

Attorney General Rob Bonta  
California Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

Honorable Brooke Jenkins  
San Francisco District Attorney's Office  
350 Rhode Island St.  
North Building, Suite 400N  
San Francisco, CA 94103

**RE: Request for Criminal Investigation into Mark Farrell's Campaign for Mayor**

Dear Attorney General Bonta and District Attorney Jenkins:

We write in regard to a remarkable situation wherein Mark Farrell appears to be willfully violating election law. Pursuant to [California Government Code Section 91000](#) and/or [Section 1.170](#) of the San Francisco Campaign and Governmental Conduct Code, the alleged criminal conduct should be investigated by either the California Attorney General or San Francisco District Attorney.

**I. Mr. Farrell has funneled hundreds of thousands of dollars into a ballot measure to pay for expenses incurred exclusively by his campaign for mayor.**

Candidate campaigns are limited to a \$500 per person contribution limit in San Francisco. Ballot measures, however, can receive unlimited contributions. In a scheme initially uncovered by [the San Francisco Chronicle](#),<sup>1</sup> Mark Farrell appears to be laundering significant sums of money through an unrestricted ballot measure committee to cover costs incurred by his campaign for mayor to circumvent the \$500 per person limit on contributions.

The Chronicle quoted Mr. Farrell's campaign claiming; "the pooled payments included costs for canvassers who were trained by Farrell's mayoral campaign staff to educate voters about the ballot measure. Canvassers also used Farrell's office space." However, the San Francisco Chronicle reported in [a subsequent article](#) that Mr. Farrell's campaign office **had no presence and no staff on site for Proposition D.**<sup>2</sup> The Chronicle concluded that the "shared" payments for rent and payroll appeared to be intended to cover expenses incurred exclusively by his campaign for mayor to circumvent the \$500 contribution limit. They found his ballot measure committee had subsidized 40% of his payroll and about half of the rent for his mayoral campaign committee under the guise of "shared" expenses. Curiously, through September 26th, campaign

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<sup>1</sup> See Exhibit A.

<sup>2</sup> See Exhibit B.

finance disclosures reveal no literature has been printed by the Proposition D campaign committee.<sup>3</sup> Since they have not printed literature to canvas for Proposition D, this suggests Proposition D money is subsidizing costs for staff working exclusively on Mark Farrell’s campaign for mayor.

## **II. Farrell’s Campaign Is Spending Significant Sums of Proposition D Dollars on Advertising Intended to Support His Campaign for Mayor.**

While candidates can use ballot measure committees to pay for advertisements that have the effect of increasing their visibility with voters, those advertisements actually have to be about the ballot measure—not the candidate’s qualifications for office or public policy issues that have nothing to do with the underlying measure.<sup>4</sup> [California Government Code § 82025](#) holds that ads by a candidate for office for an ostensibly unrelated measure like Proposition D, must “not take a position on the character, qualifications, or fitness for office of a candidate or officeholder.”

[According to Mission Local](#), Mark Farrell’s Proposition D campaign is spending hundreds of thousands of dollars on advertisements that violate the law.<sup>5</sup> A mailer paid for by Proposition D features Mr. Farrell urging a yes vote on the measure on one side, while the other side has a statement attributed to him that is completely unrelated to Proposition D: “As interim mayor, I targeted drug dealing and cleared all large tent encampments in just six months. But since then, our leaders have failed us.” Proposition D is not mentioned. Digital advertisements paid for by Mr. Farrell’s Proposition D committee have taken a similar tact.

## **III. Mark Farrell Claims The Scheme Is Vetted and Approved by Counsel, But The Advice He Has Received Does Not Authorize His Conduct & His Attorney is Unlicensed In California and May Therefore Be Engaging in the Unauthorized Practice of Law.**

When confronted about this scheme, Mr. Farrell has repeatedly said that the activities outlined above were vetted and approved by his attorney. As proof, he has cited and circulated a legal memorandum drafted by his attorney.<sup>6</sup> The memo, however, does not purport to authorize the conduct that Mr. Farrell or his campaign have engaged in. Rather, it articulates the precise reasons why Mr. Farrell’s conduct is clearly in violation of state and local laws. For example, while the memo states, “*each committee’s funds and purposes remain segregated and accounted for—and no committee subsidizes the activity of the other,*” the Chronicle reporter proved that Proposition D had no presence and no staff at the office it was paying for. As noted above, to this day the Proposition D ballot committee continues to “share” costs for Mark Farrell campaign staff, yet Proposition D 460 forms indicate it still has not printed any door hangers. If staff is

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<sup>3</sup> See *Proposition D 460 Campaign Finance Forms* available at [www.sfethics.org](http://www.sfethics.org).

