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California State Senate

SENATOR
PATRICIA C. BATES
SENATE REPUBLICAN LEADER
THIRTY-SIXTH SENATE DISTRICT



COMMITTEES
APPROPRIATIONS
VICE CHAIR
JOINT RULES COMMITTEE
JOINT LEGISLATIVE BUDGET
COMMITTEE
JOINT LEGISLATIVE COMMITTEE
ON EMERGENCY MANAGEMENT

December 12, 2017

The Honorable Kevin de León
President pro Tempore
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Anthony Rendon
Speaker of the Assembly
California State Assembly
State Capitol, Room 219
Sacramento, CA 95814

Dear President pro Tempore de León and Speaker Rendon:

The Assembly Rules Subcommittee on Harassment, Discrimination, and Retaliation Prevention and Response met on November 28, 2017, to discuss sexual harassment prevention, current policies and protections, and recommendations for change. The Subcommittee heard testimony from two attorneys experienced in sexual harassment litigation: Jean Hyams and Genie Harrison.

Both Ms. Hyams and Ms. Harrison discussed in their testimony that when the Senate resolves sexual harassment claims by settlement, it has in some circumstances required nondisclosure agreements (NDAs) that prohibit the settling victim from disclosing or discussing the subject of the settlement or non-disparagement provisions. As a result, this prevents public criticism of the perpetrator or the institution in which the instance of sexual harassment occurred.

As Ms. Hyams and Ms. Harrison correctly stated during the Subcommittee hearing, legislative business is public business, which should be open for all members of the public to review. However, these NDAs conceal public business and all wrongdoing, but are funded by taxpayer dollars. It is inappropriate for a state government to conceal these settlements and wrongdoing by requiring that victims refrain from discussing their experiences or criticizing the person or the institution involved. It was the conclusion of Ms. Hyams and Ms. Harrison that NDAs enable more wrongdoing and harm to the Legislature's employees by maintaining or encouraging silence regarding inappropriate behavior.

As such, Ms. Hyams and Ms. Harrison suggested that a simple and straightforward way to foster a working environment that is free of hostility, harassment or discrimination is to release any victims, witnesses or whistleblowers who have agreed to NDAs from any obligation to conceal information. This release from NDAs would empower victims of sexual harassment, create a new atmosphere for resolving sexual harassment or discrimination concerns, increase public awareness and transparency, and ensure that both the Senate and the Assembly fulfill their obligations to the public and their employees for providing a safe and welcoming workplace environment.

Therefore, on behalf of the Senate Republican Caucus, we request that the Rules Committees of both the Senate and the Assembly release all individuals from their obligations under any NDAs.

In addition, we support the Assembly's consideration of a confidential reporting hotline as well as the Senate's initiation of a process to select an external, independent law firm to investigate complaints of sexual harassment and misconduct, but we believe that both efforts are simply tools that should be available within a more comprehensive and restructured set of policies and procedures for both the Senate and Assembly. As such, we recommend the following actions to further improve our policies regarding sexual harassment:

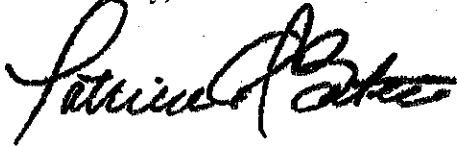
- The Joint Rules Committee should be convened to initiate a comprehensive, bicameral and bipartisan review and discussion of the policies and procedures that have guided both houses of the Legislature. It should review the history of harassment complaints in both houses. The Joint Rules Committee is the best venue to consider all of these issues to ensure that both houses are on the same page in addressing the failure of both the Senate and the Assembly to protect all members of the Capitol community.
- As the Joint Rules Committee considers policy changes, including a confidential reporting hotline and the use of outside law firms to handle investigations, it should do so in conjunction with a larger conversation regarding improving our policies and procedures for the reporting of sexual harassment. As previously stated, we are concerned that these tools will be ineffective without an improved and clearly-articulated structure, such as a clear process for the processing of complaints, timelines for resolution and the identification of the responsible entity for adjudicatory authority.
- The Joint Rules Committee should consider the assigning of an outside entity for assuming responsibility for all issues regarding sexual and workplace harassment. Some have suggested the California Highway Patrol or an inspector general be considered.
- From the testimony in the Subcommittee, there are significant issues that need to be addressed regarding records retention (the Assembly only retains records for six years), complaint tracking and improved training for employees, legislators and professional advocates.

Most importantly, we all applaud the courage and strength of the individuals who have come forward to share their stories and shined a light on this pervasive culture of sexual harassment. We share a common goal in wanting to provide a safe and welcoming environment for all who

work in and around the State Capitol as well as the thousands of people who visit every day. We must support victims and hold perpetrators accountable. However, significant work must be done to effect change in the legislature's policies and in the Capitol culture, and we remain committed to this cause. We stand ready to work with you and our colleagues to address these critical issues.

To reiterate, first and foremost, we ask that you immediately release any victims, witnesses or whistleblowers who have agreed to NDAs with the Senate and/or Assembly from any obligation to conceal their story and that you convene the Joint Rules Committee as the best available venue and vehicle from which to initiate a bicameral and bipartisan effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia C. Bates". The signature is written in a cursive, flowing style with some loops and flourishes.

PATRICIA C. BATES
Senate Republican Leader