



April 20, 2023

VIA EMAIL: [kcornwall@fppc.ca.gov](mailto:kcornwall@fppc.ca.gov)

Kevin Cornwall  
Senior Commission Counsel  
Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95814

RE: Comments, Section 84308 – Levine Act  
Interested Persons Meeting

Dear Mr. Cornwall:

On behalf of the California Building Industry Association (CBIA) and the California Business Properties Association (CBPA), we are grateful for the opportunity to provide you with our comments regarding the current draft of the regulations implementing SB 1439 (Glazer – 2022).

#### Agents & Employees

Section 18438.3 applies when an agent “communicates” with the governmental agency. Does “communicate” include studies, drawings, plans, or other documents where the materials indicate the name or logo of the person or firm who prepared the document but the person or firm who prepared the document is not the person appearing before the agency? We think that those people or firms should not be treated as an agent, like the solicitation exemption provided in paragraph 2, subdivision (d) of section 18438.6.

Section 18438.3(b) treats individual employees of a law, architectural, engineering or consulting firm, or similar entity or corporation as agents. This includes employees of parties and participants, in addition to employees of independent contractors. See also, section 18438.5

However, it is not legal for any employer to prevent, control, influence, coerce or direct employee participation in politics, including making contributions to officials. See, Labor Code sections 1101 and 1102. There is no way for an employer to prevent an employee from contributing more than \$250. Moreover, an employee may view a request for information regarding political contributions as an attempt to influence, coerce, control, or retaliate against the employee for engaging in their constitutionally protected free speech rights. Unless there is a public record of a contribution that employers can see, inquiring about an employee’s contributions may be viewed as a violation of various provisions of the Labor Code. We can use our best efforts to learn who has contributed to an official where it is publicly available but beyond that, the regulation is impossible to comply with. It is

fundamentally unfair to hold a party liable when the party is legally prohibited from controlling the offending person's actions. Accordingly, we believe that disclosure of employee contributions – whether of a party or a party's agent – should be limited to contributions that are publicly reported.

Disqualification

Section 18438.7 creates some ambiguities that we believe can use some clarification.

First, we would like to see a clear statement that if a party has made the disclosure required by Government Code section 84308, the failure of an official to self-disqualify will not result in invalidating a decision after it is made. We are concerned that the decision would be invalidated by a determination that the officer failed to self-disqualify. The determination of whether a participant or a participant's agent has a financial interest is not a bright line test. This makes the decision made by the officer, necessarily made on the fly, fraught with peril and subject to a lot of second guessing after the fact. It may be possible for the FPPC to take into consideration the officer's good faith or a variety of other factors in determining whether and how much to fine an officer or participant, but an after the fact requirement to invalidate the decision, places the consequences on the party rather than the participant or the officer. The party complied with the law and should not be punished. The regulation should expressly prohibit invalidating the decision or disqualifying a vote after the fact.

Second, subdivision (b)(1)(C)(ii) creates the impression that an officer must be disqualified if the officer has previously received a contribution of more than \$250 from a party or participant. There is no limit to the lookback period. We believe it should not apply to contributions made by a party prior to January 1, 2023, and it should only apply to contributions made within the preceding 12 months prior to rendering a decision per Government Code 84308(c).

We very much appreciate your consideration of these comments.

Sincerely,



Nick Cammarota  
Senior Vice President & General Counsel  
California Building Industry Association



Matthew Hargrove  
President & CEO  
California Business Properties Association