



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Hatch, Hayward, and Wilson

From: Commissioner Cárdenas

Subject: Commissioner Manual Revision

Date: December 19, 2019

I. INTRODUCTION

At the September 19, 2019 meeting of this Commission, the Commission charged myself and the Commission's Legal Division with the task of reviewing Chapters 3 and 4 of the agency's existing internal Commissioner Manual (the "Manual") to identify areas that may require modification.¹ This includes, but is not limited to, clarifying and formalizing the summary of the policies, rules, regulations and laws that establish the scope of each Commissioner's powers and duties, and identifying potential internal policies that may impose limits not required under prevailing legal authority.²

At that meeting, the Commission further directed the Legal Division to request an opinion from the Attorney General's Office regarding whether Government Code Section 83105 prohibits commissioners from contributing to federal candidates, and if such a prohibition would be constitutional. This direction was prompted by a concern that the prohibition on commissioner contributions to federal candidates contained in Chapter 4 of the Manual, section V.A.(1)(a), may represent an unconstitutional restriction of the right of free speech. Section V. of Chapter 4 deals with political activities of commissioners, stating, as a matter of general policy: "It is the policy of the Commission to comply with Government Code Section 83105 regarding restrictions on the political activities of commissioners." Hence the question whether section 83105, at least as interpreted by Chapter 4 section V.A.(1)(a), is an unconstitutional infringement of a commissioner's right of free speech, inasmuch as political contributions constitute a form of protected speech. Such opinion of the Attorney General's Office was subsequently requested, posing the legal question thusly: "Does Government Code section 83105 prohibit a Fair Political Practices Commission member from making a campaign contribution to a candidate for (1) President; and/or (2) Congress?" (FPPC Request for Opinion by the Office of the Attorney General, October 16, 2019). That opinion is still pending.

¹ Chapter 3 of the Manual is entitled "Commissioner Responsibilities, Ethical Duties and Restrictions," and Chapter 4 is entitled "Statement of Incompatible Activities for Commissioners."

² At the October 8, 2019 meeting of this Commission, the Legal Division provided the Commission a color-coded delineation of those provisions of Chapters 3 and 4 that are (a) legally required (denoted in green type), (b) reflective of best practices (denoted in blue type), and (c) not easily be categorized as "required" or "aspirational," as where the verbiage involved a nuanced interpretation or discussion of a statute or case law (denoted in orange type).

Because of the concern that Chapter 4’s prohibition on federal contributions may represent an unconstitutional restriction of the right of free speech, the Commission further voted to suspend its policy stated in Chapter 4 section V.A.(1)(a) as it pertains to federal contributions by commissioners “pending the Attorney General’s opinion and further action by the Commission.”³

Not explicitly addressed during the September meeting is the fact that Chapter 3 of the Commissioner Manual also states that Government Code Section 83105 prohibits commissioners from making contributions to “campaigns for federal office.”⁴

Since the September meeting questions have arisen concerning the propriety of the Commission’s decision to suspend the Manual’s prohibition on the making of federal contributions by commissioners, including criticisms expressed in several news articles and editorials across the state.⁵ The essence of the questions concerning the Commission’s decision to suspend the prohibition center around a question of the Commission’s impartiality and nonpartisanship.⁶

Perhaps no attribution or characteristic of the Commission are as core to its mission, genesis and viability moving forward as the perception and reality of its fairness and impartiality as a “political watchdog.” Questions concerning the integrity of this Commission and its suitability for its purpose deserve our full attention. For this reason, this memo deals solely with the question of whether Chapter 4 section V.A.(1)(a), or Chapter 3 section A., should warrant the Commission’s adherence; independent of an opinion of our Attorney General. For the reasons set forth herein, I recommend that we set aside the suspension of section V.A.(1)(a) and conduct ourselves in full accordance with its restriction, and that of Chapter 3 section A.

II. THE STRUCTURE OF THE COMMISSIONER MANUAL

The Commissioner Manual is a binder document traditionally provided to commissioners upon their appointment to the Commission. It was not adopted by the Commission through official action, except as otherwise discussed below. It is intended as an orientation and primer

³ Transcript of the September 19, 2019 meeting of the Commission, at minute 123, second 40.

