

Patrick Monette-Shaw

975 Sutter Street, Apt. 6
San Francisco, CA 94109
Phone: (415) 292-6969 • e-mail: pmonette-shaw@earthlink.net

January 22, 2021

San Francisco Board of Supervisors Rules Committee
The Honorable Aaron Peskin, Chair, Rules Committee
The Honorable Rafael Mandelman, Member, Rules Committee
The Honorable Connie Chan, Member, Rules Committee
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Agenda Item #5: Additional Opposition to Re-Appointment of David Pilpel to Sunshine Ordinance Task Force (SOTF)**

Dear Chair Peskin and Rules Committee Members,

I am submitting additional testimony opposing re-appointment of David Pilpel to the SOTF.

During the initial January 11 Rules Committee hearing considering applicants for appointment to the SOTF, Mr. Pilpel's comments regarding his qualifications to serve on this important body were very disturbing, for the following reasons:

1. **Deceptiveness Regarding Backlog of 100 Sunshine Complaints:** Pilpel opened his remarks on January 11 by saying that the Sunshine Task Force has over 100 open Sunshine complaints that is "*totally unacceptable*." He implied the Task Force had been irresponsible allowing the backlog of complaints to accumulate and further implied that by re-appointing him to a seat on the Task Force he would help solve the backlog.

What Pilpel deceptively did *not* mention was that the Task Force was not allowed to meet for six months between March and September 2020, which in large part caused the backlog of cases to occur. After Mayor Breed essentially closed City offices to members of the public due to the COVID-19 pandemic in March and curtailed public meetings of policy bodies, the Task Force was not allowed to hold remote meetings and resume hearing Sunshine complaints until September. That Pilpel decided to elide that information during his January 11 remarks speaks to his deceptiveness.

2. **Brazen Suggestion to Eliminate Anonymous Complaints:** Anonymous complaints and anonymous whistleblowers are part and parcel of the bedrock of holding public officials accountable. Nothing in the law precludes or prohibits anonymous requests for public records. As a corollary, nothing in the law precludes anonymous complaints from individuals who have encountered problems accessing public records that must be disclosed.

Pilpel's suggestion to eliminate anonymous complaints would require changing state law to preclude anonymous requests for public records. Pilpel's suggestion is, therefore, completely antithetical to open government laws, which should disqualify him from further consideration for appointment to the SOTF.

3. **Brazen Suggestion to Accept Only "Important" Complaints and Reject "Unimportant" Complaints:** Pilpel's inference that the SOTF be allowed to prejudge which complaints are "important" vs. complaints that could be (wrongly) considered to be "unimportant" signals his utter disregard for due process. This, too, should also disqualify Pilpel from further consideration for appointment to the SOTF. Each complainant deserves to have an impartial SOTF subcommittee initially consider and evaluate the merits of each complaint to determine whether the Task Force has jurisdiction and whether to refer it to the full Task Force for a fair hearing.

Pilpel is not the arbiter of what is important vs. unimportant — that should not be pre-judged. It's another example of his brazen hubris that should disqualify him from appointment to the SOTF.

4. **Brazen Suggestion to Limit Complainants to Only One New Complaint Every 30 Days:** While the Rule of Reason is embedded in open government laws, the CPRA, and our Sunshine Ordinance to prevent overly broad

records requests that would unreasonably burden public agencies and take employees away from performing their public servant job duties taxpayers pay them to perform, the Rule of Reason should not be twisted like a pretzel into restricting complainants from filing multiple Sunshine complaints during an arbitrary time period.

Pilpel's suggestion to limit the number of complaints an individual may file in a 30-day period demonstrates his utter disregard and disrespect of complainants, which again, should disqualify him from appointment.

5. **Misguided Recommendation to “Focus Less on Complaints” in Favor of Focusing on Outreach, Education, and Training:** Pilpel's recommendation to focus less on actual Sunshine complaints may be the most egregious of his comments during presentation of his ostensible qualifications to serve on the SOTF. When the drafters of the Sunshine Ordinance first wrote stronger local protections for access to public records and public meeting access in San Francisco, they were not as concerned with outreach, education and training as they were concerned about providing an avenue to file complaints for the failure of local government officials to provide San Franciscans with increased transparency and accountability involving conduct of the people's business.

