

Kachuck Enterprises



Date: November 5, 2025
To: Jason Cole, Chair, and the Board of the California Avocado Commission
From: Norm Kachuck, MD FAAN, for the American Avocado Farmers
Re: Grievance submissions for immediate board action on
I: Eligibility, conflicts of interest, and recusal policy
II: Indemnification from personal liability for payment of legal fees

Chair Cole and Members of the CAC Board:

I submit these two formal GRIEVANCE requests for immediate Board action. The first is arising from the events and decisions summarized in my petition dated September 7, 2025, and the recent Board vote in which multiple Directors self-recused from a matter directly implicating the import pipeline and U.S. producer interests. The second concerns the proposed board motion concerning personal indemnification of CAC board members and staff for legal fees incurred in litigation where those defendants are later found to have been in violation of CAC charter, bylaws, or to have made false conflict-of-interest attestations that affected their ability to vote impartially.

GRIEVANCE ONE

Summary of problem

- The Board's acceptance of self-recusal by Directors who acknowledged associations with the import pipeline has exposed an operational loophole: current vetting and eligibility processes do not prevent persons with unmanaged conflicts of interest from serving, voting, or remaining eligible as candidates for Commission seats.
- The recusals show that where conflicts exist, Directors cannot credibly participate in matters that directly affect the integrity of the domestic industry. This calls into question prior votes by those Directors on import-related matters and undermines member confidence.
- The President's recent response that eligibility changes must wait for legislative action ignores provisions in the Commission's rules empowering the Board to amend Commission regulations and to apply eligibility standards administratively. Immediate action is necessary to preserve a fair election process and Commission integrity.

Requested Board actions (immediate)

1. Temporary suspension of eligibility and candidacy for any current Director or candidate who discloses or is shown to have a financial, familial, or contractual relationship with any handler, importer, or entity materially involved in the avocado import pipeline, pending administrative review.
2. Direct the Executive Committee to adopt, within 14 calendar days, interim eligibility guidance that:
 - defines disqualifying conflicts (financial ownership, management, employment, contractual dependency, or immediate-family interests with handlers/importers);

- requires contemporaneous disclosure statements from all sitting Directors and all current candidates for the 2025 election;
 - requires automatic administrative recusal from vote and deliberation where the disclosed relationship is material to the subject matter.
3. Reissue election ballots for the 2025 Board seats affected by these concerns only after the interim eligibility guidance and disclosures are complete and verified.
 4. Commission a limited independent review (legal counsel or outside compliance specialist) of prior import-related votes by Directors who have now acknowledged conflicts, to determine whether votes were materially affected and whether corrective action, disclosures to members, or re-hearings are warranted.

Basis and authority for immediate action

- The California Commission Law (Sections 67082 and 67901) rules and bylaws provide the Board with authority to adopt and enforce internal rules and to interpret eligibility and conflict provisions administratively. These powers are exercised routinely for governance, ethics, and election administration and do not require a legislative change to address an emergent threat to Commission integrity. Contrary to the CAC President's communications, the requirement for delaying of the implementation of these demands for regularly scheduled board activities related to such actions is not noted anywhere in the Commission by-laws, and is unwarranted and without legal justification.
- The exigency is practical and immediate: the ongoing 2025 election and the public trust of assessment-paying producers requires prompt clarification and enforcement so that members can vote with confidence.

Proposed interim eligibility wording (draft for Board motion)

- "Effective immediately, any sitting Director or candidate for Director who has, or within the prior 24 months had, a direct or indirect financial, management, employment, ownership, contractual, or familial relationship with any handler, importer, or entity substantially engaged in the avocado import pipeline shall disclose such relationship in writing to the Commission. The Executive Committee shall determine whether the relationship creates a material conflict of interest. Where a material conflict is found, the individual shall be temporarily ineligible to serve, to vote, or to remain a candidate, pending full review."

Operative timeline

- Day 0 (Board meeting): Adopt motion to implement interim eligibility guidance and ordering of disclosures.
- Day 1–7: Board distributes disclosure form to all sitting Directors and all candidates for vacated seats; Executive Director collects submissions.
- Day 8–14: Executive Committee, with Commission counsel, reviews disclosures and issues determinations; temporarily ineligible individuals are identified and removed from ballots or relieved of duties pending full review.
- Day 15–30: Independent compliance review initiated for prior votes where conflicts now acknowledged; Board receives findings and determines remedial actions.

