

**From:** [Caleb Smith](#)  
**To:** [Ethics Public Comment](#)  
**Subject:** Comment on 9/16/24 meeting, Items 10-14  
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Dear Commissioners,

My name is Caleb Smith, and I am an Oakland resident who in 2022 had the honor of serving as Chair of the Yes on Measure C (library parcel tax extension) committee. I wish to respectfully urge your Commission to consider dismissing the proposed cases that are agendized as settlements in Items 10-14 on the grounds that some or all of the alleged violations are legally unsound and risk having a chilling effect on legitimate political activity.

Before getting into the details of why that is the case, I should note in the interests of transparency that in 2018 I was hired to be the Data Manager for Libby Schaaf's Re-election campaign for Mayor, and I previously had unpaid internships with Mayor Schaaf while I was in college. That said, I did not work on or contribute to any of the campaigns or ballot measures described in the complaints, I have not been employed by Mayor Schaaf since the 2018 Mayoral campaign, and the comment I submit tonight is my own and was not previously discussed with any other person.

The common factor behind the cases in Items 10-14 is that they all hinge upon the question of when does a campaign committee become "candidate controlled" as defined in California Government Code Section 82016. This section of the government code describes a campaign committee as "candidate controlled" when a candidate has a "significant influence" on the committee. However, as the proposed settlement report itself notes, the term "significant influence" is not defined in state law or any state or local regulation. The enforcement action brought by commission staff relies upon FPPC advice letters to determine what that definition is, but this approach is fundamentally flawed- FPPC advice letters are not case law, nor are they a binding, rule-making process. They are simply advisory in nature.

In the absence of a clear, written standard for what "significant influence" means, the Public Ethics Commission should default to the most conservative definition of "significant influence." This definition would have a committee significantly influenced by an elected official if the elected official has exclusive and executive authority over the operations of the committee. I do not believe that standard was consistently met in the proposed enforcement actions, and the Commission should therefore consider dismissing some or all of these cases.

In the proposed case settlements, the Commission staff allege that the parties were negligent in failing to disclose that a committee was candidate controlled. However, I found it striking that in the Committee for an Affordable Easy Bay case, Mayor Schaaf disclosed the fact that she had solicited contributions to the committee through the applicable required forms, and the committee otherwise maintained timely filings. For the staff's allegation of negligence to be valid, this Commission must find that a reasonable person in a similar position would have acted differently. However, as a former ballot measure committee chair, I think I can realistically be described as a reasonable person in a similar position and I think I would have found the standard for substantial influence to be too vague to know to act differently, had I been in the shoes of those accused. I therefore submit that the accusation of negligence is unsubstantiated.

Before concluding, I want to turn briefly to why it is important for the Commission to set standards via a rulemaking process instead of via an enforcement process. Campaign committees and donors need certainty about how they should act. If I was to chair a future campaign committee, such as for a hypothetical library bond measure, I would need to know if the following conduct would make our committee candidate controlled:

- What if a Councilmember holds a fundraiser for us?
- What if a Councilmember introduces us to a campaign consultant they think highly of?
- What if a Councilmember provides feedback on a video advertisement we are thinking about running?

If the settlements are adopted, and in the absence of a rule-making process, it would be unclear if any or all of the above would turn my hypothetical committee into a candidate controlled committee. I also fear that the enforcement action against individual donors in the set of settlements places an unreasonable level of due diligence on those donors- it seems to require any major donor to conduct a detailed examination of a possible ballot measure committee's connections to elected officials before making any contributions. I fear this will simply deter some donors from contributing at all to ballot measures.

In conclusion, I do not think that all the conduct described in the cases 10-14 should be allowed on an ongoing basis. However, the proper way for the Commission to address this issue is through establishing local regulations that clearly define "substantial influence" rather than pursuing enforcement actions on the basis of an unknowably vague standard. I hope to have the opportunity to provide input on such regulations in future. Thank you for your time and attention to this matter.

Best,  
Caleb Smith