



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Silver and Commissioners Brandt, Ortiz, and Wilson

From: Dave Bainbridge, General Counsel
John Feser, Senior Counsel, Legal Division

Subject: **Adoption of Proposed Amendments to Regulation 18361.4**

Date: March 9, 2026

Executive Summary

At the January 2026 Commission meeting, staff presented proposed amendments to Regulation 18361.4 intended to reduce opportunities to unnecessarily delay a finding of probable cause. Attorneys who regularly represent respondents in the enforcement process expressed opposition to the proposed regulatory changes, particularly with regards to removing the records production process, and requested the Commission delay adopting amended regulations. The Commissioners expressed differing views on the proposed amendments related to records production but agreed to delay a decision on the proposed amendments to allow time for additional input from the regulated community.

On February 10, 2026, staff met with representatives of the California Political Attorneys Association (CPAA) to discuss potential alternatives to staff's proposal. The CPAA representatives reiterated their opposition to the proposed amendments, specifically removing the records production procedure, and indicated their preference to keep the records production provision substantively as it is in the current regulation. As a result, staff now submits two alternate versions of proposed amendments to Regulation 18361.4 for adoption, one *without*¹ and one *with*² a records production procedure.

Each of the two versions of proposed amendments to Regulation 18361.4 would streamline the probable cause process by: establishing a firm deadline to conduct a probable cause conference, and eliminating provisions regarding witnesses, conference participants, and submission of supplemental evidence after a probable cause conference. The version of proposed amendments to Regulation 18361.4 *with* records production sets forth the same production procedure provided in the existing regulation. Staff recommends that the Commission adopt the amendments to Regulation 18361.4 *without* records production because it is irrelevant to the determination of probable cause, there is no evidence demonstrating it is beneficial to a probable cause determination, and it is not required by law. Moreover, a records production procedure potentially misleads respondents that probable cause is something other than an informal finding

¹ The version *without* records production is attached hereto as version 1. This version was presented to the Commission for consideration and adoption at the Commission meeting in January.

² The version *with* records production is attached hereto as Version 2.

that is preliminary to formal administrative adjudication.

Reason for Proposed Regulatory Action

The Commission requested staff present recommendations to limit delay in the completion of probable cause proceedings. Staff from both the Legal and Enforcement Divisions have identified areas of improvement to the probable cause proceedings they believe will accomplish the Commission's goal. Current evidentiary and scheduling processes in the existing regulation can delay proceedings and cause additional work for all parties. Staff believes these downsides outweigh any potential benefits to the parties involved. The recommended improvements would modify the existing regulation in accordance with governing statutes to promote and facilitate a more efficient enforcement process in compliance with the Political Reform Act (the Act),³ while maintaining fairness for persons subject to enforcement proceedings.

Background and Law

Probable Cause Proceedings Under the Act

The Act and its regulations provide persons accused of violating the Act with certain procedural protections beyond those provided by the Administrative Procedures Act found in Sections 11500, et. seq. (APA). Among them are the requirements that the Commission make a finding of probable cause and that respondents have the right to be heard at a probable cause proceeding. (Section 83115.5.)

Specifically, Section 83115.5 provides:

No finding of probable cause to believe this title has been violated shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have violated this title is notified of the violation by service of process or registered mail with return receipt requested, provided with a summary of the evidence, and informed of his right to be present in person and represented by counsel at any proceeding of the commission held for the purpose of considering whether probable cause exists for believing the person violated this title. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.

Under existing Regulation 18361.4(e), in order for the Commission to make a finding of probable cause against a respondent, a hearing officer determines whether the evidence, as

³ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

summarized in a probable cause report prepared by the Enforcement Division, is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a respondent committed a violation of the Act. If the hearing officer, typically a senior attorney in the Legal Division, determines the standard for finding probable cause is met, Enforcement Division staff are authorized to issue an accusation initiating an administrative adjudication. The probable cause process is informal, and although a probable cause finding is a prerequisite to formal APA adjudication, it does not constitute a finding or determination that a respondent violated the Act.⁴ (See Regulation 18361.4(e).)

When the Commission determines there is probable cause for believing the Act has been violated, it may hold an administrative hearing to determine if a violation has occurred. (Section 83116.) Notice must be given and the hearing conducted in accordance with the APA. (*Ibid.*)

The APA provides for a comprehensive adjudicatory process pre-hearing, during a hearing, and post-hearing, to ensure the due process rights of a respondent are upheld. When an administrative proceeding is initiated after a finding of probable cause, a respondent has the opportunity to conduct formal discovery, address evidentiary disputes, participate in a full evidentiary hearing before a neutral fact finder, and challenge the decision before the Commission, as well as seek judicial review in superior court. (See Section 1150 et seq.)

