a permanent classification. When an employee is on the tenure track, he proceeds automatically through other classifications to permanent status. The only way he would not get permanent status is if there is an affirmative intervention by the governing board of the school district or the community college district to deny the progression. There have been some disputes which have been before the Attorney General about whether a decision to do nothing amounts to an appointment. Rather than have the sitting public official be subject to duress over this issue of whether, if the board merely says nothing, their spouse who was employed before the official was elected can move through the chairs, he prefers not to start the matter. The issue is uncertain in the general law of the state. We must be cognizant of this civil-service issue and the question of “what does it mean to ‘appoint?’”

Chairman Randolph suggested that staff could address this issue in the adoption memo if the Commission decides to move forward with adoption. That situation could arise if the spouse was

only in a unique classification, not if the spouse was in a general classification with other employees.

Commissioner Huguenin responded that it would arise in both cases.

Mr. Wallace said that the Attorney General deals with other conflict of interest laws, some of which have very strict provisions that the Commission does not. If the issue is whether the abstention is considered "acting," Commission regulations have a provision that exempts disqualification from ever being considered "participation" or "making" of a decision so long as it is based on the conflict of interest rules. So, if the official disqualifies himself based on a conflict of interest, Commission regulations say that is not "participation."

Chairman Randolph said that if the official, by failing to act, allows one to be appointed, then there is no decision from which one would disqualify himself.

Commissioner Huguenin added that he understood it in the same way. Sometimes, the conception that is delivered to the appointed official by local council is that the spouse cannot advance because that would be a conflict of interest. The regulation should be clarified to deal with this issue before the final regulation is adopted. He was just calling it to staff's attention and does not think it needs to be resolved today.

Mr. Finlev said staff will certainly look into the issue over the next two months if the Commission decides to move forward.

Chairman Randolph asked whether there was any objection to bringing the regulation back for adoption. (There was no objection.) She advised staff to bring it back to the Commission for adoption.

Item #22. In re St. Croix Opinion Request (O-04-226).

Commission Counsel Galena West presented a draft opinion to address San Francisco's new ranked-choice voting (RCV) system. This opinion request pertains to the application of section 85501 to candidate sponsored mailings which rank candidates in a particular order for the voters in a single-seat race. This matter was presented at the January Commission meeting where staff was directed to draft a proposed opinion. At that meeting, the Commission determined that the proposed mailings would not violate section 85501 so long as the candidate sending the mailing was doing so to promote his or her own candidacy. The Commission also concluded that the appropriate valuation method was an equal division of the mailing regardless of the ranking of the candidates.

Ms. West explained that RCV allows a candidate to be elected by a majority vote without the need for a separate run-off election in single-seat races in San Francisco. Voters elect these officials by ranking the three different candidates in order of preference. If any candidate receives an absolute majority of the votes, then the election is over, and only the first choice votes will have been counted. If no candidate receives a majority, then the candidate who

received the fewest number of votes is eliminated and their votes are transferred to the voters' second choice. Then, the votes are recounted, and if a majority is obtained at that time, then the election is over.

Ms. West said that certain candidates in San Francisco wish to send out mailers telling voters their preferred order of candidates for each of the 3 positions. Candidates would like to send out these mailers both individually and in cooperation with other candidates in order to defer the costs. San Francisco Ethics asks whether the Commission would consider any expenditure for a communication made by one candidate that urges voters to rank candidates in a specific order to be an independent expenditure that supports or opposes another candidate within the meaning of section 85501. It also asks how costs associated with these mailings should be allocated. At the Commission's direction, staff has drafted an opinion concluding that if these types of mailings in a single-seat, RCV race promote the mailing candidate's own candidacy, even if this objective is achieved by urging a specific ranking of the candidate's opponents, then section 85501 would not be applicable. Staff requests that the Commission adopt the proposed opinion for publication.

Chairman Randolph said she thought the opinion was very well drafted.

Commissioner Remy asked whether this would change the way the Commission views campaign funds or expenditures because now, when one runs a campaign, he is as interested in targeting opposition as he is in promoting his candidate. He wondered about the impact on any rules and regulations regarding campaign funding and expenditures.

Ms. West said that RCV is very specific to San Francisco and is used in single-seat races. The opinion is specific enough that it does not address any other type of campaign expenditure. It also is consistent with our interpretations of independent expenditures as they currently exist. In the future, if RCV is adopted in other jurisdictions, then the Commission would likely have to establish additional regulations because it is such a specific type of election. This is the first instance of such a system.

