Fair Political Practices Commission

To: Chairman Randolph; Commissioners Blair, Downey, Karlan and Knox

From: Luisa Menchaca, General Counsel
Lawrence T. Woodlock, Senior Commission Counsel

Subject: Pending Litigation

Date: August 19, 2004

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1. *California ProLife Council, Inc. v. Karen Getman et al.*

This action challenges the Act's reporting requirements for express ballot measure advocacy. In October 2000 the Federal District Court for the Eastern District of California dismissed certain counts for standing and/or failure to state a claim, and later granted the FPPC's motion for summary judgment, eliminating further counts in a judgment entered on January 22, 2002. Plaintiff appealed that judgment to the Ninth Circuit Court of Appeal. The Ninth Circuit rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The Ninth Circuit remanded the matter back to the district court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and whether the state's disclosure rules are properly tailored to that interest. To permit more time for discovery, the district court issued an amended Scheduling Order, providing that discovery would end on May 17, 2004, with disclosure and discovery relating to expert witnesses to conclude on August 20, 2004. Dispositive motions, if any, will be heard no later than October 29, 2004. Trial is set for March 7, 2005.

2. *FPPC v. Agua Caliente Band of Cahuilla Indians, et al.*

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than $7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions, and likewise failed to disclose more than $1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a $125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. Defendants responded to the lawsuit by filing a motion to quash service, alleging that they are not required to comply with the Political Reform Act because of tribal sovereign immunity. On February 27, 2003 the Honorable Loren McMaster of the Sacramento County Superior Court ruled in the FPPC's favor. On April 7, defendants filed a petition for writ of mandate in the Third District Court of Appeal, challenging the decision of the trial court. The petition was summarily denied on April 24, 2003,

whereupon defendants filed a petition for review in the California Supreme Court. On July 23, 2003, the Supreme Court granted review and transferred the case back to the Court of Appeal, where oral argument was heard before Justices Blease, Sims, and Davis. On March 3, 2004, the Court issued its opinion, affirming the Superior Court's decision after concluding that "the constitutional right of the State to preserve its republican form of government trumps the common law doctrine of tribal immunity." On April 6, 2004, Blue Lake Rancheria and Mainstay Business Solutions, a Government Sponsored Enterprise of the Blue Lake Rancheria, filed with the California Supreme Court a request for depublication of the court of appeal decision. Associate Justice Rick Sims of the Third District Court of Appeal, author of the opinion, filed a letter with the supreme court on April 19, 2004, requesting that the depublication request be denied on the ground that it had not been properly served on the Third District Court of Appeal, depriving him of the opportunity to respond to the depublication request. In the interim, on April 13, 2004, the Agua Caliente Band of Cahuilla Indians filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. On July 14, 2004, the Agua Caliente Band of Cahuilla Indians requested an extension of time until September 21, 2004, to file its opening brief, which was granted by the court.

3. *FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria*

In this action the FPPC alleges that the Santa Rosa Indian Community of the Santa Rosa Rancheria failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than $500,000 in political contributions to statewide candidates and propositions, and that defendants failed to disclose more than $350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended on October 7, 2002. On January 17, 2003, defendants filed a motion to quash service, based on its claim of tribal sovereign immunity. On May 13, 2003, the Honorable Joe S. Gray of the Sacramento County Superior Court entered an order in favor of defendants. On July 14, 2003, the FPPC appealed this decision to the Third District Court of Appeal, where the matter is now scheduled for oral argument on August 18, 2004. The Attorney General has filed an amicus brief in support of the FPPC's position. On July 16, 2004, the Commission's appellate counsel was apprised that the tribe had secured new counsel to further pursue this appeal and would be seeking a continuance of the oral argument date. On July 29, 2004, the Santa Rosa Indian Community of the Santa Rosa Rancheria filed a substitution of attorneys replacing Monteau & Peebles with Lang, Richert & Patch of Fresno, as appellate counsel. Concurrent with the filing of the substitution of attorneys, a request for a continuance of the date for oral argument was made. The court granted a continuance of the oral argument to October 19, 2004, at 9:30 a.m.

4. *FPPC v. American Civil Rights Coalition, et al.*

In a lawsuit filed in the Sacramento County Superior Court on Sept. 3, 2003, the FPPC alleges that the American Civil Rights Coalition ("ACRC") and its CEO Ward Connerly failed to file campaign statements reporting the source of almost $2 million contributed to promote the passage of Proposition 54 on the Oct. 7 ballot. An application for intervention in the lawsuit was filed on September 16 by a group known as the "DOE Class" of past and potential contributors

to ACRC, seeking among other things to postpone a hearing on the FPPC's motion for preliminary injunction to an unspecified later date. The court went forward with the injunction hearing on September 19, 2004, denying the FPPC's motion on the ground that the factual record was not sufficiently developed to warrant a preemptive remedy. Defendants next brought a special motion to strike the complaint under Code of Civil Procedure § 425.16. On December 1, 2003, the Superior Court denied that motion. On December 3, defendants appealed to the Third District Court of Appeal. Briefing is complete, and defendants/appellants requested oral argument. On August 16, 2004, the court of appeal heard oral argument, and the matter was submitted. A case management conference in the Superior Court is scheduled for September 2, 2004.

5. *Evans v. FPPC, et al.; Walters v. FPPC, et al.*

The plaintiffs in these cases are State Assembly candidates on the March primary ballot. They obtained writs from the Sacramento Superior Court in December, allowing each to amend his Candidate Statement of Intention to change the indicated intent to accept or reject voluntary expenditure limits. The Secretary of State and the FPPC opposed plaintiffs' writ petitions, and the FPPC immediately sought a writ of mandamus in the Third District Court of Appeal to overturn the lower court's decisions. This petition was denied without comment, with one judge indicating he would grant the writ. The FPPC appealed both cases to the Third District Court of Appeal. While the matters were pending, legislation was passed and signed by the Governor in August that accomplished the relief sought by the Commission in its appeals. The law now clearly states that future candidates will only be able to amend their designation statements regarding expenditure limits as allowed by the expenditure limit scheme itself. Because this codifies Commission interpretation of the rules, the appeals became moot and the Court of Appeal granted the Commission's request for dismissal of both cases.

6. *Larry R. Danielson v. FPPC*

On March 13, 2004 Danielson filed a Notice of Appeal from a money judgment entered against him by the Sacramento County Superior Court. Danielson had previously sought a Writ of Mandate in that court, challenging a proposed decision by an Administrative Law Judge which the Commission adopted at its December 2002 meeting. On November 7, 2003, the Superior Court denied the appellant's petition. The FPPC then filed its complaint for a money judgment, and prevailed on a motion for summary judgment, which is the subject of the present appeal. Because Danielsen missed the deadline for depositing the fees to pay for the transcript of the hearing, on April 13, 2004, he filed a Notice of Motion and Motion to Include Reporter's Transcript on Appeal, which was granted by the court on April 20, 2004. Therefore, the transcript is being prepared and, once it is filed with the court, the 20-day period within which Danielsen must file his opening brief will commence. The case is before the Appellate Division of the Sacramento Superior Court. The Attorney General's office is representing the FPPC in this matter.