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Ana Valencia, Vice Mayor  
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SENT VIA OVERNIGHT DELIVERY

November 7, 2022

Chair Richard Miadich and Commissioners  
Fair Political Practices Commission  
1102 Q Street, Suite 3800  
Sacramento, CA 95811

RE: Government Code Sections 84308 and SB 1439

Dear Chairman Miadich and Commissioners:

I submit this correspondence to address the review by the Fair Political Practices Commission's (FPPC) of issues related to SB 1439, the application of this legislation relating to Government Code 84308 and the potential impacts upon all who serve at the local level if this law is applied retroactively for donations received prior to January 1, 2023, the effect date of SB 1439.

For nearly forty (40) years, Government Code Section 84308 has been on the books and while amended throughout this period of time, the main provisions of this law have remained in place. Those exempt as set forth in Government Code Section 84308 include judicial officers, the legislature, other constitutional officers and **local governmental agencies whose members are directly elected by the voters.** (Emphasis added.) While SB 1439 changes the rules for everyone at the local level, the State Legislature imposes these new and additional rules that they refuse to apply to their campaigns and fund-raising activities. It is important to note the purpose of this letter is not to question the wisdom of enacting this change after 40 years, it is to respectfully request that the FPPC don't create additional havoc by applying the undefined and unclear language of SB 1439 retroactively.

At your next Commission meeting of November 17, 2022, you will be considering the important issue of whether to apply SB 1439 in a retroactive manner, even though this legislation is silent on this matter and in fact does not mandate such application. In reviewing the Opinion offered by the FPPC's General and Commission Counsel dated November 3, 2022 (the Opinion) addressing this question, there are certain practical and legal implications that would be created if the retroactive application of SB 1439 is adopted as recommended by the FPPC Counsel. The Opinion states at page 4 "the amendment would merely impact future events." Candidly, this statement is inaccurate. While the ability of local officials to vote on certain matters applies prospectively, the actual effect upon both candidates and contributors is impacted retroactively on the date in 2022

that the donation was made. I am quite certain that thousands of candidates and donors Statewide would have evaluated their campaign donations differently had the new rules of SB 1439 been known even before the law was adopted by the Legislature and signed into law by the Governor.

In addition to the above statements, respectfully I ask the FPPC to consider the following:

- The three cases cited in the Opinion are completely unrelated to the First Amendment rights impacted and specifically do not address campaign donations and participation in the elective process.
- While the donations made in 2022 were lawfully provided at the time they were made, the ultimate impact, if SB 1439 is applied retroactively, would deny local elected officials', even those who did not hold office prior to the November 2022 election, their opportunity to participate in the decision making process based upon those contributions.
- The Opinion states that SB 1439 did not anticipate a "grace period," yet, a fair approach in applying this law is to commence its application starting with the effective date of the law, January 1, 2023, and to apply it only to donations made after that date. Simply stated, there was no notice to those exercising their rightful First Amendment privileges of the impacts and implications of those donations when they were made during 2022. To apply this legislation retroactively is not something defined or anticipated in the language of SB 1439.
- The Opinion's continual statement relying on the concept of "pay to play" to justify the incorrect application of SB 1439 retroactively quite frankly is an insult to the thousands of elected officials who serve their constituents in a fair, lawful and honest manner. Unfortunately, there are significant examples of elected officials at all levels of government engaging in improper conduct. Federal, State and local elections occur with millions if not billions of dollars contributed, yet SB 1439 does not attempt to address contributions and resulting actions and votes by members of the State Legislature or Congress.
- The Opinion does not examine the strong likelihood of legal challenges that would occur if the FPPC applies SB 1439 retroactively. These legal challenges could include constitutional challenges based upon First Amendment rights being impacted and create infringement of the fundamental rights of participation of elected officials, candidates and donors in the electoral process. In addition, anti-SLAPP or other claims and lawsuits would be expected challenging the retroactive impacts of your decision. It should be noted, the cost to the taxpayers of the State would be significant as these lawsuits would likely occur in many different jurisdictions.

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In closing, a fair and reasonable approach for the FPPC to approve would be to establish that the new rules created by SB 1439 should apply for donations made in the new year. Retroactive application is not only inconsistent with the intent of the law and the plain and reasonable application of the law. Prospective application is the right thing to do for all involved.

Thank you for your time and consideration of the views expressed in this letter.

Very truly yours,

A handwritten signature in black ink that reads "Jennifer Perez". The signature is written in a cursive style with a large, looping initial "J".

Jennifer Perez  
Councilmember, City of Norwalk