Commissioner Downey moved to adopt the proposed opinion.

Commissioner Huguenin seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 5-0 vote.

Item #23. Adoption of Resolution Regarding Sections 84503 and 84506.

Senior Commission Counsel Scott Tocher explained that this matter concerns the adoption of a resolution regarding the enforcement of two provisions in the PRA regarding advertising disclosure. Sections 84503 and 84506 require certain political advertisements to identify their top two contributors of $50,000 or more to the committee making the advertisement. This is known as "on publication disclosure." In August of 2004, the United States Court of Appeals for

the Ninth Circuit ruled in *ACLU v. Heller* that a Nevada statute that also requires this form of "on publication disclosure" was unconstitutional under the First Amendment. In November of 2004, sections 84503 and 84506 were challenged in the United States District Court here in Sacramento, and the judge enjoined the Commission and issued a preliminary injunction from enforcing sections 84503 and 84506 against the plaintiffs, the California Democratic Party, the California Republican Party, and the Orange County Republican Party. The basis of the preliminary injunction was the authority of the *Heller* decision of the Ninth Circuit. Staff believes that the resources of the Commission are best conserved by avoiding the certainty of further piecemeal litigation based on the *Heller* decision and the District Court's decision regarding these two sections. By adopting the resolution, the Commission would clarify its scope of enforcement of these two statutes.

Mr. Tocher added that he had three changes to the resolution. The term "ballot measure" in reference to "committees" should be deleted from paragraphs one, three, and four.

Commissioner Downey said this appears to be a practical and correct resolution. He said the general rule is that the Commission is obliged to defend against a constitutional attack on the PRA and asked where the Commission has the authority to make such a resolution.

Mr. Tocher responded that the authority stems from the Commission's statutory authority to implement and defend the PRA in a constitutional manner. The Ninth Circuit has compelling appellate authority that indicates that the statutes in question are unconstitutional. The District Court has also expressed this opinion.

Commissioner Downey moved to adopt the resolution and then withdrew his motion to allow more discussion.

Commissioner Blair expressed his concern that the resolution mentions the limited resources of the State of California and that the Commission may be seen as making a decision not to do the right thing because of limited resources. He wondered if this statement could be stricken because it otherwise suggests that if the Commission had more money, then it would do the right thing.

Chairman Randolph replied that Commissioner Blair raised a good point because the Commission is persuaded by the futility of continuing with its own interpretation alone. She added that the resources issue is an additional factor but would likely not change the Commission's decision if the sentence was eliminated.

Mr. Tocher added that staff agreed.

Commissioner Blair said that, in the future, the Commission could say, "the excessive cost does not bring value to the State of California" which sounds like the Commission is making good use of the money it has instead of sounding like it cannot afford to do the right thing.

Commissioner Huguenin commented that another reference to cost is made on the second page but that he is not suggesting to remove it.

Mr. Tocher clarified that the last "whereas" clause on the first page would be eliminated, but not the second "whereas" clause on the second page will be kept.

Commissioner Downey moves to adopt the resolution with the changes discussed.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Huguenin, Remy, and Chairman Randolph supported the motion, which carried with a 5-0 vote.

Item #24. Approval of 2005 Campaign Manual Addendum.

Technical Assistance Division Chief Carla Wardlow requested approval of the 2005 Campaign Manual addendum to reflect changes in the law after the last publication of the manual. She said the candidate campaign manual should be available for Commission approval at the April meeting. Staff received a comment letter from Lance Olson regarding language on page four of the manual that addresses limits on controlled ballot measure committees imposed by the adoption of regulation 18530.9. Mr. Olson asks that the Commission delete a sentence relating to whether contributions to a controlled ballot measure committee should be aggregated with contributions to other committees controlled by the same candidate, including other controlled ballot measure committees.

Chairman Randolph added that the comment letter specifically says that 18530.9 is not authority for the concept that they are not aggregated. Her recollection of the discussion was that while the Commission did not specifically address the issue in the regulatory language, in the context of the discussion, the contributions were not aggregated.

Ms. Wardlow said that was her recollection as well.

Mr. Tocher, who worked on the regulation, said that was his recollection as well.

In response to a question, Mr. Tocher said that his recollection is that, in the context of the campaign manual addendum, Chairman Randolph's statement is not incorrect.

