

**TO:** BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES  
**FROM:** Vice-Chair Tom Pavel  
**SUBJECT:** Proposal for 2025 SJMC Revision  
**DATE:** Aug 8, 2024

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## Preface

At the last board meeting, our collective sentiment was to try to move along our proposal for additional disclosures to mitigate against campaign dark-money and work towards delivering it to the Rules Committee in the near future. Towards that end, I thought it useful to draft a more self-contained memo with additional background on our reasoning. I expect that we will still iterate this draft over the next meeting or two, and therefore welcome any suggestions and input.

## Background

Nationally, the problem of anonymous donations to political campaigns through nonprofit organizations (known as "dark-money" contributions) has grown significantly over the past decade or more. As a result of the *Citizens United v. FEC* decision in 2010, unlimited amounts of cash can flow from special interests into elections via nonprofits, potentially swaying election outcomes without much public scrutiny. This lack of transparency can undermine public trust in elections and raise concerns about undue influence by wealthy individuals or groups.

The natural approach to address such concerns would be to force disclosure of the ultimate sources of campaign donations, or at least of the largest contributors. However, subsequent court decisions, such as *AFP v Bonta* in 2021, have limited the ability of state and local governments to legislate such disclosures, for example by requiring the nonprofits involved to file as campaign committees.

Although the greatest share of such "dark-money" campaign spending applies to races for federal offices, there have been an increasing number of examples at the local level where transparency about the sources of funding or the relationships between funders and candidates might have been helpful to voters in weighing the merits of certain races or issues. Here are a few examples to help illustrate the range and complexity of issues involved:

## (1) 2024 16th Congressional District recount

Although this case was an election for a federal office, similar issues might easily arise in a local election. In this year's 16th Congressional district primary, a rare tie occurred in the initial results, leading to a three-way race for the November run-off. Ultimately, a recount not requested by any of the candidates was financed by a PAC with potential ties to Sam Liccardo.<sup>1</sup> This resulted in Evan Low beating out Joe Simitian for second place and eliminating Simitian from the November race. It's unclear whether this result actually benefits or hurts Liccardo's prospects in the November election, but the seeming obfuscation of the recount financing certainly fuels voter cynicism. Since the time of the recount, the "Count the Vote" PAC has reported its donors in its July FEC quarterly filing,<sup>2</sup> but the 3-month delay served to obscure this information from the bulk of discussion and news reports. Of course, had this been a local election, the State FPPC deadlines would have forced a more prompt disclosure of the donors.

## (2) Stand up for Santa Clara and City of Santa Clara campaign disclosure rules

In recent years, the City of Santa Clara has tightened disclosure rules on Independent Expenditure Committees (IECs), partly due to public concerns about influence from the San Francisco 49ers team. A recent example, however, highlights how even the disclosure of funding isn't necessarily sufficient to inform voters about the relationships to candidates.<sup>3</sup>

In this case, a complaint was filed with the State FPPC in 2023 alleging that a 501(c)(3) nonprofit, Stand up for Santa Clara, paid for Facebook ads without filing campaign spending disclosures or without officially forming an IEC.<sup>4</sup> The ads were advocating on issues that aligned with the Santa Clara mayor, but the relationship between the mayor and the nonprofit remains a subject of dispute. If there were any coordination between the mayor and the nonprofit, this would seemingly be a violation of campaign financing disclosure. However, it is also plausible that the nonprofit represents an independent voice that happened to be aligned with the mayor's views (although, as a separate issue, it remains unclear if the Facebook ads constituted campaign-related expenditures). The publicly available information has not given the press sufficient facts to inform the electorate one way or the other. Requiring public disclosure of any relationship between a nonprofit or related IEC and any candidate or their campaign organization would potentially be helpful in similar future cases.