<sup>4</sup> Eskenazi, J. (2024, September 13). *Mark Farrell ads violate campaign law, opponents say*. Mission Local. <https://missionlocal.org/2024/09/mark-farrell-ads-violate-campaign-law-opponents-say/>

<sup>5</sup> See *Exhibit C*.

<sup>6</sup> See *Exhibit D*.

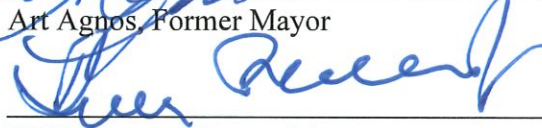
being paid in part by Proposition D but has no literature with which to canvas, it would appear Mark Farrell's campaign for mayor continues to be subsidized by Proposition D.

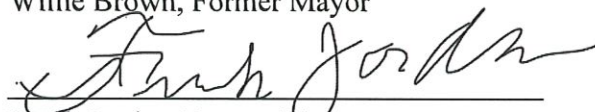
Finally, the memo cited and circulated by Mr. Farrell was drafted by Herrera Arellano LLP. That firm is led by Roy Herrera and Daniel Arellano, Arizona attorneys who are not licensed to practice law in California. [CA Business & Professions Code § 6125](#) states that, "No person shall practice law in California unless the person is an active licensee of the State Bar." [BPC § 6126](#) holds that "anyone advertising or holding themselves out as entitled to practice law who is not an active member of the State Bar, or authorized by the court at the time is guilty of a crime." Merely giving legal advice can constitute the unauthorized practice of law.<sup>7</sup> Separately, if Mr. Farrell's campaign is relying on Mr. Farrell's advice, this, too, may constitute the unauthorized practice of law. Mr. Farrell is also [ineligible to practice](#) following his failure to complete Mandatory Continuing Legal Education (MCLE) courses, a large portion of which are required ethics courses.<sup>8</sup>

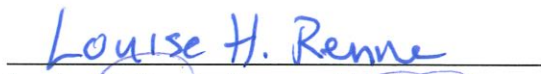
In conclusion, we urge you to investigate and take action now before the election. A prima facie case against Mr. Farrell can be established based on publicly available records alone. If you fail to act promptly Mark Farrell will have exploited inaction by ethics officials and law enforcement authorities alike to unlawfully funnel hundreds of thousands of dollars into his campaign for mayor and perhaps prevail as a result.

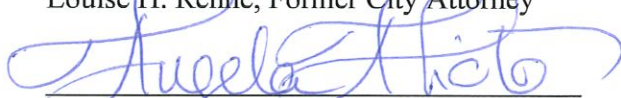
Thank you for your time and consideration. Sincerely,

  
Art Agnos, Former Mayor

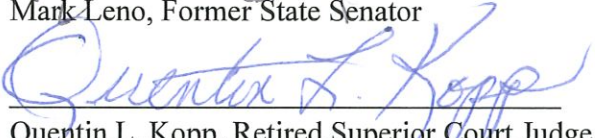
  
Willie Brown, Former Mayor

  
Frank Jordan, Former Mayor

  
Louise H. Renne, Former City Attorney

  
Angela Alioto, Former Supervisor

  
Mark Leno, Former State Senator

  
Quentin L. Kopp, Retired Superior Court Judge  
and Former Ethics Commissioner

  
John Keker, Founding Partner Keker, Van Nest  
& Peters LLP

  
Randy Knox, Criminal Defense Attorney

<sup>7</sup> *The State Bar of California*. (n.d.). <https://www.calbar.ca.gov/Public/Free-Legal-Information/Unauthorized-Practice-of-Law>

<sup>8</sup> California, S. B. O. (n.d.). *Mark E Farrell # 215616 - Attorney Licensee search*. © 2018 the State Bar of California. <https://apps.calbar.ca.gov/attorney/Licensee/Detail/215616>

CC: Fair Political Practices Commission  
San Francisco Ethics Commission  
San Francisco City Attorney  
State Bar of California  
State Bar of Arizona

**EXHIBIT A**

JUST IN

24m ago

## Cruise fined \$1.5 million for not fully reporting S.F. pedestrian crash

BAY AREA // SAN FRANCISCO

# S.F. mayoral candidate Mark Farrell's fundraising for a ballot measure draws scrutiny

By **J.D. Morris**, City Hall Reporter

June 21, 2024



A recent disclosure in public records that San Francisco mayoral candidate Mark Farrell's campaign committee and his ballot measure committee are pooling money to share some staffing costs and other expenses is drawing criticism from his

opponents.