Lance Olson, from Olson, Hagel, and Fishburn, LLP, said he was present on behalf of the Alliance for a Better California which is a registered political campaign committee that is opposed to some of the Governor's ballot measures and supportive of others. A fair reading of the regulation is not that which is reached in the manual. He added that this is a major policy decision that should be discussed and carefully considered before it is put out to the public. The Governor believes what is in the proposed manual because he has engaged in maximum contribution fundraising into both his candidate controlled committee in seeking re-election and into his candidate controlled committee in promoting his various initiatives. But, Mr. Olson said, that is inconsistent with the Commission's regulation and the intent of Proposition 34. If the Commission is going to have a rule that imposes contribution limits on candidate controlled

committees, then it ought to apply to the candidate and not separately to each committee that the candidate may control. Mr. Olson went on to say that last year, the Governor had at least three separate committees that he used to promote ballot measures, the California Recovery Team, and two others. Under the rule, a candidate could create dozens of these candidate controlled ballot measure committees and receive maximum contributions into each of those committees, and those committees could promote the Governor. These committees all ran advertisements identifying Arnold Schwarzenegger and saying that he supports or opposes various measures. Mr. Olson said that this has some political benefit to the candidate, and if there is any doubt about that, he has attached the fundraising e-mail solicitation where the Governor references that this will benefit the Governor. Mr. Olson requests that the Commission adopt a rule that makes it clear that the Commission aggregates the contributions from a donor to all of the committees controlled by that candidate.

Commissioner Downey asked whether Mr. Olson thinks that the Commission should adopt that rule in the future or that this is the current rule under the law.

Mr. Olson said he thinks that the Commission should clarify that this is the current rule under the law. The regulation is silent on the issue. The Commission is being asked to adopt a manual that will interpret the rule in a particular direction, and he thinks that is the wrong direction, that it should be interpreted in another direction.

Commissioner Downey asked under what authority the Commission would act in saying that it is a problem for a committee to accept an individual's contribution when he already contributed the maximum amount to another committee.

Mr. Olson responded that he would cite Government Code section 85301 and 85302. The Commission has taken a position in court in defending regulation 18530.9, which applies contribution limits to candidate controlled ballot measure committees. That is the regulation on which the Governor has chosen to sue the Commission, claiming that it is invalid because the Commission does not have the statutory authority to adopt such a regulation. In defending that, the Commission is saying that the reason the Commission has authority to do so is 85301, which imposes limits on candidates. The Commission says that the limit is tied to the candidate and not the committee. The brief submitted in court by the Citizens to Save California says "to support its assertion that Government Code section 85301 and 85302 provide the necessary statutory authority for the regulation, the FPPC claims that a contribution to a candidate controlled committee is a contribution to 'the candidate.'" He said it goes on to say that while on the one hand, the FPPC claims that a contribution to a candidate controlled committee is a contribution to the candidate, the FPPC does not count the contributions to a candidate controlled committee against the contribution limits to a controlling candidate's committee for elective state office. So, the brief points out the inconsistency in the Commission's position. The Commission has not taken this position but they anticipate that the Commission will take it. To say that it applies on a candidate basis but that the contribution limits are not aggregated undermines the theory of the Commission's defense.

Chairman Randolph commented that she remembers this issue arising during adoption of the regulation because that was one of the objections to the regulation. The reason why that

discussion happened is because the default is that each committee starts with its separate limit, as in cases where a candidate has one committee running for an office, and another when he goes to run for re-election. To do something other than the default, such as an aggregated limit, has not been done by the Commission.

Mr. Olson said the Commission would never permit a candidate who has two committees for different offices to make expenditures from one committee that ultimately benefited the other committee. The Commission has stepped in to enforce this situation. Here, by adopting this interpretation, the Commission is allowing the Governor to run ads featuring him and promoting his agenda.

Chairman Randolph said that upon initial adoption of the regulation, the Commission did not take the policy step to say that there is an aggregated limit. If there was a factual blending of committees, then that would be an enforcement issue. The policy direction of the Commission in the past is a separate question from the manual. She thinks the manual is correct, that at the time regulation 18530.9 was adopted, the Commission did not take a position that the limits were aggregated and instead went with the default that separate committees have separate limits.

Mr. Olson said there was nothing in the regulation that discusses it one way or the other. There may have been discussion about what the Commission should do, but the action by the Commission was, at best, not to decide. The Commission has not made the decision. The Commission should not sanction unlimited fundraising and undermine its own position in the case that is pending against the Commission.