In addition to the administrative process, FPPC enforcement actions alternatively can be pursued through civil proceedings in superior court.⁵ A probable cause conference is not required for a civil action, nor does the court have an analogous procedure. A civil complaint, which is the filing that initiates a civil case, is similar to the accusation in an administrative hearing. In a civil case, records are not exchanged until after the complaint and an answer have been filed.

Probable Cause in Other Legal Proceedings

While the Act's probable cause process is only applicable to the FPPC, probable cause proceedings exist in other legal contexts, typically in circumstances where defendants will be deprived of their liberty, such as civil commitments and criminal cases. Generally, probable cause proceedings have a low standard of proof and are intended as preliminary matters to test the sufficiency of allegations against the accused. The California Supreme Court in *Cooley v. Superior Court* (2002) 29 Cal.4th 228, 250–251, as modified (Jan. 15, 2003), and holding modified by *People v. Hardin* (2024) 15 Cal. 5th 834, discussed the nature of a probable cause proceeding similar to the Act. The hearings at issue specifically involved civil commitments for sexually violent predators:⁶

The probable cause hearing... is only a preliminary determination that cannot form the

⁴ This is reflected in the language the hearing officer uses when finding that probable cause exists for the matter to move forward, specifically, it says, "A finding of probable cause exists when the evidence supports a reasonable belief or strong suspicion that a violation occurred but does not constitute a finding a violation occurred. Respondents are presumed innocent of any violation of the Act until a violation is proven in a subsequent proceeding."

⁵ See Sections 91004-91007.

⁶ In *Cooley*, the court was analyzing the statutory procedure to involuntarily commit a sex offender under the Sexually Violent Predators Act (SVPA).

basis of a civil commitment; the ultimate determination of whether an individual can be committed as an SVP is made only at trial. For this reason, based on the structure of the SVPA, a [probable cause] hearing is analogous to a preliminary hearing in a criminal case; both serve to weed out groundless or unsupported charges and to relieve the accused of the degradation and expense of a trial. Like a criminal preliminary hearing, the only purpose of the probable cause hearing is to test the sufficiency of the evidence supporting the SVPA petition.

[Citations and quotations omitted.]

Regarding the standard of proof in a probable cause proceeding in the criminal law context, the court in *Cooley* stated:

This court has stated in the felony preliminary hearing context that probable cause is shown if a man of ordinary caution or prudence would be led to believe and conscientiously entertain a strong suspicion of the guilt of the accused. ***In making the determination of probable cause, the magistrates do not themselves decide whether the defendant is guilty.*** Rather, they simply decide whether a reasonable person could harbor a strong suspicion of the defendant's guilt. In doing so, they may weigh the evidence, resolve conflicts, and give or withhold credence to particular witnesses. ***But the proceeding is not a trial: if the magistrate forms a personal opinion regarding the defendant's guilt, it is of no legal significance.*** In sum, the magistrate's role is limited to determining whether a reasonable person could harbor a strong suspicion of the defendant's guilt, i.e., whether such a person could reasonably weigh the evidence, resolve conflicts, and give or withhold credence to particular witnesses in favor of harboring such a suspicion.

(*Cooley, supra*, at pp. 250-25 [citations and quotations omitted; emphasis added].)

Similarly, under the Act, the probable cause conference is only a preliminary determination that cannot form the basis of a violation of the Act. The purpose of the informal probable cause proceeding under the Act is to assess the sufficiency of the Enforcement Division's allegations that the Act has been violated in light of the evidence as summarized in the probable cause report. The weighing of evidence and ultimate determination of whether a respondent violated the Act is made under the APA's formal adjudication process.

The hearing officer at a probable cause conference does not decide whether a respondent violated the Act, and the conference is not a trial. The hearing officer's role is limited to determining whether the Enforcement Division's summary of evidence is sufficient to lead a person of ordinary caution and prudence to believe or entertain a strong suspicion that a respondent committed a violation of the Act. The hearing officer does not weigh evidence but determines whether a reasonable person could weigh the evidence summarized by the Enforcement Division and believe or entertain a strong suspicion that the Act was violated. Because the hearing officer does not conduct a trial, find facts, or decide whether a violation of the Act occurred, records produced in addition to the Enforcement Division's summary of evidence are unnecessary to determine probable cause.

