

Patrick Monette-Shaw

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April 14, 2022

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 #2: Opposition to Re-Appointment of David Pilpel to Sunshine Ordinance Task Force (SOTF)**

Dear Chair Peskin and Rules Committee Members,

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

I am re-submitting verbatim written testimony (below) that I submitted back on January 11, 2021 and April 27, 2016 opposing Pilpel's application for appointment to the Task Force. Nothing has changed since April 2016 (when then Supervisor Katy Tang blocked Pilpel's re-appointment) or since January 2021; Pilpel is still not qualified. I urge you to once again reject Pilpel's application.

A reminder: **Pilpel's 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 re-appointed to SOTF in 2016.

During the initial January 11, 2021 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:

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.

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.

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.

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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.

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.

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.

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 April 18, 2022, the Rules Committee should again 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.

Please see attached PDF file for additional testimony submitted in 2016 by Patrick Monette-Shaw and Claire Zvanski

Respectfully submitted,

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Columnist/Reporter

Westside Observer Newspaper

cc: The Honorable Catherine Stefani, Supervisor, District 2
The Honorable Gordon Mar, Supervisor, District 4
The Honorable Dean Preston, Supervisor, District 5
The Honorable Matt Haney, Supervisor, District 6
The Honorable Myrna Melgar, Supervisor, District 7
The Honorable Hillary Ronen, Supervisor, District 9
The Honorable Shamann Walton, Supervisor, District 10
The Honorable Ahsha Safai, Supervisor, District 11
Angela Calvillo, Clerk of the Board
Victor Young, Clerk of the Rules Committee
Lee Hepner, Legislative Aide to Supervisor Aaron Peskin

Patrick Monette-Shaw

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April 27, 2016

Rules Committee

San Francisco Board of Supervisors

The Honorable Katy Tang, Supervisor, San Francisco Board of Supervisors, Chair, Rules Committee
The Honorable Eric Mar, Supervisor, San Francisco Board of Supervisors, Member, Rules Committee
The Honorable Malia Cohen, Supervisor, San Francisco Board of Supervisors, Member, Rules Committee
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Opposition to Re-Appointment of David Pilpel to Sunshine Ordinance Task Force**

Dear Rules Committee Members,

Please do not approve recommending applicant David Pilpel to another term on the SOTF for the following reasons.

Prior Disruptive Behavior Prevented His Re-Appointment to Two CAC's

Mr. Pilpel's behavior as a member of other policy bodies has been totally disruptive.

Despite Pilpel's claim on his application that he has served on the SFMTA CAC, SFPUUC CAC, and on the Redistricting Task Force, he was not re-appointed to the MTA CAC in 2009 or earlier, reportedly due to his disruptive behavior and badgering of MTA CAC members and MTA staff. Similarly, within approximately the past year Pilpel was not re-appointed to the PUC CAC for the largely the same reason, as Supervisor Tang must be aware. And by report, Pilpel was extremely disruptive when he served on the Redistricting Task Force.

Poor Attendance Record

Between October 2, 2013 and August 24, 2014, the SOTF held 15 meetings. Pilpel was absent four times — 26.7% — of those 14 meetings.

Refusal to Recuse Himself vs. Recusal From Hearing Complaints

- On May 5, 2015, a Sunshine complaint filed by Brian Browne against the SF PUC was calendared for a hearing before the Sunshine Task Force. Browne — aware that Pilpel was then serving on the PUC's CAC — requested that Pilpel recuse himself from hearing Browne's complaint due to a potential conflict of interest. Pilpel refused, and announced that although he was a member of the PUC's CAC, he should NOT have to recuse himself. Browne's complaint was continued to a future meeting of the Task Force.
- On April 6, 2016, an hour-and-a-half into the Sunshine Task Force's meeting, Pilpel suddenly requested being recused from hearing a complaint filed by Ray Hartz, Jr. involving the Ethics Commission. Pilpel admitted he had attended the Ethics Commission's January 25 meeting and had testified several times that the Commission was making a mistake because he felt an item on the Ethics Commission's agenda "was not framed properly for public discussion." Pilpel felt the Ethics Commission was not conducting themselves appropriately. Subsequently Hartz filed a Sunshine complaint concerning the Ethics Commission's January 25 meeting.

Pilpel claimed he had been speaking as a "private citizen" but it was obvious he was providing advice to the Ethics Commission in his role as a member of the Sunshine Task Force.