Commissioner Downey responded that in adopting regulation 18530.9, the Commission started down the path of bringing in section 85301 to support a contribution limit on a ballot measure committee controlled by a candidate. Without that section, it is not at all obvious that there would be a contribution limit on a ballot measure committee controlled by a candidate. The Commission adopted it and it is now under attack. It is a different question to ask how far down that path the Commission has gone. There was discussion of it when the Commission adopted regulation 18530.9, but it did not reach it. If asked whether the manual correctly stated the rule that the Commission has not yet imposed an aggregation obligation, then he would say the manual is probably right. He said that Mr. Olson's arguments are compelling if the Commission were considering adoption of a regulation, but that is not what is now before the Commission.

Mr. Olson said that this is not a manual, but an equivalent of a regulation. The Commission is being asked to make a policy choice. The adoption of a manual will provide an official interpretation. He added that the Governor has taken a creative interpretation of the ability to not aggregate because he is soliciting contributions in the maximum amount for two elections into his ballot measure committee. He is soliciting a total of $44,600 to the California Recovery Team, to which that sum is established by assuming that there is a primary and a general limit. For that maximum contribution, one or two people may have a private briefing. He opined that if one abides by the contribution limits, then one may not get a private briefing. In fairness to the Commission, it saw an abuse during the recall, and the Commission adopted this regulation in response. No one thought that one would create multiple committees and then max people out.

Chairman Randolph responded that the Commission had the option when it adopted regulation 18530.9 to go ahead and impose aggregation, and it did not. She does not see this statement as making a policy determination so much as stating what the existing rules are, and if the Commission were to so choose, it could change that policy direction. She does not think that this is a new or inconsistent policy from the Commission.

Mr. Olson responded that the Commission could have said in the regulation that it would not aggregate. Instead, the Commission sees it as being left at a default position, which seems contrary to what it ought to be, that the default should aggregate contributions. The Commission is on the brink and is sending a message out to anyone who wants to take advantage. It undermines Proposition 34.

Commissioner Downey said that the problem with aggregation is that it is a hairy issue. He would want to have a preliminary notice meeting, an interested persons meeting, and a final adoption. He does not want to do this by adopting a campaign manual. It is inappropriate for the Commission to impose an aggregation rule, even though he sees the reasons for it. He must disagree that the Commission has tacitly imposed an aggregation obligation in the adoption of regulation 18530.9, and he believes that the current position is correctly stated in the addendum to the current manual.

Commissioner Huguenin said that the regulation was adopted without the gloss which appears in the manual and at a time when the Commission did not have as many facts about how the regulated community would deal with the issue as it does today. The crucial point is that the Commission is locked in litigation about its right to even adopt the regulation. The Commission is purporting through adoption of a manual to say something about the meaning of a regulation that is currently under attack. The Commission is not doing itself any favor by doing that today. He moved to say nothing either way about aggregation today, but to take the matter under advisement and strike the sentence regarding aggregation. Then, the Commission could adopt the manual as it is and look at the aggregation issue later through a more formal rulemaking process like a regulation rather than through a manual.

There was no second to the motion, so it failed.

Commissioner Blair moved to accept the addendum as recommended by staff. He held the motion in order to hear more discussion.

Charles Bell, from Bell, McAndrews, and Hiltachk, represented the Governor by saying that he agrees with the Chairman and staff's recollection of what transpired at the meeting about the regulation. The issue was discussed, and though nothing specific made it into the regulation, the intent was to allow aggregation, or at least that is what was left after adoption of the regulation. This issue is now being litigated. From a procedural standpoint, Mr. Olson is requesting that the Commission adopt a regulation de facto by omitting this language, which is informational, from the manual. It would likely not have any impact on the Commission's position. It would be inappropriate to adopt this as new policy at this meeting. Mr. Bell suggested not changing policy by playing with the language in regulations, particularly when the Commission has settled on an interpretation. In addition, he defended the Governor from a factually inaccurate statement about

his fundraising, saying that at no point has the Governor or his controlled ballot measure committee sought to raise more than the limit and not a primary-general approach to fundraising with separate limits for each. He urged the Commission to leave the language as it is, which is instructive. If the court grants a preliminary injunction against the enforcement of this, it seems there is time to deal with the matter before going to print on the addendum.

Mr. Olson said that it is clear that the Governor is raising money for both a primary and a general election. He asks whether this is permitted and refers to the draft manual saying that the committee is subject to a single contribution limit from each source. It is not unreasonable to stop and revisit the issue before sending out any message in any direction.

