



# CALIFORNIA CONTRACT CITIES ASSOCIATION



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November 8, 2022

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

CC: Commissioners Catharine Baker (Vice Chair), E. Dotson Wilson, Dr. José A. Gómez, Ph.D., and Abby Wood

RE: Senate Bill 1439 & Concerns Relating to Retroactive Application

Dear Chairman Miadich and Commission Members,

The California Contract Cities Association (CCCA) writes to express our concerns in regards to applying the rules outlined in Senate Bill 1439 to donations received by elected officials prior to January 1, 2023. We are very worried that retroactive application could create havoc for local elected officials across the State of California.

At the next Fair Political Practices Commission (FPPC) meeting of November 17, 2022, the Commission will be considering whether to apply SB 1439 in a retroactive manner. In reviewing the Opinion offered by the FPPC's General and Commission Counsel dated November 3, 2022 (the Opinion), 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." This statement is inaccurate. While the ability of local officials to vote on certain matters applies prospectively, the actual impact upon both candidates and contributors is retroactive and relative to the date a donation was made in 2022. If these retroactive rules were known before SB 1439 was adopted by the Legislature and signed into law by the Governor, candidates and donors are likely to have evaluated their campaign donations differently.

In addition, CCCA respectfully asks 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 decision making processes.
- 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. To apply this legislation retroactively is not 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 is quite frankly an insult to the thousands of local elected officials who serve their constituents in a fair, lawful and honest manner.
- 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, anti-SLAPP or other claims and lawsuits. 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.

CCCA represents over 80 cities throughout Southern California. For more than 64 years, CCCA’s mission has been to advance the benefits of the contracting model and strengthen local control. With collaborative governance as a focal point, CCCA has advanced its mission through education, advocacy, networking, and access to protect and enhance the quality of life for more than 7.5 million residents. As a matter of policy, our organization supports and defends the rights of cities on policy issues pertinent to them. For that reason, we felt it was of great importance to share our concerns regarding the retroactive implementation of SB 1439. As an organization, we urge the FPPC to consider a fair and reasonable approach to applying SB 1439, clarifying that its new rules do not apply retroactively, and instead apply to donations made in the new year.

Thank you for your time and consideration of our position.

Yours in service,

A handwritten signature in black ink, appearing to read 'M. Rodarte', written in a cursive style.

Marcel Rodarte, Executive Director