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<sup>1</sup> <https://sanjosespotlight.com/silicon-valley-rep-eshoo-demands-transparency-in-recount/>

<sup>2</sup> <https://www.kqed.org/news/11995771/heres-who-funded-the-controversial-recount-for-congress-in-silicon-valley>

<sup>3</sup> <https://sanjosespotlight.com/santa-clara-mayor-accused-of-ties-to-dark-money-group/>

<sup>4</sup> <https://www.mercurynews.com/2023/09/18/santa-clara-councilmembers-file-ethics-complaint-against-group-they-say-has-ties-to-mayor-lisa-gillmor/>

### (3) Common Good Silicon Valley in the 2022 San Jose election

In 2022, Mayor Sam Liccardo had termed out of office and was not directly involved in any San Jose races. However, he formed an Independent Expenditure Committee (IEC) to support certain candidates and solicited donations to the IEC from individuals and companies that did business with the city.<sup>5</sup> This was properly disclosed and covered in the press at the time.<sup>6</sup>

However, this IEC went through several iterations and amended its Form 410 filings over the course of the 2022 campaign season. It was initially an officeholder-controlled committee, then it was an independent committee, and finally it became an IEC sponsored by a 501(c)(4) nonprofit, Solutions Silicon Valley.<sup>7</sup> This last iteration represents a potential future loophole, where the donors to the nonprofit would not need to be disclosed. In this particular case, the city also required disclosure of any solicitations of donations by current officeholders (SJM 12.16.040) and it was well-known that the nonprofit was created by Mayor Liccardo, but one can well imagine future cases where the ties between a nonprofit and any specific officeholders or candidates might be much murkier. Hence, we see the value of disclosure rules that would illuminate such relationships between public figures and IECs.

### Proposal

In order to make some progress on this vexing problem of dark-money contributions, we propose a novel approach to disclosure requirements for Independent Expenditure Committees (IECs). The idea is to require IECs involved in City races to file a list of all *decision-makers* within their organization that have a significant influence over spending decisions. These IECs must currently disclose their *principal officers*<sup>8</sup> in their Form 410 filings which register the nature of the committee. Depending on the definition of "*decision-makers*" that is ultimately adopted, we propose that IECs also include the set of all *decision-makers* in their Form 410 filings or perhaps include an updated set of *decision-makers* with each Form 462 expenditure filing report or some other appropriate filing.

There are various ways to define the set of *decision-makers* and we are currently investigating which approach would yield the broadest coverage while still being clear, practical, and legally defensible. Here are some potential approaches:

- all committee members with a vote on spending or personnel or strategy
- any members of the organization who approve spending decisions at any level

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<sup>5</sup> <https://sanjosespotlight.com/disappointing-san-jose-reacts-to-mayor-sam-liccardo-election-meddling-campaign-fundraising-political-action-committee-pac-common-good-silicon-valley-election-2022/>

<sup>6</sup> <https://sanjosespotlight.com/san-jose-mayor-sam-liccardo-cleared-of-campaign-fundraising-complaint-political-action-committee-pac-election-2022/>

<sup>7</sup> <https://sanjosespotlight.com/legal-questions-raised-about-san-jose-mayor-sam-liccardo-role-in-political-action-committee-pac-fundraising-campaign-contributions-donations-fppc-election-2022/>

<sup>8</sup> The State FPPC defines *principal officers* as those primarily responsible for expenditure decisions and also requires that a treasurer be identified for the committee.

- anyone involved in discussions with committee members about spending
- anyone with “*significant influence*” on spending decisions, along the lines described in SJMC 12.06.060 (which is used to determine whether committees are independent or candidate-controlled)
- [other ideas we’ve previously discussed that I might have missed?]

The results of our investigation may well result in multiple options with some associated trade-offs. Ultimately, this will be a decision for the San Jose City Council to make, so it is reasonable to recommend more than one option if the best choice is not clear.

Presumably, this change would be timed to apply for the 2026 election, but we expect it may take significant time to refine the details and incorporate suggestions from the public. As a result, we want to introduce the idea promptly and leave sufficient time for discussion and refinement. Since the primary concern is around revealing connections between IEC funders and candidates or officeholders, our main focus is on disclosure rules for IECs supporting/opposing City elected officials. Potentially, this could perhaps be extended to IECs supporting/opposing City ballot measures in some future iteration.