Lea Suzuki/The Chronicle

When [San Francisco mayoral hopeful Mark Farrell](#) created a candidate-controlled committee to support a proposed ballot measure to reform City Hall, the move was fairly run-of-the-mill. Such political action committees can boost a candidate's name recognition and help them reach voters.

But a recent disclosure in public records that Farrell's campaign committee and his ballot measure committee are pooling money to share some staffing costs and other expenses is drawing criticism from his opponents. That's because individual contributions to candidates are capped at \$500, but donors can give unlimited amounts to PACs like the one that Farrell set up.

- **Read also:** [Key S.F. union backs Mark Farrell for mayor after supporting London Breed in 2018](#)
- **Opinion:** [Mark Farrell says you can trust his campaign finances. A surprise trip to his office left me wondering](#)

While it's common for San Francisco elected officials to set up committees in support of ballot measures, sharing some costs with their campaign appears to be a more unusual arrangement.

The measure in question is being [promoted](#) by the moderate advocacy group TogetherSF Action, which [previously faced scrutiny over its close ties to Farrell's campaign](#). If the group gathers enough signatures to make the November ballot, the proposal would ask voters to halve the number of city oversight commissions in a bid to trim red tape and make San Francisco's bureaucracy function more smoothly. The measure would also cap commissions at 65, while giving the mayor more power to appoint or remove commissioners and hire or fire department heads.

Farrell, a moderate former supervisor and interim mayor who is one of the four leading challengers to Mayor London Breed's reelection bid, has so far raised nearly \$400,000 in support of the TogetherSF Action measure. The committee has reported spending about \$82,600 — much of which was categorized as shared expenses with Farrell's campaign for mayor.

- **Read also:** As an S.F. supervisor, Mark Farrell wanted to fund a pet cause. He repeatedly turned to companies with business at City Hall

This month, the committee received \$45,000 from Oberndorf Enterprises LLC, which is affiliated with William Oberndorf, a conservative billionaire who has spent heavily to influence San Francisco politics in recent years. Oberndorf is a backer of Neighbors for a Better San Francisco, the top donor to the 2022 campaign that recalled progressive District Attorney Chesa Boudin.

At the same time, Farrell's ballot measure committee reported spending more than \$57,000 on shared expenses with the Farrell mayoral campaign, with the money mostly going to payroll but also funding office space, a contractor and insurance. Farrell's mayoral campaign has not yet had to report its fundraising or spending for the same time period.

Farrell's campaign said donations to the ballot measure committee will not directly fund his bid to unseat Breed. The pooled payments included costs for canvassers who were trained by Farrell's mayoral campaign staff to educate voters about the ballot measure, the campaign said. Canvassers also used Farrell's office space.

"We need bold reforms to our commissions and governance systems because it is holding us back from making the progress our residents, businesses, and visitors deserve and expect to see," Farrell said in a statement.



Politicians cannot use ballot measure committees to skirt legal restrictions on individual contributions to their campaigns, said Brian Hildreth, a Sacramento campaign finance lawyer, who stressed he did not have enough information to comment on Farrell's committee. "The legal rule is, a candidate is not allowed to open a ballot measure committee and use that as a slush fund to support their election to office," Hildreth said.

Some of Farrell's rivals in the mayor's race think that's exactly what is happening — that money from the PAC will directly support the candidate's mayoral campaign.

Joe Arellano, a spokesperson for Breed's reelection campaign, noted that in 2016, Farrell paid \$25,000 to settle allegations that he had illegally coordinated with a political action committee while running for the Board of Supervisors in 2010. While Farrell did not know about the misconduct, he took "ultimate responsibility" anyway, according to the settlement.

Arellano said Farrell "apparently didn't learn his lesson." In a statement, he said, "Fast forward to 2024 and he's using a loophole to skirt campaign finance limits and receive endless amounts of cash for his campaign."