Communications to membership

- Post-adoption, issue a concise notice to all assessment-paying members that (a) the Board has adopted interim eligibility rules; (b) disclosures are being collected and reviewed; (c) the integrity

of the election is being protected; and (d) the Commission will report outcomes and any ballot changes before votes are finalized.

Relief requested and rationale

- I ask the Board to adopt the interim measures above to restore member confidence and ensure that the Commission's decisions reflect the interests of assessment-paying producers rather than parties that may benefit from import pipelines that disadvantage domestic growers. These administrative steps are consistent with the Board's authority to govern its procedures and are necessary now to prevent further erosion of trust and to protect the fairness of the ongoing election.

GRIEVANCE II

Summary of problem

The California Avocado Commission (CAC) board's proposed amendment to expand indemnification to cover legal fees for management and Board members named as defendants in litigation is *inappropriate where those defendants are later found to have violated the CAC charter, bylaws, or to have made false conflict-of-interest attestations that affected their ability to vote impartially*. Allowing indemnification in those circumstances effectively shields individuals who abused their duties and perpetuates tactics by handlers/importers that can be seen as attempts to pressure and subordinate the producer membership.

Requested Board actions (immediate)

Request is made that the CAC Board vote to approve the following revision of the proposed amendment on the agenda concerning GRIEVANCE I, as a temporary measure pending final rule change for consideration by an independent review committee.

Proposed revision

Add to the indemnification section a carve-out and procedural safeguards:

1. Amend text

- "The Commission shall not indemnify, advance, or otherwise pay legal fees or expenses for any Director, Officer, or employee for any claim, suit, action, or proceeding arising from conduct which is finally determined by a court of competent jurisdiction or by a duly constituted Commission disciplinary body to constitute: (a) a breach of the CAC charter, bylaws, or code of conduct; (b) willful misconduct, gross negligence, or fraud; or (c) a materially false or knowingly misleading conflict-of-interest declaration or an omission that would have required recusal from voting. In the event indemnification is sought, the burden shall be on the claimant to demonstrate entitlement consistent with the foregoing exclusions."

2. Procedural safeguards

- Independent counsel: where potential disqualifying conduct is alleged, the Commission shall retain independent counsel to evaluate indemnification requests.
- Interim suspension of fee advancement: advancement of fees shall be stayed pending an independent inquiry when facts reasonably suggest willful misconduct, fraud, or knowingly false conflict declarations.

- Right of recovery: if indemnification or fee advancement is provided and the person is later found to have engaged in excluded conduct, the Commission shall require repayment of advanced fees and may seek damages.
- Public reporting: final determinations concerning indemnification and any repayments shall be summarized in a public report to members (redacting privileged details as required by law).

Rationale

- Accountability for attestations: Conflict-of-interest declarations directly affect voting legitimacy; false attestations that allow participatory advantage must carry personal responsibility.
- Preventing capture: Removing indemnity for proven misconduct removes a practical shield used to enable tactics that hold producer membership hostage to importer/handler agendas.
- Fiduciary integrity: Boards and management act as fiduciaries; indemnity should protect good-faith actions taken within duties—not deliberate breaches, fraud, or knowingly false statements.
- Risk management: Independent review and repayment provisions protect the Commission’s financial exposure and deter reckless or intentional misconduct.

Additional Enforcement and implementation recommendations

- The Board needs to define standards of proof: specify “preponderance of evidence” for internal disciplinary actions and require a judicial or independent adjudicative finding for automatic repayment triggers.
- Establish an independent review committee: three-member panel composed of neutral members (e.g., retired judge or outside counsel and two non-conflicted growers) to assess alleged indemnity exclusions.
- Insurance alignment: require indemnity policies and D&O insurance to incorporate these exclusions explicitly and to permit the Commission’s recovery actions where misconduct is established.
- Timeline and notice: set clear timelines for interim fee advancement decisions, investigations, and final determinations to avoid undue delay and uncertainty.

CLOSING

- The Board’s willingness to act now will protect both the Commission’s statutory mission and the practical interests of U.S. producers who fund and rely on the Commission. I appreciate the Board’s prompt consideration and request that the Chair place this matter on the agenda of a convened meeting not later than 7 days from the date of this request.

Respectfully submitted,



Norm Kachuck, MD FAAN
For the American Avocado Farmers