



FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Remke, Commissioners Casher, Eskovitz, Wasserman, and Wynne

From: John Wallace, Assistant General Counsel
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Subject: Pending Litigation

Date: February 6, 2015

ProtectMarriage.Com et al. v. Bowen et al.

On January 9, 2009, in the United States District Court for the Eastern District of California, plaintiffs ProtectMarriage.com - Yes on 8, a Project of California Renewal and National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage, challenged the Act's campaign disclosure requirements on contributions to ballot measure committees as unconstitutional. They cite a variety of adverse actions against persons who supported Proposition 8, which was on the November 2008 ballot, alleging that some of these persons were identified through campaign contribution information made public as required by the Act's campaign reporting and disclosure provisions. The complaint seeks to permanently enjoin the future disclosure of all of plaintiffs' contributors, expunge the records of all of plaintiffs' past contributors, invalidate as unconstitutional the Act's \$100 disclosure threshold for contributors to ballot measure committees, and invalidate the Act's requirement for post-election disclosure of contributors to ballot measure committees. As to all counts, plaintiffs sought declaratory and injunctive relief, and an award of attorney's fees.

The State prevailed on cross motions for summary judgment, with the district court upholding the facial and as-applied validity of the challenged provisions of the Act. On May 20, 2014, the Ninth Circuit affirmed the District Court's decision in part, and remanded with instructions to vacate the facial challenge portion of the decision. The Court upheld the Act's \$100 threshold for disclosure of contributions and found California's interest in post-election reporting is important and not unduly burdensome. The Court also found the challenge to already-disclosed contributor information non-justiciable as moot.

On June 3, 2014, plaintiffs filed a motion for panel re-hearing requesting that the panel revisit its decision on mootness based on allegedly over-looked “material facts.” Defendants filed an opposition brief on July 3, 2014. On May 20, 2014, the Court issued its Order denying plaintiffs’ motion for re-hearing, which became final on July 25, 2014.

Plaintiffs subsequently filed a petition for writ of certiorari with the United States Supreme Court on October 14, 2014, requesting that the Court reverse the Ninth Circuit’s decision regarding mootness. Defendants filed a response to the petition on January 29, 2015.

Enforcement Cases

Tony Dane v. Fair Political Practices Commission

Tony Dane, a former respondent in an Enforcement Division case, filed in a Las Vegas, Nevada Court, a motion to quash an Enforcement division subpoena that was issued to Wells Fargo Bank. The FPPC then filed a motion to compel production in Sacramento Superior Court and prevailed in both cases. Tony Dane then sued the FPPC in Nevada for malicious prosecution and abuse of process. On June 14, 2012, the Nevada court dismissed the malicious prosecution claim, but declined to dismiss the abuse of process claim on the basis that Dane had alleged ill will (essentially that the FPPC was out to get him based upon his political beliefs). The judge ruled that under the state’s loose “notice pleading” standards, this allegation was sufficient to preserve that cause of action. The FPPC filed a motion for summary judgment on December 19, 2013 in Nevada state court. The court granted the FPPC’s motion at a hearing on February 7, 2014. A dismissal of the case is pending with the Nevada court.

Fair Political Practices Commission v. Cathy Prazma

On June 19, 2014, the Commission approved a Default Decision and Order in the Matter of Cathy Prazma: FPPC Case No. 12/722. The Commission found that Respondent Cathy Prazma, who is currently a Board Member of the Descanso Community Planning Group, failed to file a 2011 annual Statement of Economic Interests by the April 2, 2012 deadline, in violation of Government Code Section 87203 (1 count). The Commission ordered Respondent Prazma to file a 2011 annual Statement of Economic Interests and to pay an administrative penalty of \$5,000. To date, Respondent Prazma has not filed a 2011 annual Statement of Economic Interests or paid the ordered administrative penalty of \$5,000.

On October 28, 2014, the Enforcement Division filed a Summons and Complaint for a Permanent Injunction in the San Diego Superior Court in the matter of *Fair Political Practices Commission v. Cathy Prazma*: Case No. 37-2014-00037096-CL-MC-CTL, ordering Defendant Cathy Prazma to comply with the Default Decision and Order of the Commission to file a 2011 annual Statement of Economic Interests. On October 31, 2014, the court set the matter for Case Management Conference to be held on April 10, 2015, 8:30am, in Department C-66, before Judge Joel M. Pressman. Defendant Cathy Prazma was personally served with the Complaint on November 5, 2014, and she failed to file an Answer to the Complaint. The Enforcement Division will proceed with a Request for an Entry of Default in this matter.