Jim Stearns, a political consultant for Board of Supervisors President Aaron Peskin's mayoral campaign, called the shared expenses "outrageous," saying, "I would just say that, when a candidate who's been busted for ethics violations starts playing fast and loose with campaign finance laws again, watch out."

Farrell said Peskin has underscored the urgency of passing the TogetherSF Action measure by introducing a rival proposal that he is trying to put on the November ballot. Peskin's proposal calls for establishing a task force to recommend ways to cull the number of city commissions, but it wouldn't cap the number of commissions. Farrell called it an "ineffective, poison-pill counter measure."

"Voters need to be informed about the initiative that will deliver real reforms, so that they aren't fooled by Peskin's petty political ploy, and choose the better policy for our City," Farrell said in his statement.

Stearns compared the TogetherSF Action proposal to "a blank check that you give and hope that somebody does the right thing." "Aaron's measure keeps voters in control of their government," he said.

*Reach J.D. Morris: [jd.morris@sfchronicle.com](mailto:jd.morris@sfchronicle.com); Twitter: @thejdmorris*

June 21, 2024



**J.D. Morris**

CITY HALL REPORTER



J.D. Morris covers San Francisco City Hall, focused on Mayor London Breed. He joined the Chronicle in 2018 to cover energy and spent three years writing mostly about PG&E and California wildfires.

Before coming to The Chronicle, he reported on local government for the Santa Rosa Press Democrat, where he was among the journalists awarded a Pulitzer Prize for their coverage of the 2017 North Bay wildfires.

He was previously the casino industry reporter for the Las Vegas Sun. Raised in Monterey County and Bakersfield, he has a bachelor's degree in rhetoric from UC Berkeley.

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## Top Of The News

**EXHIBIT B**

OPINION // EMILY HOEVEN

# Mark Farrell says you can trust his campaign finances. A surprise trip to his office left me wondering

By **Emily Hoeven**, Columnist

Aug 16, 2024



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Account



Mark Farrell's mayoral campaign is sharing expenses with a ballot measure committee that he established to support Proposition D, an unusual move that opens up a murky legal area that's ripe for exploitation and abuse.

Camille Cohen/Special to the Chronicle

San Francisco mayoral candidate Mark Farrell has scooped up some of the city's most coveted endorsements — including [that of the influential firefighters' union Thursday](#) — by vowing to restore order and safety to the streets and purge City Hall of its [corrupting layers of inefficient bureaucracy](#).

But it's becoming increasingly clear that for all his talk of law and order, Farrell and his campaign are quite comfortable with aggressively pushing legal limits of their own.

- **Millions of dollars are being poured into S.F. mayoral race.** [We're tracking where it's coming from](#)

As [the Chronicle reported in June](#), Farrell's mayoral campaign has taken the unusual step of sharing expenses with a ballot measure committee that Farrell established to support Proposition D, an initiative to [cut the city's unwieldy thicket of commissions](#). It's common for candidates to set up ballot measure committees to increase their visibility with voters. But sharing expenses between a candidate committee and a ballot measure committee opens up a murky legal area that's ripe for exploitation and abuse.

- **Mayoral debate:** On Sept. 19, the Chronicle and KQED are hosting an S.F. mayoral debate with the leading candidates. Click [here to register](#) for the livestream.

What debate question do you have for the S.F. mayoral candidates? \*

Write-in

\* indicates required field

1 / 3

While donors can give a maximum of \$500 to a candidate's campaign, they can make unlimited contributions to ballot measure committees. By pooling the two pots of funds, Farrell has invited accusations from his political opponents that he's laundering money — effectively using the ballot measure committee to circumvent contribution limits and funnel money into his mayoral campaign, which would be illegal.

"Everything we do is vetted, approved, and signed off by legal counsel," Farrell said in a statement. "My opponents are working overtime to drag us in the mud because they are trying to distract voters from their failed leadership and inability to deliver real change for our city."

Campaign finance is complicated, with a lot of legal gray areas, and accusations of money laundering certainly sound like the kind of hyperbolic reputational slander typical of San Francisco politics. But after doing some digging of my own into Farrell's campaign finances, I found even more evidence of activity that doesn't quite pass the sniff test.

Campaign filings show that in June, real estate magnate Thomas Coates and his wife, Linda, each donated \$250,000 to Farrell's ballot measure campaign. These donations came within 10 days of Neighbors for a Better San Francisco Advocacy —

a powerful moderate group that's become one of the biggest spenders in local elections — refunding Coates \$500,000 he'd contributed months prior.