Section 67.21 of the Sunshine Ordinance provides an administrative appeals process and recourse for records requestors who are denied access to public records and public meetings. Section 67.30 of the Ordinance addresses referrals to a municipal office with enforcement powers whenever the Task Force concludes that any person has violated provisions of the Ordinance. The clear language of the Ordinance — which may have escaped Pilpel — all but mandates that the Task Force focus on complaints. While the Task Force may have created an Outreach, Education, and Training sub-committee to assist with its enforcement efforts, the Task Force's principal duty is to assist citizens with access to public records and public meetings. That Pilpel recommends focusing less on Sunshine complaints speaks to his disregard for Sections 67.21 and 67.30 of the Ordinance. Therefore, he should be disqualified from re-appointment to the Task Force.

6. **Pilpel's Promise to Be “Less Verbose”:** During his remarks on January 11, Pilpel said “... *about me being too verbose at meetings. I intend to be more concise, period.*” Nobody believes his hollow promise and dubious “intentions,” since as I've previously testified leopards rarely change their spots, tigers rarely change their stripes, and both animals rarely change their behaviors. Pilpel's well-known verbosity was clearly an impediment to the Task Force's “efficiency” conducting its meetings and damaged the Task Force's credibility when he previously served as a Task Force member. His verbosity and disruptiveness on the PUC's CAC, the SFMTA's CAC, and on the Redistricting Task Force clearly contributed to his not being re-appointed to any of those bodies and not being re-appointed to the SOTF in 2016.

Pilpel's suggestions and recommendations will not rebuild credibility of the Task Force as he mistakenly may believe. It's time to stop considering him for appointment to any Board or Commission in City government, since he's far too disruptive to transparency and accountability.

This current Rules Committee must not make the same mistake of forwarding Pilpel's name to the full Board of Supervisors for consideration of re-appointment to the SOTF.

On January 25, 2011, the Rules Committee should vote to specifically decline submitting his name for further consideration and should instead forward an explicit recommendation to the full Board of Supervisors clearly rejecting Mr. Pilpel from further consideration permanently.

Maybe then he'll stop wasting your time and go quietly into the night — where he belongs.

Respectfully submitted,

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Columnist/Reporter

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Respectfully submitted,

Patrick Monette-Shaw
Columnist/Reporter

From: [Christine Hanson](#)
To: [Young, Victor \(BOS\)](#)
Subject: Item 5 - Appointments, Sunshine Ordinance Task Force
Date: Sunday, January 24, 2021 11:32:36 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Re: Sunshine Ordinance Task Force Appointments

Dear Rules Committee Members Peskin, Mandelman and Chan,

Please appoint David Pilpel to the Sunshine Ordinance Task Force.

Mr. Pilpel has demonstrated a depth of knowledge of legislation and parliamentary procedure as a member of the public.

His participation, via succinct public comment, at City College Citizens Bond Oversight Committee meetings, has helped the Committee clarify issues and move forward with tasks. With his depth of knowledge, Mr. Pilpel will be a voice of clarity and an asset to the public if he is appointed to this Task Force.

Sincerely,
Christine Hanson

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Perfectionism is the voice of the oppressor.

Annie Lamott

From: [Anonymous](#)
To: [Young, Victor \(BOS\)](#)
Subject: Re: A Slate of SOTF Recommendations - UPDATED
Date: Friday, January 22, 2021 11:23:34 AM
Attachments: [signature.asc](#)

ADA Khojasteh appears to have dropped out. However, there is another attorney (law student), technologist, and young person who is now running and widely endorsed. Therefore I'll update my suggested slate to:

1. Appointing new members:
 - Laurie **Jones Neighbors** (re: helping bridge the digital divide and bring public access to underserved communities)
 - **Kevin Frazier** (law student, young person, and technologist)
 - Kai **Forsley** (records requesters' perspective, Civil grand jury investigative experience, librarian)
2. Reappointing Chris **Hyland**, Bruce **Wolfe**, and Matt **Yankee**. They have a deep understanding of the policy and technology issues from their own work and past cases, and all have years of public service. Furthermore, at least one appointee (Wolfe) must have a disability. (Disclosure: all 3 have obviously voted for and against various cases I have brought before them)
3. Seeking legal advice about the effect, if any, of appointing Khojasteh.