Hartz's complaint that was supposed to be heard on April 6 involved the new Executive Director of Ethics, LeeAnn Pelham. The draft minutes of the Task Force's April 6 minutes only reported that Pilpel wanted to avoid the appearance of bias.

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Pilpel requested to be recused from hearing the matter. The MP3 audio file of the April 6 Task Force meeting shows that Pilpel stated during the meeting that “my view is that I have either bias, or the appearance thereof” [for having spoken during the Ethics Commission’s meeting on January 25]. But there should have been no need for him to recuse himself if he had, in fact, been speaking as a private citizen. And there should have been no question about whether Pilpel was engaging in “bias” if he had been speaking as a member of the public.

The MP3 audio also shows that Task Force Member Mark Rumold — a lawyer who holds a Task Force seat reserved for nominations from the Society of Professional Journalists — noted that potentially the Task Force may want to eventually discuss whether Pilpel has abused his duties as a member of the Task Force often, and that, if so, the Task Force we could take some action later.

There doesn’t seem to be much rhyme or reason as to when Pilpel decides whether or not to request being recused from hearing items on the agenda.

Ex Parte Communications

On May 5, 2015 following the hearing on Brian Browne’s Sunshine complainant, Pilpel raced up to the SFPUC representative who had attended the hearing and who was enroute to the elevator, and began speaking with the PUC rep. Browne reportedly said “Mr. Pilpel, I hope you are not talking to her about my case.” It’s one of many examples — not an isolated occurrence — of Pilpel having sidebar — *ex parte* — conversations with respondents regarding Sunshine complaints prior to hearing the merits of a complainant’s formal complaint.

Undermining Sunshine Complainants

Also in 2015, Pilpel submitted a letter to the Ethics Commission prior to an Ethics Commission hearing involving a Sunshine complaint Paula Datesch had filed against the Art Commission that the Task Force had referred to the Ethics for enforcement. Pilpel intentionally interfered with the Ethics Commission’s deliberations by offering his so-called “personal opinion” on a matter that the Task Force had already ruled on and had concluded. Pilpel has no compulsion about trying to overturn Sunshine Task Force decisions that he doesn’t agree with, and is brazen enough to show up at Ethics hearings to intentionally undercut official Orders of Determination the Task Force had issued.

It is thought Pilpel has interfered with other concluded Orders of Determination issued by the Task Force after-the-fact, and this is not an isolated incident.

Two Ethics Complaints Involving Violations of the Statement of Incompatible Activities Applicable to the Board of Supervisors and SOTF Members

In 2014 I filed two Ethics complaints against Mr. Pilpel alleging that he had violated the SIA applicable to SOTF members. In the first Ethics complaint, I noted Pilpel had identified himself during public comment at a meeting of the Ethics Commission as “David Pilpel, Member of SOTF,” rather than as a member of the public, as if he were authorized to speak on behalf of the full Task Force.

After I filed my complaints, Pilpel became somewhat more careful to claim he addresses policy bodies as a member of the public, although he has been reported by other observers as having continued to identify himself as a member of SOTF when addressing other policy bodies.

Mr. Pilpel had *not* sought an Advance Written Determination that testifying to the Ethics Commission about a Sunshine Complaint adjudicated and finalized by the full Task Force is *not* incompatible with his official duties.

In my second Ethics complaint, the underlying issue was not whether Mr. Pilpel is permitted to speak before other policy bodies on issues *outside* the scope of his duties as a member of the Sunshine Task Force (for example speaking during a meeting of a Commission considering a land use matter that might affect Mr. Pilpel’s neighborhood). Instead, the underlying issue was whether Pilpel is permitted to speak to another policy body on issues that are *inside* the scope of his duties as a Sunshine Task Force member (i.e., speaking about a matter inside the scope of his duties, *after* the full Task Force had concluded the matter and referred it to the Ethics Commission for enforcement).

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When Mr. Pilpel voluntarily became a member of the Task Force, he was automatically bound under the governing SIA to restrict his testimony on matters falling *inside* the scope of his duties before other bodies. As a member of the Task Force, he has a duty to support and abide by decisions reached by a majority of Task Force members.

Pilpel's *ex parte* communications with other Policy Bodies and his testimony during other Policy Body meetings are a ruse when he claims to be speaking as a private citizen. His claims are a sham, when not a pretense or pretext, since it is clear he is trying to provide testimony in his role as a member of the Task Force, not so much as a member of the public.