Why did this catch my eye?

Well, Coates was one of just two donors to an independent expenditure committee that the San Francisco Ethics Commission accused of illegally coordinating with Farrell's 2010 supervisorial campaign. In 2016, Farrell agreed to pay a record \$25,000 fine — negotiated down from \$191,000 — to settle the allegations. Farrell was cleared of any personal wrongdoing and claimed he was unaware of the misconduct, although the settlement said he took "ultimate responsibility."

Filings show that Neighbors refunded Coates shortly before announcing it would not create an independent expenditure committee to back a mayoral candidate — likely to avoid accusations of improper coordination with Farrell's campaign. As the Chronicle reported in April, Neighbors leader Jay Cheng helped connect a potential job applicant to Farrell's campaign and promised another political player he'd hold open a lucrative consulting position. Neighbors has endorsed Farrell and nonprofit executive Daniel Lurie as their top choices for mayor.

In an email, Coates told me that Prop D is necessary to create "a city government that is more accountable and efficient for everyone" and that "I believe and trust in Mark Farrell's leadership."

But if Coates was primarily concerned about passing Prop D, he could have kept his money with Neighbors, which has heavily contributed to a separate committee backing the measure.

The refund suggests that Coates may have preferred for his money to go into a Neighbors-backed independent expenditure committee supporting Farrell's

mayoral bid — and that when that didn't come to pass, he instead redirected it to Farrell's ballot measure committee.

Again, if Farrell were using money from his ballot measure committee to subsidize his campaign for mayor, that would be illegal — and could result in a hefty fine from the San Francisco Ethics Commission of as much as three times the amount of funds proven to be mishandled. Farrell's campaign adamantly denies this is happening and insists that the unique financial setup — in which Farrell's ballot measure committee reimburses the mayoral committee for the value of resources used, such as staff time or office space — is legal and helps streamline administrative costs.

But Sean McMorris, a campaign finance law expert and Common Cause's transparency, ethics and accountability program manager, told me the structure "raises a lot of red flags" and "makes it harder for the public ... to trust that they are using the money the proper way." Former San Francisco ethics commissioner and San Mateo County Superior Court judge Quentin Kopp filed a June complaint about Farrell's cost-sharing practices with the city's ethics commission, which told me it is legally prohibited from commenting on complaints or potential investigations.

Indeed, the breakdown of shared costs is suspicious.

Campaign filings reveal that, as of June 30, Farrell's ballot measure committee had reimbursed his mayoral campaign for about 40% of more than \$143,000 in payroll expenses. There aren't more recent campaign filings for Farrell's mayoral committee, but the ballot measure committee reported reimbursing the mayoral campaign about another \$39,000 in payroll expenses from July 1-15. The ballot measure committee also appears to be paying about half of the \$7,500 monthly rent for Farrell's West Portal campaign headquarters.



These figures suggest that Farrell's campaign staffers have been spending a significant amount of their time working on the Prop D campaign — which is difficult to believe given the intensity and cost of the mayor's race, already the most expensive in San Francisco history.

They also imply that the ballot measure committee is using a decent amount of space at Farrell's campaign headquarters.

So, on Wednesday, I paid his office a surprise visit.

The windows of the low-slung building at the corner of West Portal and 14th avenues were plastered in red "Mark Farrell for Mayor" posters. There were no signs mentioning Prop D or a commission-related ballot measure.

When I knocked on the door, Farrell's mayoral campaign manager, Jade Tu, answered. I introduced myself and asked if she had any Prop D ballot measure campaign literature or material that she could share with me.

"What ballot measure?" Tu asked.

I explained that Prop D was the commission-cutting initiative Farrell had formed a committee to support. Tu said there wasn't any ballot measure-related material at the office and it may be "stored elsewhere." When I asked if the office was used primarily for Farrell's mayoral campaign, she said, "Pretty much."

I expressed surprise that there weren't any materials relating to Prop D in the office because Farrell's committee supporting the measure was paying a big chunk of the rent. Tu said she was in the middle of a meeting and would connect me with the campaign's press office.

## About Opinion

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Guest opinions in **Open Forum and Insight** are produced by writers with expertise, personal experience or original insights on a subject of interest to our readers. **Their views do not necessarily reflect** the opinion of The Chronicle editorial board, which is committed to providing a diversity of ideas to our readership.