⁴ “Finally, section 83105 prevents Commissioners from participating in or contributing to any election campaign. Thus, Commissioners may not promote the passage or defeat of any measure that appears (or may appear) on a ballot anywhere in California. They may not make contributions to any campaign involving an election held in this state. This includes campaigns for federal office if the candidate will appear on the ballot in California (e.g., a campaign for President or a California congressional seat).” Commissioner Manual, Chapter 3, Commissioner Responsibilities, Ethical Duties and Restrictions, section A., Ban on Holding Office, Participating in Elections and Lobbying.

⁵ *Los Angeles Times*, December 4; *The San Diego Union Tribune*, December 6; *Sacramento Bee*, December 8; *Press Democrat*; December 13; and *Enterprise-Record*, December 14, 2019.

⁶ For example, “The decision by the Fair Political Practices Commission, which is responsible for policing campaign finance in California, is drawing criticism from some political reform advocates and former state officials who say the policy was put in place to avoid an appearance of bias in favor of political candidates whose campaigns are scrutinized by the state agency.” *Los Angeles Times*, December 4. “Impartiality, and the appearance of it, must be paramount at the FPPC.” *The San Diego Union Tribune*, December 6, 2019.

for new commissioners, providing information such as an overview of the Commission, the basic structure of the FPPC, commissioner duties, notes on submitting travel and other reimbursement forms, a description of the FPPC's Enforcement Division, and most pertinent to the discussion herein:

Chapter 2: Statement of Governance Principles,
Chapter 3: Commissioner Responsibilities, Ethical Duties and Restrictions, and
Chapter 4: Statement of Incompatible Activities.

Each of these three chapters contain provisions dealing with various aspects of commissioner duties, responsibilities and activities, including certain prohibitions of particular activities such as lobbying and political contributions. As with the common prohibition on the making of contributions by commissioners to campaigns for federal election found in both Chapter 3 section A., and Chapter 4 section V.A.(1)(a), there are overlaps among these three chapters, perhaps a function of the fact that each has its own history and derivation. In other words, it's complicated.

III. STATEMENT OF INCOMPATIBLE ACTIVITIES FOR COMMISSIONERS

Our analysis begins with the essential, instant issue: the prohibition on the making of contributions in federal elections by commissioners under Chapter 4 section V.A.(1)(a). Chapter 4 of the Manual begins with this statement: "The following principles have been in place since adoption by the Commission on March 21, 2013." The Commission, however, did not meet during March of 2013, nor can staff identify any meeting at which the provisions of Chapter 4, or a Statement of Incompatible Activities under any guise, were adopted.

The purported adoption of Chapter 4 in 2013 has become lore, as the Report of the Ad Hoc Committee on FPPC Governance by Commissioners Hayward and Hatch, dated March 12, 2018, points to the August 2013 Commission meeting as the adoption date:

"Our present Statement [of Incompatible Activities] was adopted at the Commission's August 22, 2013 meeting, amending previous versions adopted in 2001 and 1988. See Memorandum: Statement of Activities which are Deemed to be Inconsistent, Incompatible, or in Conflict with the Duties of its Officers and Employees (August 22, 2013); Memorandum: Proposed Revision to Statement of Incompatible Activities (September 25, 2001).⁷

Then-General Counsel Zachary P. Morazzini's Memorandum: Statement of Activities which are Deemed to be Inconsistent, Incompatible, or in Conflict with the Duties of its Officers and Employees of August 22, 2013, however, makes clear that the associated item presented for Commission approval was crafted to apply to FPPC *staff*, not commissioners.⁸ General Counsel

⁷ Note that Memorandum: Proposed Revision to Statement of Incompatible Activities (September 25, 2001) has not been reviewed in the preparation of this memo.

⁸ "Please note that this proposed Statement does not apply to the members of the Commission. The Commission has approved a Statement explicitly applicable to the Commissioners that was provided to

Morazzini states: “[T]he Commission has approved a Statement explicitly applicable to the Commissioners,” but there appears neither therein nor in the record of Commission agenda, minutes or website database any sourcing for such a commission-approved Statement of Incompatible Activities.