His ruse needs to stop, and the Rules Committee can do so by refusing to advance him for consideration for re-appointment to the Task Force. Please refuse to support him application; it's long overdue that you dump him off of SOTF.

Pilpel Withheld Key Information from Rules Committee in May 2014

To the extent that Pilpel sought to sway the Rules Committee into re-appointing him to the Sunshine Task Force on May 15, 2014 by blabbing his wild assertion that members of the SOTF didn't understand where "due process attaches," he may have gamed re-appointment to the Task Force by withholding informing Supervisors Yee and Tang on May 15 that just 17 days earlier when Pilpel had raised the "due process" issue during the Sunshine complaint hearing involving Phil Ginsburg before the Ethics Commission, Deputy City Attorney Josh White who advises the Ethics Commission, had to interject and inform Ethics Commissioners that "due process" didn't apply.

It is completely egregious that Pilpel — who must have fully understood DCA White's clear City Attorney advice — withheld DCA White's advice from Tang and Yee in 2014, and repeated the "due process" misinformation that White had shot down, during his testimony seeking re-appointment to the Task Force. Indeed, it could be argued that by ignoring DCA White's "City Attorney opinion," and repeating due process misinformation, Pilpel had failed Katy Tang's "litmus test" of undying fealty to City Attorney "advice" as a condition of appointment to the Task Force.

Conclusion

The Rules Committee should not make the same mistake twice by referring Mr. Pilpel for re-appointment to the Task Force again, after he duped you in May 2014.

After all, leopards rarely change their spots, and tigers rarely change their stripes. Both animals rarely change their behavior. So, too, with David Pilpel. It's time to get rid of him as being too disruptive.

Respectfully submitted,

Patrick Monette-Shaw

Columnist/Reporter

Westside Observer Newspaper

Below is the testimony Claire Zvanski submitted on April 26, 2016 opposing the appointment of David Pilpel to the Sunshine Ordinance Task Force. Zvanski's letter is a public record that was posted on-line to the Rules Committee in April 2016.

Evans, Derek

From: Tang, Katy (BOS)
Sent: Tuesday, April 26, 2016 11:46 AM
To: Evans, Derek
Subject: FW: Rules Committee appointment consideration

For the clerk's records

From: claire zvanski [mailto:czvanski@hotmail.com]
Sent: Tuesday, April 26, 2016 3:51 AM
To: Mar, Eric (BOS) <eric.mar@sfgov.org>; Cohen, Malia (BOS) <malia.cohen@sfgov.org>; Tang, Katy (BOS) <katy.tang@sfgov.org>
Subject: Rules Committee appointment consideration

Dear Supervisors:

It is my understanding that the Rules Committee will be considering appointments to the Sunshine Task Force this Thursday, April 28. It is also my understanding that David Pilpel has submitted his application for reappointment to that task force.

I have known David for more than 25 years. He was a teenager when I used to have to physically extract him from offices at MUNI headquarters (on Presidio at Geary in those days). He was regularly rifling through desks of managers and other employees and also going through our file cabinets for "information" on various projects and issues. He would often come in after hours when those managers would have gone home for the day. This was not a once or twice occurrence. It was a regular practice for a very long time. He was reported, but he continued to do this as long as the doors of the building were not locked. Later, security measures were taken and he could not easily access our building after hours. So, he would come in and "visit" with various managers at the end of the day but not leave the building at closing.

Mr. Pilpel has continued to probe/snoop into City business and City offices over the years. As a retired City employee with nearly 40 years of service behind me, I found and continue to find Mr. Pilpel's methods despicable and his motives questionable. While I support transparency and the public's right to know, I also understand the need for files and work products to remain protected. There is a time and place for everything.

All this is to say that I don't believe Mr. Pilpel is appropriate for reappointment to the Sunshine Task Force. Colleagues of mine have told me of his ongoing unorthodox methods in seeking information and also his harassment of both City employees and elected/appointed individuals. These are unprofessional methods and behaviors that should not be rewarded by appointment to an official City body, especially the Sunshine Task Force.

Please reject the reappointment of David Pilpel to the Sunshine Task Force.

Thank you very much for your consideration of this request.

Claire Zvanski

(37.5 years retired career public service with CCSF; 26 years on HSS board)