Commissioner Blair moves to accept staff's recommendations to the 2005 addendum.

Commissioner Downey seconded the motion.

Commissioners Blair, Downey, Remy, and Chairman Randolph supported the motion. Commissioner Huguenin opposed. The motion passed with a 4-1 vote.

Item #25. March 2005 Work Plan Revisions.

Assistant General Counsel John Wallace said he had nothing new to add and referred to the staff memo as submitted.

Item #26. Legislative Report.

Commission Assistant Whitney Barazoto explained that AB 347, by Assemblymember Huff, increases the maximum criminal penalty for violations of the PRA from the current misdemeanor to a misdemeanor or a felony. This is called a "wobbler," which allows the Attorney General or local prosecutor the choice of pursuing either a misdemeanor or a felony punishment. The bill is unlikely to incur more than nominal costs to the Commission. Staff recommends a "support" position.

Ms. Barazoto continued that AB 709, by Assemblymember Wolk, imposes an individual contribution limit of $5,600 per election on candidate-controlled ballot measure committees. Existing law imposes specific limits on individual contributions made to a candidate depending on the office that that candidate is seeking, for example $3,300 for a legislative office seeker, $5,600 for statewide elective office, and $22,300 for the Governor's office. When a candidate controls a ballot measure committee, that committee is subject to a candidates own contribution limits. This bill would instead universally apply a $5,600 contribution limit to all state candidate-controlled ballot measure committees, regardless of who controls the committees.

Commissioner Downey asked whether it imposes an aggregation provision.

Ms. Barazoto responded that it does, and the aggregation provision relates to primarily-formed candidate controlled ballot measure committees.

Commissioner Downey asked whether a candidate with three controlled ballot measure committees supporting three different ballot measures could contribute $5,600 to one committee and additional amounts to another.

Ms. Barazoto said the limit is on contributing to one particular ballot measure. If the candidate has multiple committees designed to support one ballot measure, then the aggregated limit applies. But, if the candidate has multiple ballot measures, then the limit is separate for each, without aggregation.

Executive Director Mark Krausse added that if a candidate has multiple committees for one ballot measure, then those contributions are aggregated under a similar limit. But, there is no aggregation under this bill for the candidate, for his or her own purposes, and their ballot measure committee.

Commissioner Huguenin clarified that the purpose of this bill is not to deal with the aggregation issue that was heard by the Commission a few minutes ago but to deal with multiple committees on the same measure or perhaps to limit the possibility of multiple committees.

Mr. Krausse agreed, saying that the main purpose here appears to create one limit for all levels of state candidates and to have a statute that does this.

Ms. Barazoto added that last year, the Commission supported AB 1980, which would have imposed a $21,200 contribution limit on any candidate controlled ballot measure committee. That bill went to a joint legislative conference committee hearing and came out of the committee with the language that is not in this bill. Last year, AB 1980 passed the Senate, but not the Assembly. The bill will likely impose minimal costs on the Commission. Staff recommends a "support" position.

Commissioner Blair asked how the recommended staff positions are established.

Mr. Krausse responded that all of the Commission's divisions have input, and they may or may not agree on the recommendation. If one division feels strongly about their recommendation and the divisions are not in unison, then their remarks may be included in the analysis or they may present their argument to the Commission during a meeting. Staff in each division write an analysis, the division chief reviews it and may make changes, and then Mr. Finlev, Ms. Barazoto, and Mr. Krausse consolidate these together into a final analysis that is reviewed by the Chair before going to the Commissioners.

Commissioner Blair commented that it may be helpful to know whether the recommended position was unanimous or whether there was a split in suggested positions among staff or divisions.

Mr. Krausse said that when there is disagreement among staff, then staff will try to point that out to Commissioners.

Commissioner Blair mentioned that a minority report is informative in showing the other point of view on an issue.

Ms. Barazoto said the analyses from both the Legal Division and the Technical Assistance Division listed support positions on AB 709.

Mr. Krausse added that, due to Enforcement staff's workload, they are often asked to comment if they have any problems with it or if it is about an enforcement issue. For example, they wrote an analysis on AB 347, which creates a felony potential.