Thus, to date, the date and nature of any formal adoption of the Statement of Incompatible Activities cannot be verified.⁹

Its origin story aside, the Commission’s current Statement of Incompatible Activities (the version memorialized as Chapter 4 of the 2019 Manual), sets forth the policy of the Statement of Incompatible Activities thusly:

“This policy statement expresses the intent of the members of the Fair Political Practices Commission to refrain from engaging in any employment, activity, or enterprise which is inconsistent, incompatible, or in conflict with duties as a commissioner of the Fair Political Practices Commission or which could imply individual or Commission partisanship.”

Chapter 4, section V. is entitled “Political Activities” and states as its general policy: “It is the policy of the Commission to comply with Government Code Section 83105 regarding restrictions on the political activities of commissioners.” Government Code section 83105 provides in its entirety:

§ 83105. Qualifications; Removal. Each member of the Commission shall be an elector. No member of the Commission, during his or her tenure, shall hold, any other public office, serve as an officer of any political party or partisan organization, *participate in or contribute to an election campaign*, or employ or be employed as a lobbyist nor, during his or her term of appointment, seek election to any other public office. Members of the Commission may be removed by the Governor, with concurrence of the Senate, for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office or violation of this section, after written notice and opportunity for a reply. (Emphasis added).

The Chapter 4 section V.A.(1)(a) prohibition on the making of contributions in federal elections by commissioners quite evidently represents an interpretation of “election campaign” in §83105 as encompassing federal election campaigns.

each Commissioner when they were appointed to the Commission.” Memorandum to the Members of the Commission, General Counsel Zackery P. Morazzini (August 22, 2013), footnote 4, at page 1.

⁹ Similarly, the Ad Hoc Committee on FPPC Governance stated that they found no evidence of the adoption of Chapter 3 by the Commission; “We have found nothing to indicate that Chapter 3 was ever officially adopted by the Commission.” *Report of the Ad Hoc Committee on FPPC Governance*, by Commissioners Hatch and Hayward, March 12, 2018.

IV. THE 2018 GOVERNANCE PRINCIPLES

On June 4, 2018, a unanimous Commission¹⁰ replaced the Statement of Governance Principles that had been in place since adoption by the Commission on January 12, 2001 (the “2001 Governance Principles”), with the adoption of Regulations 18308, 18308.1, 18308.2, and 18308.3 (the “2018 Governance Principles”). In detailing the authority of the Commission §18308.1(c) provides, in pertinent part:

“The Commission ensures the proper conduct and governance of the Agency. The Commission strives to achieve a governing style that encourages effective operations, frank and collegial discussions among members of the Commission, the staff and the public, and fairness to persons whose compliance with the Act is called into question. To this end, each commissioner shall:

1. Comply with the statutory qualification requirements and the Statement of Incompatible Activities adopted by the Commission.”

The 2018 Governance Principles, memorialized as Chapter 2 of the Manual, proclaims:

“The Commission's statutory duty is to ensure that the Political Reform Act is impartially and effectively administered and implemented.” (§18308). It states that each commissioner shall comply with the statutory qualification requirements and the Statement of Incompatible Activities. (§18308.1(c)).

It mandates that each commissioner:

“[S]et exemplary ethical standards that reflect positively on the Commission, while refraining from engaging in biased or partisan activities that may reflect poorly on the Commission.” (§18308(c)(7)).

For reasons that are not evident to me in researching the record of the deliberation and promulgation of the 2018 Governance Principles, the following requirement of all commissioners, included as part of the 2001 Governance Principles (and denoted as C.6., in my hardcopy of the 2017 Commissioner Manual provided to me upon my appointment to the Commission in December 2017) does not appear in the current 2018 Governance Principles:

“At all times meet high ethical standards that exceed legal minimums, including refraining from activities that suggest partisanship or other bias by the Commission or individual Commissioners.”¹¹

It appears from the record of Commission agenda, minutes and website database that the first version of any Statement of Governance Principles to include the “reflect positively on the Commission” ethical standard in place of the former “exceed legal minimums” standard is the

¹⁰ Commissioners Audero, Cárdenas, Hayward and Hatch all voting in favor.