*[Read more about our transparency and ethics policies](#)*

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A campaign spokesperson said that given that propositions had just been assigned letters this week, the ballot measure committee was in the process of printing updated materials. If I returned next week, the spokesperson continued, there would be Prop D signs and literature available.

I'm sure there will be.

*Reach Emily Hoeven: [emily.hoeven@sfnchronicle.com](mailto:emily.hoeven@sfnchronicle.com); Twitter: [@emily\\_hoeven](https://twitter.com/emily_hoeven)*

Aug 16, 2024



**Emily Hoeven**

COLUMNIST



Emily Hoeven is an Opinion columnist and editorial writer at the Chronicle. In 2024, she won the Sacramento Press Club's award for best commentary, placed second in the California News Publishers Association's contest for best editorial comment and placed third in the Best of the West contest for general interest column writing.

She wrote CalMatters' daily WhatMatters newsletter on California politics and policy from March 2020 to January 2023 and makes frequent appearances on TV, radio, podcasts and panels. Emily has reported across the West, from California to Utah to Montana, and got her start writing opinion columns for the Mercury News and the Daily Pennsylvanian. A Fremont native, Emily graduated from the University of Pennsylvania with a degree in English and French and taught English for a year in France.

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**Top Of The News**

**EXHIBIT C**

ELECTION COVERAGE

# Mark Farrell ads violate campaign law, opponents say



by **JOE ESKENAZI**  
SEPTEMBER 13, 2024, 5:30 AM



**“As interim mayor, I targeted drug dealing and cleared all large tent encampments in just six months.**

But since then, our leaders have failed us.”  
– **Democrat Mark Farrell**

'Judges aren't stupid,' says Daniel Lurie's campaign attorney, Jim Sutton, regarding this Mark Farrell ad. 'Any judge will see this is a not-that-thinly veiled attempt to use over-the-limit corporate contributions to promote his mayoral candidacy.'

Photo by Xueer Lu. September 13, 2024.

Attorneys for three mayoral opponents say that candidate Mark Farrell has unambiguously violated campaign laws with his latest mailer, which ostensibly urges voters to support a charter reform measure, Proposition D, but prominently features Farrell touting unrelated accomplishments as mayor and accusing his successor of failure.

One side of the eight-by-11-inch placard, which was mailed to voters' homes last week, features a smiling Farrell with his top button undone, urging a yes vote on the TogetherSF ballot measure. The mailer was paid for by Farrell's candidate-controlled committee backing the measure: Mayor Mark Farrell for Yes on Prop. D.



One side of the Mark Farrell ad. Photo by Xueer Lu. September 13, 2024.

On the flipside, however, is a wholly different ad: A stern Farrell in a full suit and tie gazes at the viewer alongside the text: "As interim mayor, I targeted drug dealing and cleared all large tent encampments in just six months. But since then, our leaders have failed us."

This statement is attributed to “Democrat Mark Farrell.” Farrell is superimposed in front of City Hall and Prop. D is not mentioned.

Prop. D would reduce city commissions from perhaps 130 to 65 and give the mayor more appointment power to remaining bodies; it is unstated how Farrell’s focus on drug-dealing and tents while interim mayor in 2018 are relevant to Prop. D.

Following last week’s mailer, Farrell’s Prop. D campaign released a very similar video ad.

On Tuesday morning, *Mission Local* submitted these detailed, written questions. Farrell offered the following response on Thursday evening:

“Every paid communication we share with voters is vetted and approved by counsel. We follow all laws — period.”

The attorneys advising his opponents’ campaigns, however, would beg to differ.

“It is perfectly legal for candidates to control ballot measures committees and take positions on ballot measures. That happens all the time,” says Jim Sutton, the campaign attorney for Daniel Lurie’s mayoral campaign. “But the communications have to actually be about the ballot measure. Not their qualifications for office and not a public policy issue — drug-dealing and tent encampments — which have nothing to do with the underlying measure.”

This sentiment was echoed by Tom Willis, the campaign attorney for Mayor London Breed: “If it had been a mailer about Prop. D completely, and didn’t have the stuff about his qualifications for office, that’d be okay. But that’s obviously not what it’s about. It talks about being interim mayor, being a Democrat, all those things. It replicates his campaign messaging.”