Records Production

The Commission first instituted a records production process in the probable cause proceeding in 2011.⁷ These provisions are currently found in Regulation 18361.4(d)(3). Since the Commission added this process to the regulation, there has been no indication that records production impacts the likelihood of a finding of probable cause one way or the other. On the contrary, records production is not relevant to the hearing officer's determination of probable cause, and thus its inclusion in Regulation 18361.4 is unnecessary and interferes with the timeliness and efficiency of a probable cause proceeding.

Most cases that go through the probable cause process do not include a records request from the respondent. The Enforcement Division found that between April 2020 and October of 2025, only 37 of 206 cases that went through a probable cause proceeding involved the production of records. However, for those 37 cases, FPPC staff time for preparing records productions totaled approximately 790 hours. This, of course, does not take into account the time spent by respondents and their counsel to prepare and review records requests. Despite the increase in the amount of time a case takes when records are requested, as noted above, staff has not observed that cases where records are requested are more or less likely to result in a finding of probable cause. In practice, probable cause is found for all counts alleged in most instances due to the low burden of proof and because alleged violations that are in danger of not meeting the burden of proof are typically not charged.

Further, respondents in an Enforcement case will likely already have all, or nearly all, of the evidence prior to receiving records in response to a records request. For most Enforcement investigations, the relevant records are public documents (e.g. campaign statements and reports, lobbying reports, SEIs, meeting minutes, etc.), or documents submitted by the complainant or provided by the respondent (e.g. bank records, emails, etc.). Consequently, records produced by the Enforcement Division are most likely already in the possession of, or available to, the respondent. For this reason, the records production process is typically of no value to the respondent.

Staff asserts that eliminating the records production process at the probable cause stage would not deprive a respondent of any due process. A probable cause proceeding is merely an informal check on the sufficiency of the Enforcement Division's allegations and evidence; it does not deprive a respondent of life, liberty, property, or even a finding that the respondent violated the Act. Further, the probable cause process does not have a mechanism to resolve evidentiary disputes or evaluate the relevance or admissibility of evidence. The APA does, however, provide for formal and comprehensive adjudication, including records production and other evidentiary procedures.

Scheduling Probable Cause Conferences

The process for scheduling a probable cause conference is provided in Regulation 18361.4. Prior to amendments adopted by the Commission in 2020, Regulation 18361.4 did not

⁷ Enforcement Regulations Memorandum, Fair Political Practices Commission Meeting Agenda, November 10, 2011, Item #24.

include a time frame for conducting a probable cause conference. The regulation simply provided “(t)he Executive Director shall fix a time for the probable cause conference and conduct the conference informally.”

As part of comprehensive amendments in 2020 to the regulations governing Enforcement processes, the Commission established the current time period for conducting a probable cause conference, as well as granting a continuance. The staff memorandum for the amended regulations in 2020 stated as follows:

In order to prevent any attempt by a respondent to impede the progress of a case by significantly delaying the scheduling of a probable cause conference, the proposed amendments would impose a 75-day deadline, to begin either when the Commission Assistant receives a request or after the date records are sent pursuant to proposed subdivision (d)(3), for the conference to proceed subject to extension by the assigned hearing officer only through a showing of good cause by any party. (Proposed subdivision (d)(2)(C).) If the probable cause conference does not timely proceed, the Commission Assistant shall set a probable cause conference to occur within 14 calendar days of the deadline, which gives the respondent one last chance to proceed with the probable cause conference while providing finality to the process.⁸

Despite the 75-day deadline, delays still occur in the probable cause process due to the open-ended extensions for “good cause.” For example, in a recent case a respondent postponed a probable cause conference for several months until after an election in which the candidate was on the ballot. The respondent’s purported “good cause” for the delay was “scheduling conflicts.” The “good cause” standard, while flexible, provides the hearing officer with no guidance or authority for setting a definite conference date when a respondent asserts a reason for delaying a conference. Moreover, as a practical matter, each case typically involves multiple parties and attorneys, which complicates scheduling. As a result, the existing extension process can lead to significant delays in Enforcement cases because the administrative adjudication process cannot begin until after a finding of probable cause. Because probable cause under the Act is an informal proceeding preliminary to formal administrative adjudication under the APA, the parties and the public are best served by avoiding unnecessary delay in resolving probable cause proceedings.