¹¹ The minutes of the January 21, 2001 Commission meeting at which the 2001 Governance Principles were discussed and adopted does not reflect any discussion of this “exceed legal minimums” provision.

version incorporated into the Report of the Ad Hoc Committee on FPPC Governance by Commissioners Hayward and Hatch, dated March 12, 2018; the version that became the 2018 Governance Principles. A review of the transcript of that March meeting at which the proposed 2018 Governance Principles were discussed reveals a discussion between Commissioner Audero and Senior Commission Counsel John Feser in which Commissioner Audero references, critically, the “exceed legal minimums” standard and states that she finds it to be “unclear.”¹² Other than this exchange between Commissioner Audero and Mr. Feser there was no discussion of the ethical standard to which commissioners should be held at either the March 22, 2018 meeting,¹³ the April 19, 2018 meeting,¹⁴ or the June 4, 2018 meeting.¹⁵ To date, there appears to be no record evidencing how and why the former “exceed legal minimums” standard became replaced by the “reflect positively on the Commission” ethical standard.

V. PROPOSITION 9 AND THE EXPRESSED INTENT OF THE VOTERS

In passing the Political Reform Act of 1974, appearing on the ballot as Proposition 9: Political Reform Initiative, the people declared that previous laws designed to regulate political practices were inadequate. Disillusioned and angered by Watergate, the growing costs of elections and the influence of lobbyists, the people demanded more of those who exercise power in our democracy. In passing Proposition 9, the voters were clearly motivated by a desire to

¹² Commissioner Audero: “So when we talk about on page five meeting “high ethical standards that exceed legal minimums,” so that to me is unclear. I don't know what that means, because, so, how far do we have to go beyond what we are, this is, this is back to Commissioner Hatch's question of, you know, six feet and a foot, six inches and a foot, right? How far do we have to go to meet this standard? And, and who says, and who is the arbiter? And on what authority is that person the arbiter? Because there's no case law on this.”

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

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

Mr. Feser: “I don't know what you're looking for.” Transcript of the March 22, 2018 meeting of the Commission, beginning at minute 171, second 05.

¹³ At which the Governance Principles version put forth by the Ad Hoc Committee on FPPC Governance were forwarded to the Office of Administrative Law for formal promulgation under the Administrative Procedures Act (with minor changes not material to the issues addressed herein).

¹⁴ At which the language of proposed regulations 18308, 18308.1, 18308.2, and 18308.3 were finalized.

¹⁵ At which the regulations 18308, 18308.1, 18308.2, and 18308.3 were adopted.

restore confidence in government. Indeed, the Rebuttal to the Argument Against Proposition 9¹⁶ read, in part:

“The impact of Watergate and related events has obviously contributed to the serious decline of citizen confidence in the governmental process. **That confidence must be restored.**” (Emphasis in original ballot).

When regulations such as §18308.1(c) are adopted requiring commissioner compliance with the Statement of Incompatible Activities, when that policy clearly prohibits commissioner contribution to federal election campaigns, the intent of the Act is being honored. And when the Commission adheres to policies such as the Statement of Incompatible Activities and Chapter 3 section A., which each interpret Government Code §83105 as encompassing contributions to federal election campaigns, the Commission is applying the Act to its commissioners consistent with the well-established practice by our courts of construing provisions of referenda and initiatives, including the Act, liberally.¹⁷ Indeed, it was the voters’ intent that their Act be construed liberally: the verbiage that became Government Code §83105 was included on the ballot.¹⁸

Perhaps the most authoritative source for the proposition that the voters intended their Act to result in the type of commission that would adopt and adhere to the restrictions of Statement of Incompatible Activities and Chapter 3 section A. is to be found in the argument for the Act¹⁹ made by the voters themselves:

“YOUR "YES" VOTE WILL:

1. Limit spending for statewide campaigns.
2. Require full disclosure of anyone contributing \$50 or more to a campaign.
3. Stop sizable anonymous and cash contributions to campaigns.
4. Prohibit lobbyists from giving campaign contributions and expensive gifts to politicians.
5. End conflicts of interest by stopping all state and local officials from Noting on matters in which they have a personal financial stake.

¹⁶ Proposition 9: Political Reform Initiative, California Voters Pamphlet, June 4, 1974 Primary Election, at page 37.