Mr. Krausse introduced SB 145 by explaining that when Proposition 34 was enacted, many people were surprised by one provision, 85316, which said that a candidate could not collect a contribution after an election except to retire debt. This makes sense in a per-election based limit, but the negative implication is that when a candidate is elected to their last term of office or decides not to run for office again, then they are sitting for two or four years without any ability to fundraise for officeholder expenses in a situation where they did not have sums of money left over in their last election campaign fund. In 2001 or 2002, the Commission took a support position on the notion of what is referred to as "termed out officeholder fundraising." In other words, an elected official needs money in order to be able to perform his duties as an elected official, for example, to have town hall meetings, communications with constituents, etc. This way, all members would be on equal footing.

Mr. Krausse continued to explain that SB 145 has been introduced several times but has not passed the legislature. As first introduced, the bill established new and separate fundraising authority at, for example, $3,000 for a legislator to collect per year for officeholder expenses up to a certain cap. This is an improvement over some of the previous bills which did not impose limits. The author's office has agreed to our suggested amendments to tighten the language to make it clear that if an officeholder who collects these funds decides to run for some future office, the contributions received will count against that candidate. Therefore, the candidate, in his bid for that future office, would have his contribution limit reduced accordingly as to those who donated. The author's office also created a separate bank account for this money, much like proposition 208's officeholder account. This was a request by the Enforcement Division, which was having trouble with the notion of trying to track moneys collected for different purposes but deposited in the same account.

Mr. Krausse suggested that a position of "neutral" is appropriate. The author's office has met most of the Commission's concerns, particularly about use of the money in future races. Staff does not recommend a "support" position because ideally, staff would like to see the current proposition 34 limits apply here. In other words, if an officeholder wants to collect a contribution after the election and he has no debt, he could do that for officeholder expenses, but he would need to go to donors from whom he has not yet received the maximum contribution, or from whom he has received no contribution, so that no one donor can contribute more than the proposition 34 limits. Currently, SB 145 allows at least a doubling of that proposition 34 limit.

This concerns staff and is the reason for its recommended "neutral" position. There are additional technical issues that staff is concerned about, and the author's office gave preliminary indications that it would likely accept those changes when the bill is in the Assembly.

Commissioner Blair asked about the maximum amount that can be raised.

Mr. Krausse responded that the maximum amount is $50,000 annually for the Assembly and Senate, $100,000 for statewide office other than the governor, and $200,000 for the governor.

Commissioner Huguenin asked whether the contribution limits are the same as they are under proposition 34.

Mr. Krausse responded that that is one of the technical issues. Currently, with indexing, the Legislative limits are $3,300, but under this bill, it is $3,000 with officeholder expenses. Staff would like to make these consistent and believes this can be done later through amendments.

Commissioner Blair moved to approve staff's recommendations.

Commissioner Huguenin seconded the motion.

Commissioners Downey, Blair, Huguenin, Remy, and Chairman Randolph supported the motion, which passed with a 5-0 vote.

INFORMATIONAL ITEMS

Mr. Krausse informed the Commission that SB 787 would take the prohibitions on Commissioners and apply them to all Commission staff and interns to prohibit them from making any contributions to political campaigns, whether candidate or ballot measure, in local, state, and federal elections. It does this by defining "elections officials" to include the Secretary of State and all of his employees, local elections officials, and the Commission and its employees. Mr. Krausse is working with the author's office to communicate staff's concerns and may bring it to the Commission next month. The bill also suggests that FPPC Commissioners could run for office, which is prohibited by the PRA. Staff hopes to have references to the Commission eliminated from the bill.

Mr. Krausse added that the legislative report includes a list of items scheduled for hearing so Mr. Krausse can update the Commission on the bills that have moved since the legislative report was published. AB 16 and AB 40 were "put over," which means that they were not heard in committee. SB 8, SB 11, and SB 145 passed the Senate Elections Committee. Positions on those bills were taken at the last Commission meeting.

Item #27. Executive Director's Report.

Executive Director Mark Krausse added that Media Director Sigrid Bathen announced her retirement, effective this summer. Mr. Krausse thanked her for her service and said she will be difficult to replace.

Item #28. Litigation Report.

Chairman Randolph announced that the hearing on *Citizen's to Save California* will be on Thursday, March 24.

Senior Commission Counsel Larry Woodlock said that the hearing will take place in Department 32.

Commissioners went into closed session at 12:53 p.m.

Commissioners came out of closed session at 1:35 p.m.

The meeting adjourned at 1:40 p.m.

Dated: March 23, 2005

Respectfully submitted,

_____

Whitney Barazoto
Commission Assistant

Approved by:

_____

Liane Randolph
Chairman