Witnesses

Current Regulation 18361.4(f) provides that a party may request to produce a witness at a probable cause conference. The hearing officer can then decide whether to allow the witness based on criteria in the regulation. In practice, such a request is extremely rare given the procedural posture of a probable cause conference. Similar to the records production process discussed above, staff believe the calling of witnesses is not beneficial to the probable cause conference, can cause confusion about what is relevant to a probable cause determination, and is more appropriate at a formal APA hearing.

⁸ Staff Memorandum, Fair Political Practices Commission Meeting Agenda, October 15, 2020, Item #12.

Record Submission After a Probable Cause Conference

Current Regulation 18361.4(f) also provides that a hearing officer may permit a party to submit additional evidence at or after a probable cause conference if the evidence confirms or disproves a statement made at the probable cause conference. Like the provision for witnesses, submission of additional evidence after a conference is rare. While it is not common, staff believe this process, similar to the records production process, is not beneficial in determining whether probable cause exists for any particular alleged violation since the analysis is based on Enforcement's summary of the evidence, not the records themselves, and may unnecessarily delay the probable cause process.

Proposed Regulations

At the January Commission meeting, the main point of discussion among the Commissioners was whether to adopt an amended regulation that would eliminate the pre-conference records production process. As a result, staff has prepared two versions of proposed amendments. As described in more detail below, both versions propose to place a definitive deadline on the time for conducting a hearing, eliminate provisions regarding witnesses and submission of records after a conference, and various formatting changes. The two versions differ on whether to eliminate the record production process in the current regulation.

The following is a summary of the proposed amendments to Regulation 18361.4 in both versions.

Proposed Amendments to Subdivision (d)(2)(C) – Conference Scheduling and Extensions

Under subdivision (g) of the proposed amendments, existing subdivision (d)(2)(C), the timeframes for conducting a probable cause conference would not change: the conference must occur at least 75 days after the request for a probable cause conference is received, and if not then the conference must be scheduled at least 14 calendar days later. Staff proposes eliminating the current procedure that allows any party to make a request to extend any of these times to the hearing officer, supported by good cause. In its place, staff proposes to remove the hearing officer's discretion to grant further extensions of time past the 75 days, plus 14 calendar days provided in the existing regulation, unless the extension is mutually requested by a respondent and the Enforcement Division. This modification would place a hard deadline on the scheduling of a probable conference and eliminate the current open-ended extension procedure set forth in the existing regulation. The proposed amendments would only restrict the scheduling of a probable cause conference after the 89-day period; there would be no restrictions on rescheduling a conference during the 89 days. Allowing an exception to this deadline for parties to mutually extend time would account for instances where parties seek to enter a settlement agreement but need additional time to negotiate an agreement.

Proposed Amendments to Subdivision (i) – Probable Cause Conference

Staff proposes moving the line "the hearing officer shall conduct the conference informally," from the end of subdivision (d)(2)(C), which deals with conference scheduling and

extensions, to the first line of new subdivision (i), which deals with how the probable cause conference is conducted.

Staff also proposes removing provisions allowing for the participation of witnesses or other non-party attendees at the probable cause conference. As with the records production procedure, staff has found that witness participation misleads respondents about the nature and scope of probable cause proceedings and confuses probable cause with a broader legal process used in formal administrative or judicial proceedings. The controlling statute, Section 83115.5, does not require or authorize witness testimony in determining probable cause.

Finally, staff proposes eliminating language in this current subdivision that allow for parties to submit additional evidence after the probable cause conference. Similar to discovery and participation of witnesses, submitting additional evidence after a conference is redundant with the administrative hearing process and not beneficial at the probable cause stage.

Proposed Amendments – Titles Added and Subdivisions Renumbered

In addition to the substantive changes proposed above, staff proposes renumbering existing subdivisions (f) and (g) and adding titles that identify each part of the process. These nonsubstantive changes are intended to provide additional clarity to the probable cause proceedings.

Records Production

Version 1: Removal of Records Production Procedure

Under existing Regulation 18361.4(d)(3), a respondent may request a copy of all records in the possession of the Enforcement Division obtained for purposes of its investigation that are not readily available public records or otherwise in the possession of the requesting respondent. The Enforcement Division must produce evidence in its possession that supports a finding of probable cause for each alleged violation of the Act, a respondent must pay for duplicate copies of records requested, and the Enforcement Division must provide a description of any records withheld from production. (Regulation 18361.4(d)(3)(A)-(B).)