While the mail piece makes no attempt to connect Farrell’s purported achievements as interim mayor to Prop. D, the video ad does. Its voice-over states Farrell’s claims of targeting drug-dealing and removing tent encampments while interim mayor; states that his successor has failed, and then pivots to: “That’s why Mark is now supporting Prop. D to eliminate bureaucracy and unnecessary commissions.”

Bureaucracy and unnecessary commissions, however, would not constrain a mayor from targeting dealers or encampments — and, by Farrell’s own recollection, did not prevent him from doing so when he was mayor. This language was not sufficient, in Sutton’s opinion, to render the video ad compliant with the law.

“Judges aren’t stupid,” Sutton says. “Any judge will see this is a not-that-thinly veiled attempt to use over-the-limit corporate contributions to promote his mayoral candidacy.”

Whether this matter ever finds its way before a judge, however, remains to be seen. None of the rival campaigns would discuss whether or if a complaint had been filed with the Ethics Commission or California Fair Political Practices Commission. Neither Ethics nor the FPPC can comment on active complaints nor can either offer extemporaneous legal advice regarding campaign ads.

Barring unusual circumstances, any complaint leveled in the present or near future will not be addressed before November’s election. Ethics Commission enforcement actions often come years after the violations. Assessed fines can reach five digits, but these sums are a mere cost of doing business for the city’s major donors.

## **A fundraising juggernaut**

A candidate for office tossing a measure on the ballot and using it as a publicity generator not only happens all the time; it’s happening multiple times on November’s ballot. Breed put Prop. O (supporting reproductive rights) on the ballot, and Board of Supervisors President Aaron Peskin did so with Prop. C (establishment of an inspector general). These can highlight subjects a candidate would want to talk about: Reproductive rights, in Breed’s case; cracking down on municipal corruption in Peskin’s.

They can also serve as indirect fundraising vehicles. San Francisco campaign laws cap individual contributions to a candidate at \$500. But donors can contribute unlimited funds to a ballot measure committee — and they have. Thus far, Farrell’s Prop. D committee has brought in \$2,117,028; the listed top donors on the mailer are real estate investor Tom Coates with \$250,000; Coates’ wife, Linda, with \$250,000 and billionaire hotelier John Pritzker with \$200,000.

Other donors to the committee include Michael Moritz, venture capitalist and lead investor of TogetherSF, with \$500,000, and William Oberndorf, a Republican mega-donor, with \$195,000.

By sending out what they characterized as an overt mayoral campaign ad under the aegis of his Prop. D campaign, Farrell’s opponents accuse him of making a mockery of the \$500 contribution limit.

They pointed, specifically, to California Government Code 82025, which holds that ads by a candidate for office for an ostensibly unrelated measure like Prop. D must “not take a position on the character, qualifications, or fitness for office of a candidate or officeholder ...”

The text and voice-overs for the recent Farrell ads both tout his qualifications and question those of his unnamed successor, Breed.

This, says Amber Maltbie, the campaign attorney for the Peskin campaign, runs afoul of Fair Political Practices Commission **Regulation 18521.5**. That's "because it is biographical about Farrell, and not about the ballot measure." Willis notes that, under **FPPC regulation 18215**, all or part of the cost of this citywide mailer should be treated as if it was a donation to Farrell's mayoral campaign many times greater than the \$500 limit.

"The city could and, in my opinion, should investigate, penalize and maybe even enjoin this conduct before the election," Willis says. "This would restore some integrity to the campaign."

## **Commingled funds**

Farrell's commingling of funds for his campaign promoting Prop. D and his own mayoral bid have drawn prior scrutiny. Campaign filings report that, between June 1 and July 15, \$116,292 from the ballot campaign has been used to pay for workers on the mayoral campaign, as well as \$11,650 more for shared office and insurance expenses — leading to accusations that Farrell is using the uncapped donations flowing into his Prop. D committee as a **stalking horse to subsidize his mayoral run**.

This charge got legs when *Chronicle* columnist Emily Hoeven last month visited the supposed joint headquarters of Farrell's Prop. D committee and the Farrell mayoral campaign. She found, however, nary a hint of Prop. D material. When asked if there was any ballot measure material on site, Farrell's mayoral campaign manager, Jade Tu, purportedly **responded, "What ballot measure?"**

Within **the incorporating document** of the Farrell committee pushing Prop. D, the principal officer is listed as Jade Tu.