¹⁷ “Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. . . If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.” (*Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 41.*) See also, “Based on this history, the courts have described the right to initiative and referendum as a fundamental right the voters have reserved to themselves, which must be construed in favor of the voter. The right to adopt laws by initiative and referendum is “one of the most precious rights of our democratic process. It has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right not be improperly annulled.” (*Associated Home Builders, Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591.*)

¹⁸ Proposition 9: Political Reform Initiative, California Voters Pamphlet, June 4, 1974 Primary Election, at page 35.

¹⁹ Proposition 9: Political Reform Initiative, California Voters Pamphlet, June 4, 1974 Primary Election, at page 36.

6. Enforce the law by establishing a tough, *nonpolitical commission* to investigate, subpoena, levy fines, and seek criminal penalties for violators.” (Emphasis added).

The voters by direct action, acting as lawmakers with the powers reserved by them as free citizens, created the Act in order to have a *tough* and *nonpolitical* commission that would apply and enforce its provisions liberally in order to, among other aspirational goals, restore public confidence. Every regulation and policy that impinges upon commissioner duties, obligations, activities, and restrictions thereof, must therefore adhere to this expressed, and quite aspirational, legislative intent.

VI. CALIFORNIA GOVERNMENTS AND AN AMERICAN TRADITION OF ETHICS

Ethics training among California government officials, administrators and employees is an ongoing significant undertaking, shared by a number of organizations, including FPPC staff. Among the more prominent organizations in this vital field is the Institute for Local Government headquartered in Sacramento. With a staff and governing board comprised of experienced current and former public servants from across the state, ILG is an important resource for California governments. ILG’s *Understanding the Basics of Public Service Ethics*, updated periodically, is an important primer on California’s ethics and transparency laws such as the Act, the Brown Act, and the Public Records Act. The 2016 version of this document includes a message to public servants that we should find particularly relevant.²⁰

“Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct. Even though public officials may feel at times that some of these high standards of conduct are unduly burdensome or intrusive of their private lives, they must accept that adhering to these standards, including broad financial disclosure rules for gifts and income, is simply part of the process of public service.

Even so, it is important to keep in mind that these standards are only minimum standards; it is simply not possible or practical to write laws that prevent all actions that might diminish the public’s trust. For this reason, the laws should be viewed as a floor for conduct, not a ceiling. Just because a given course of conduct is legal does not mean that it is ethical (or that the public will perceive it as such).” *Understanding the Basics of Public Service Ethics*, Institute for Local Government (2016).

²⁰ Also instructive is the following: “The “publicity test,” an evaluative test regularly applied to ethical choices (Rawls, 1971, p. 133), is particularly useful in promoting the administrator’s obligation to avoid the appearance of impropriety and to promote public confidence and trust. The idea behind the publicity test is captured nicely in this advice from Thomas Jefferson in a letter written in 1785 to his nephew and ward: “Whenever you are to do a thing, tho’ it can never be known but to yourself ask yourself how you would act were all the world looking at you, and act accordingly” Lewis, C. W. and Catron, B. L. (1996) “Professional Standards and Ethics” in J. L. Perry (ed.) *Handbook of Public Administration*. Second edition. San Francisco: Jossey-Bass. Lewis, C. W. and Gilman, S. C. (2005). *The Ethics Challenge in Public Service*. Second edition. San Francisco: Jossey Bass.

This statement gives voice to an important principle in public service: the importance of holding oneself, and being prepared to be held, to high ethical standards; even if a public official believes a particular standard or stricture to be “unduly burdensome or intrusive of their private lives.” Indeed, the history of American democracy is punctuated with such sentiments.²¹

The ILG statement stands for another proposition that is vital to any public organization seeking to be ethical, particularly one charged with the duty of enforcing the ethical behavior of others: the conviction that ethical standards that those of us who choose to be public servants must be higher than laws. This is the notion that laws are floors above which we set our sights, and our conduct.²²

The councils of various cities express similar convictions. One example is Belmont:

“The Belmont City Council adopts this Code of Ethics and Conduct to assure that all elected and appointed officials, while exercising their office, conduct themselves in a manner that will instill public confidence and trust in the fair operation and integrity of Belmont’s City government.