The proposed amendments would remove the current provisions in Regulation 18361.4(d)(3), and all references thereto, that allow for records production in probable cause proceedings. Staff has found that records production misleads respondents about the nature and scope of probable cause proceedings and confuses probable cause with a broader legal process used in formal administrative or judicial proceedings. The controlling statute, Section 83115.5, does not require record production for determining probable cause. Rather it calls for a “summary of the evidence.”

The APA contains broad discovery requirements that apply if a case proceeded to an administrative hearing. (See Section 11507.6.) Thus, removing record production would eliminate any confusion respondents may have about the limited purpose and scope of probable cause proceedings.

Lastly, the time and expense associated with requesting, producing, and reviewing records under the existing regulation is unduly burdensome and costly for the parties. Given the redundancy of the record production process compared to the burden placed on staff, as well as other parties, of preparing record productions, and in light of the Commission's desire to see the probable cause process move faster, staff recommends eliminating the record production and other evidence gathering processes in Regulation 18361.4

Version 2: Relocation of Records Production Procedure

If the Commission prefers not to remove the records production procedure, staff propose moving those requirements from subdivision (d)(3) to a separate subdivision, re-lettered as subdivision (g) in Version 2, for purposes of clarity. This proposed reorganization is in line with other non-substantive changes described above.

Prior Comment Letters

Prior to the January Commission meeting, CPAA and two law firms who routinely represent respondents in Enforcement matters submitted comment letters. The letters expressed opposition to the proposed amendments to the probable cause regulation, particularly the elimination of the record production requirement. The letter from CPAA indicated "(a)n important fact overlooked in the Staff Memo presented to the Commission at the October meeting is that the Probable Cause process is the last opportunity for a vetting of the evidentiary issues ***before enforcement action is made public.***" This argument implies that record production impacts the likelihood of a finding of probable cause. The assumption is not supported by any data, or the experience of hearing officers or Enforcement staff, as discussed above. Also, while findings of probable cause are published in the monthly Executive Staff report, the existence of Enforcement cases and allegations made against respondents are, in most cases, publicly available information once a case is initiated, which is well before a probable cause conference.

The CPAA letter also intimates that eliminating record production and other evidentiary procedures at the probable cause conference would impact due process rights and deny the respondents a fair hearing. As discussed throughout this memo, Commission staff do not agree. The probable cause conference is a preliminary hearing where no final determination of liability is made. Respondents have the opportunity to respond to allegations in writing and in person at a hearing. Respondents also have the opportunity to participate in a full administrative hearing under the APA subsequent to a finding of probable cause. The proposed amendments appropriately place the probable cause proceeding within the context of the entire administrative adjudication process to ensure fairness and efficiency for all parties, and the public.

Education/Outreach Efforts

Commission staff will distribute the regulation to interested parties by means of the "Newly Adopted, Amended or Repealed Regulations" email list and update the "Newly Adopted, Amended or Repealed Regulations" page on the Commission website. Additionally, documents sent to respondents describing the probable cause process will be updated as

necessary to address the regulatory changes.

Conclusion

The probable cause process serves as a check on the Enforcement Division to ensure administrative proceedings brought against those alleged to have violated the Act are justified. While a finding that probable cause does not exist to move forward with a case is extremely rare, the requirement of a review by a neutral hearing officer serves to prevent non-meritorious cases from reaching the probable cause stage. However, the probable cause conference is a preliminary proceeding not intended to be an evidentiary hearing or substitute for an administrative hearing under the APA. In this context, a records production procedure for probable cause conferences is premature, redundant, and an inefficient use of time and resources for both parties. Records production also may mislead respondents that probable cause is something other than an informal finding that is preliminary to formal administrative adjudication. Similarly, the current open-ended conference scheduling process can result in unjustifiable delay in meritorious cases. The proposed amendments to Regulation 18361.4 would streamline the probable cause process by removing existing provisions that are unnecessarily duplicative of processes required in subsequent formal proceedings, unnecessary to determine probable cause, not required by law, and not beneficial to the parties.

Staff recommends adoption of Version 1, proposed amendments to Regulation 18361.4 *without* records production. In the alternative, staff recommends adoption of Version 2, proposed amendments to Regulation 18361.4 *with* records production.

Attachments:

Version 1 – Proposed Amendments to Regulation 18361.4 (Without Records Production)

Version 2 – Proposed Amendments to Regulation 18361.4 (With Records Production)