Fair Political Practices Commission

To: Chairman Randolph; Commissioners Blair, Downey, Huguenin and Remy

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

Subject: Pending Litigation

Date: November 27, 2006

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

This action challenged 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 and later granted the FPPC's motion for summary judgment on the remaining counts. Plaintiff appealed, and the Ninth Circuit Court of Appeal affirmed 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. However, the Ninth Circuit remanded the matter back to the district court to determine whether California could in fact establish an interest sufficient to support its committee disclosure rules, and that its disclosure rules are properly tailored to that interest. On February 22, 2005, the court granted defendants' motion for summary judgment on these questions. Plaintiff again appealed. The parties, and amici who have filed two briefs supporting defendants, have now completed the appellate briefing, and the parties are awaiting a hearing date.

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 could not be civilly prosecuted 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. 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. On March 3, 2004, the Court of Appeal

affirmed the Superior Court's decision, 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 13, 2004, defendants filed a Petition for Review in the California Supreme Court. On June 23, 2004, the Supreme Court granted the Petition for Review. Briefing was completed on April 1, 2005, and the Supreme Court heard oral argument on October 4, 2006. The Court's opinion is expected within ninety days of the hearing.

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 was scheduled for oral argument. The Attorney General filed an amicus brief in support of the FPPC's position. The court heard oral argument on October 19, 2004, and on October 27, 2004, issued a decision in favor of the Commission overturning the trial court's granting of defendant's motion to quash. The tribe filed a petition for review with California Supreme Court which was granted on January 12, 2005. However, any action on the case has been deferred pending the outcome of the Agua Caliente case.

4. *Citizens to Save California, et al. v. FPPC*

On February 8, 2005, Citizens to Save California and Assembly Member Keith Richman filed a complaint for injunctive and declaratory relief in Sacramento Superior Court challenging the Commission's adoption of regulation 18530.9 in June 2004, which imposed on candidate-controlled ballot measure committees the contribution limit applied to the controlling candidate. Plaintiffs claim that the regulation violates the First Amendment, and that the Commission lacked statutory authority to adopt the regulation. Another group of plaintiffs led by Governor Schwarzenegger intervened in the action, and the court granted plaintiffs' motion for preliminary injunction, barring FPPC enforcement of regulation 18530.9 pending final disposition of the lawsuit. The Commission appealed, noting that the Superior Court's injunction was stayed while the appeal was pending. On April 25, the Superior Court determined that its injunction remained in effect, and a writ petition challenging this finding in the Court of Appeal was denied. Ruling next on the Commission's demurrer to the complaints, on May 26 Judge Chang indicated that further proceedings in the Superior Court were stayed pending resolution of the Commission's appeal of the preliminary injunction. The Third District Court of Appeal heard oral argument on November 17, 2006, and the court's decision is anticipated within a few months.

5. *FPPC v. Chad M. Condit, et al.*

On January 10, 2006, the FPPC filed suit in Sacramento County Superior Court against Chad Condit, Cadee Condit, and the Justice PAC. The lawsuit seeks civil penalties against Chad Condit and the Justice PAC for violation of the Act's personal use provisions and its prohibition on cash expenditures, and civil penalties against Cadee Condit for violation of the personal use provisions. Discovery is now underway and a trial setting conference will take place in December.