The citizens and businesses of Belmont are entitled to have fair, ethical and accountable local government. To this end, the public should have full confidence that their elected and appointed officials:

- Comply with both the letter and spirit of the laws and policies affecting the operations of government;
 - Are independent, impartial and fair in their judgment and actions.”
- Adopted June 10, 2014 (amended 2017).

The Belmont city council’s commitment to fairness and impartiality and their importance to the maintenance of public confidence in a democracy is also echoed throughout our history.²³

Another example is Watsonville, where their code of ethics is clearly sensitive, as many throughout our history have been, to the pernicious dangers of the mere appearance of impropriety or impartiality:²⁴

²¹ “There is a big difference between what we have a right to do – and what is right to do.”

U.S. Supreme Court Justice Potter Stewart.

²² Note U.S. Supreme Court Chief Justice Earl Warren's well-known formulation: “[i]n civilized life, law floats in a sea of ethics. Each is indispensable to civilization. Without law, we should be at the mercy of the least scrupulous. Without ethics, law could not exist.”

²³ Justice Frankfurter once observed that “[t]he appearance of impartiality is an essential manifestation of its reality.” *Dennis v. United States*, 339 U.S. 162, 182 (1950). Note also the following from the Portland, Oregon *Ethics Explanations and Examples* pamphlet: “Public service requires a continual effort to overcome cynical attitudes and suspicions about the people in government.”

²⁴ “The irony is that an appearance of impropriety can be as damaging as an actual conflict of interest. Appearances potentially undermine the confidence of citizens in democratic institutions. Many public servants, as well as elected officials, will argue that such standards are unfair. Former California Senator Alan Cranston, who was reprimanded in the savings-and-loan scandals of the 1980s, claimed that no one knew what was in his heart, and he was the only one who could judge his actions. Taking exception to this, Dennis Thompson notes, “Because appearances are often the only window that citizens have on

“I avoid actions that might cause the public to question my independent judgment.” City of Watsonville Code of Ethics (Adopted January 8, 2013).

VII. DISCUSSION

Public service is not easy, nor is it necessarily intended to be. Being held to certain ethical standards is also quite apparently not easy, as evidenced by the number and nature of violations that our Commission adjudicates. We few who are charged with the responsibility of enforcing ethics laws, occasioning us to sit in judgement of the conduct of others, must hold ourselves not simply to the standards of the laws we are duty-bound to enforce, we must hold ourselves out as examples of the virtues the voters sought to advance in politics when adopting the Political Reform Act.

Californians expect and deserve what they voted for: a tough and nonpolitical commission worthy of their confidence. Every regulation and policy that impinges upon commissioner duties, obligations, activities, and restrictions thereof, must adhere to this expressed, and quite aspirational, legislative intent. The prohibition on the making of contributions in federal elections by commissioners in Commission Manual, Chapter 3, section A., and Chapter 4 section V.A.(1)(a), represents and furthers the voters’ aims by construing §83105 to encompass federal election campaigns in order to avoid the appearance of bias as we do our important work. For the members of this Commission to have the honor of maintaining and advancing this public trust must surely warrant some personal inconvenience. The privilege we hold, in the end, is voluntary.

As a final thought we might find sustenance in the following insight into one of the weighty challenges posed by the new democratic experiment:

“It may be a reflection on human nature, that such devices [checks and balances] should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.” James Madison, Federalist No. 51 (February 6, 1788).

The people of California have enabled a body of five public servants to serve as a check, of sorts, over the ethical lapses of those in government. Our own commitment to oblige ourselves with certain sacrifices and restraints toward this important end must be sturdy, in both appearance and reality.

official conduct, rejecting the appearance standard is tantamount to denying democratic accountability.” *The Ethics Challenge in Public Service: A Problem-Solving Guide*, by Carol W. Lewis, Stuart C. Gilman, John Wiley & Sons, 2012 (citing Thompson, 1993, p. 376).

VIII. CONCLUSION

For the reasons stated above, I recommend that the Commission revoke the suspension of the prohibition of the making of contributions in federal election campaigns by commissioners. I further recommend that the Commission restore the following language to its Governance Principles, such that commissioners shall:

“At all times meet high ethical standards that exceed legal minimums, including refraining from activities that suggest partisanship or other bias by the Commission or individual Commissioners.”

Respectfully submitted,



Frank C. Cárdenas