*Additional reporting by Kelly Waldron.*



**EXHIBIT D**

## MEMORANDUM

DATE: July, 2024  
TO: Interested Parties  
FROM: Herrera Arellano LLP  
RE: Cost Sharing Expenses with Ballot Measure Committee

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### I. Introduction

The Mark Farrell for Mayor 2024 committee and Mayor Mark Farrell for the Cut the Dysfunctional Bureaucracy Initiative committee have agreed to share costs for various campaign-related expenses. To prevent any improper contributions and to provide for an accurate accounting of each committee's financial information, if one committee initially pays for the cost of an initial expense the other committee subsequently reimburses the paying committee.

As detailed below, such reimbursement is not only legally sound but required under state and local law to prevent each committee from subsidizing the activities of the other.

### II. Relevant Law

A contribution is “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment” and includes “the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee” and “[t]he transfer of anything of value received by a committee from another committee . . . .” Cal. Gov. Code § 82015(a), (b)(1)–(2). Each committee's campaign statement, reflecting its financial activity for a given reporting period, must include “[t]he date and amount received for each contribution received during the period covered by the campaign statement and whether the contribution was made in the form of a monetary contribution, in-kind contribution of goods or services, or a loan.” § 84211(f)(5).

Critically, such payments and transfers are categorically *not* considered contributions if “full and adequate consideration” is paid by the receiving committee. § 82015(a), (b)(1)–(2). Full and adequate consideration is synonymous with “fair market value,” which is “estimated fair market value of goods, services, facilities or anything of value other than money.” § 82025.5; *see also* Cal. Fair Pol. Pracs. Comm’n, Campaign Disclosure Manual 3: Ballot Measure Committees, at 30 (June 2024) (proving as an example that if a political committee held a joint fundraiser with a nonprofit organization, “any costs incurred by the nonprofit organization that are not reimbursed by the political committee would be considered a nonmonetary contribution from the nonprofit to the political committee.”).

San Francisco makes clear, however, that “funds in a candidate committee’s campaign account may be used only on behalf of the candidacy for the office specified in the candidate’s declaration of intention.” S.F., Cal., Campaign & Gov. Conduct Code § 1.122(b)(1). The Campaign and Government Code further mandates that “[c]ontributions solicited or accepted under this Section for one candidate shall not be expended for the candidacy of any other candidate for local, state or federal office, [or] in support of or opposition to any measure . . . .” *Id.* (emphasis added).

### **III. The Mark Farrell Candidate Committee and Ballot Measure Committee.**

Mark Farrell has established both 1) a candidate committee in support of his election as Mayor of San Francisco and 2) a candidate-controlled committee to support the Cut the Dysfunctional Bureaucracy Initiative. Each committee serves distinct functions, and resources from one are not used to further the purposes of the other.

For efficiency, however, both committees share staff, office space, and other resources that are common among political campaigns. Staff time, in particular, is tracked and accounted for regarding how much each staffer’s time is devoted to the candidate committee compared to the ballot measure committee. Also for efficiency’s sake, rather than each setting up separate payroll systems, vendor payment systems, separate agreements with landlords, etc., the candidate committee makes the initial payments for these expenses and the ballot measure committee reimburses the candidate committee for the overall value of the staff time, rent, office supplies, and other benefits received.

Such reimbursement is not just an advisable best practice, but legally required. Such staff time, rent, and other benefits could legally be “contributions” from the candidate committee to the ballot measure committee, albeit in-kind and non-monetary ones. But because the ballot measure committee provides full and adequate consideration for these resources, *i.e.* payments reflecting the fair market value of goods, services, facilities or anything of value other than money that the ballot

measure committee receives, such resources are categorically not contributions from the ballot measure committee to the candidate committee. Each committee's funds and purposes remain segregated and accounted for—and *no committee subsidizes the activity of the other*. Further, such activity between the committees will be publicly disclosed on any required Form 460 campaign statements.

And it is worth repeating: San Francisco generally prohibits candidates from using campaign funds to support the election or defeat of other candidates or ballot measures. If the ballot measure committee did not reimburse the cost of shared expenses—as it has been doing, is doing, and will continue to do—the candidate committee would be impermissibly expending contributions it has received for something other than Mark Farrell's election.

#### **IV. Conclusion**

Abiding by all state and local campaign finance laws has been a priority for Mark Farrell and his political committees. To that end, each committee properly reimburses the other for any benefits it receives. Such reimbursements are not just advisable to keep finances separate and clear for the public in disclosure reports but are required under law.