This would, again, give 5 men, 5 women, 4 experienced, and 6 new members, in total. (Seat 3 remains unfilled)

Given that one of the six seats expires in just a few months you may wish to ask if any continuing candidate either wishes to sunset their work on SOTF soon, or if a new candidate wants to give a 'trial run' at the position given the quite large volunteer workload involved.

Prior-mentioned opposition to Pilpel for the same reasons re: prior appearance of impropriety by appearing as both a third-party neutral (in SOTF) and an advocate/supporter on the same underlying issues, stand.

NOTE: 1. If you are a public official: I intend that these communications all be disclosable public records, and I will not hold in confidence any of your messages, notwithstanding any notices to the contrary. 2. Nothing herein is legal, IT, or professional advice of any kind. The author disclaims all warranties, express or implied, including but not limited to all warranties of merchantability or fitness. 3. In no event shall the author be liable for any special, direct, indirect, consequential, or any other damages whatsoever. 4. The digital signature (signature.asc attachment), if any, in this email is not an indication of a binding agreement or offer; it merely authenticates the sender.

Sincerely,

Anonymous

----- Original Message -----

On Wednesday, January 20th, 2021 at 5:31 AM, Anonymous
<arecordsrequestor@protonmail.com> wrote:

Obviously, I am a pro-transparency advocate, so I'll give my pro-transparency recommendations for your consideration after now having a chance to do research on the candidates. The following analysis assumes that recently recommended Seat 4 Padmanaban will be successfully approved by the Board.

At the moment, the 4 non-expired SOTF seats have:

- 3 women and 1 man, and
- 3 new members (Dean Schmidt - attorney, Jennifer Wong - technologist, Jaya Padmanaban - journalist) and 1 member with experience (Lila LaHood - journalist/publisher).

If gender parity and an expertise/freshness balance is a goal, you can recommend 4 men and 2 women, and 3 continuing and 3 new members.

This would give 5 men, 5 women, 4 experienced, and 6 new members, in total. (Seat 3 remains unfilled)

You can also add both a City employee and a member of the public who has requested records before - each may be risky on their own, but together add a diverse perspective.

On that basis, I recommend:

1. Appointing new members:
 - Laurie **Jones Neighbors** (re: helping bridge the digital divide and bring public access to underserved communities)
 - ADA Ryan **Khojasteh** (City employee perspective, young person, and attorney)
 - Kai **Forsley** (records requesters' perspective, Civil grand jury investigative experience, librarian)
2. Reappointing Chris **Hyland**, Bruce **Wolfe**, and Matt **Yankee**. They have a deep understanding of the policy and technology issues from their own work and past cases, and all have years of public service. Furthermore, at least one appointee (Wolfe) must have a disability. (Disclosure: all 3 have obviously voted for and against various cases I have brought before them)
3. Seeking legal advice about the effect, if any, of appointing Khojasteh.

Finally, I did not initially understand the vocal (and written) outcry at the first hearing against Mr. Pilpel (I wasn't around back before 2016). I have since researched his prior actions not only on this Task Force but also at other City public bodies. **SOTF members must not be permitted to both be a third-party neutral in a public hearing at SOTF and also be an advocate defending a party on the same issue before a different tribunal like the Ethics Commission when their position loses at SOTF.** For example, would members of your Board vote on a CEQA appeals hearing, and then, if the member is in the minority losing position, now go to Court and be a party's advocate? If a three-judge Federal appeals panel hears a case and a judge loses in a 2-to-1 vote does the judge in the minority now go the Supreme Court to advocate against their peers? Of course not. SOTF rulings are enforceable at Superior Court, but actions like Pilpel's create the appearance of impropriety and conflict of interest that may

invalidate those rulings.

As I've previously described, apart from Mr. Pilpel's prior inappropriate prior actions as a City official, his policy positions would create lawsuits against the City. Contrary to Mr. Pilpel's beliefs, the City can neither discriminate against anonymous meeting attendees/requesters nor subjectively determine which requests or meetings are more important vs less important. Around 5-6 anonymous voices (including me) are present at SOTF, and all of us would have to sue the City instead - that means the City would owe attorneys fees and court costs if we win. At least for me, I have a track record of winning public records cases, and as long as they go through SOTF without requiring Court intervention, the City owes me no money.

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Sincerely,

Anonymous