



FAIR POLITICAL PRACTICES COMMISSION

# ENFORCEMENT DIVISION



END OF YEAR REPORT 2011

# EXECUTIVE SUMMARY

## DIVISION OVERVIEW

The Political Reform Act of 1974 (the “Act”) created the Fair Political Practices Commission (“FPPC”) and charged it with, among other things, the duty to enforce the provisions of the Act. In adopting the Act, the voters declared that “previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities” and that the Act be “vigorously enforced.”

**The FPPC Enforcement Division is committed to providing timely and impartial investigation and prosecution of alleged violations of the Act.**

The FPPC Enforcement Division’s jurisdiction is statewide, covering all levels of government. In fulfilling its mission, the Division handles over a thousand complaints a year, and prosecutes hundreds of cases per year.

An enforcement matter will be fully investigated when there is sufficient information to believe that a violation of the Act has occurred. Information regarding potential violations of the Act comes from citizen complaints, referrals from other governmental agencies, media reports, audit findings or may be identified internally.

When sufficient evidence exists to prove a violation of the Act, the Enforcement Division will bring a prosecution action to the Commission, or may issue a Warning Letter, depending upon the facts of the case and the public harm caused. If the evidence is insufficient to warrant prosecution, a case may be closed with an Advisory Letter or without violation.

The Enforcement Division also operates a campaign audit program of both mandatory and discretionary audits.

# EXECUTIVE SUMMARY

## 2011 ACCOMPLISHMENTS

### Prosecuting More Serious Cases

- Serious campaign case prosecutions were at their highest level ever in 2011.
- Conflict of Interest prosecutions were at their highest level ever in 2011.
- Major Donor and Late Contribution Reporting Cases were at a combined low of 3%.

### Prosecutions

- **In 2011, 630 cases closed with proven violations.**
- 196 of these cases resulted in prosecutions approved by Commission.
- 434 resulted in warning letters.

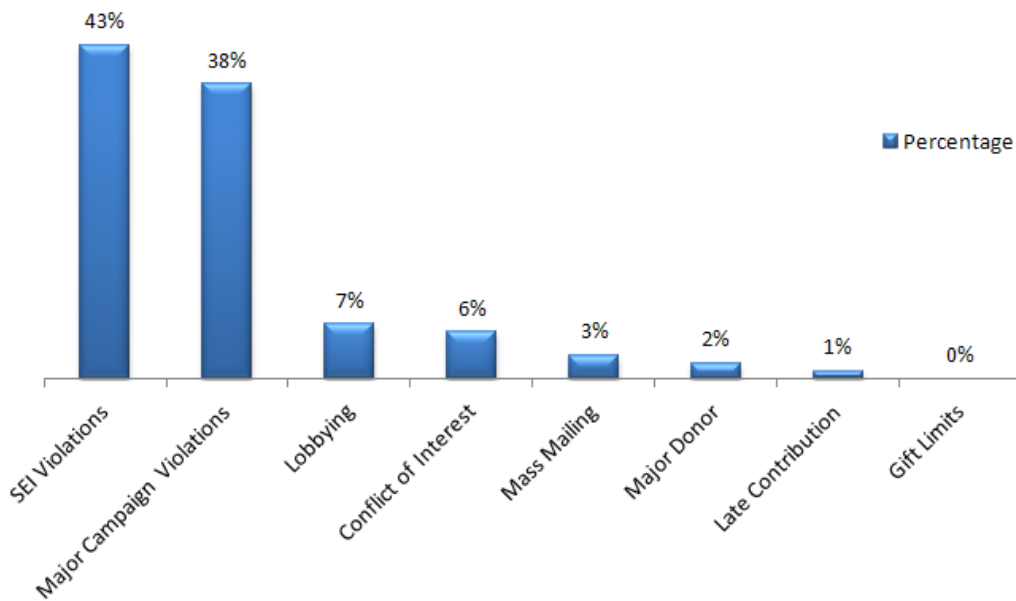
### Eliminating the Backlog

- **The Backlog of cases older than two years has continued to stay low.**  
Only 10 cases older than 2 years open.
- **66% of year-end open cases were opened in the same year.**

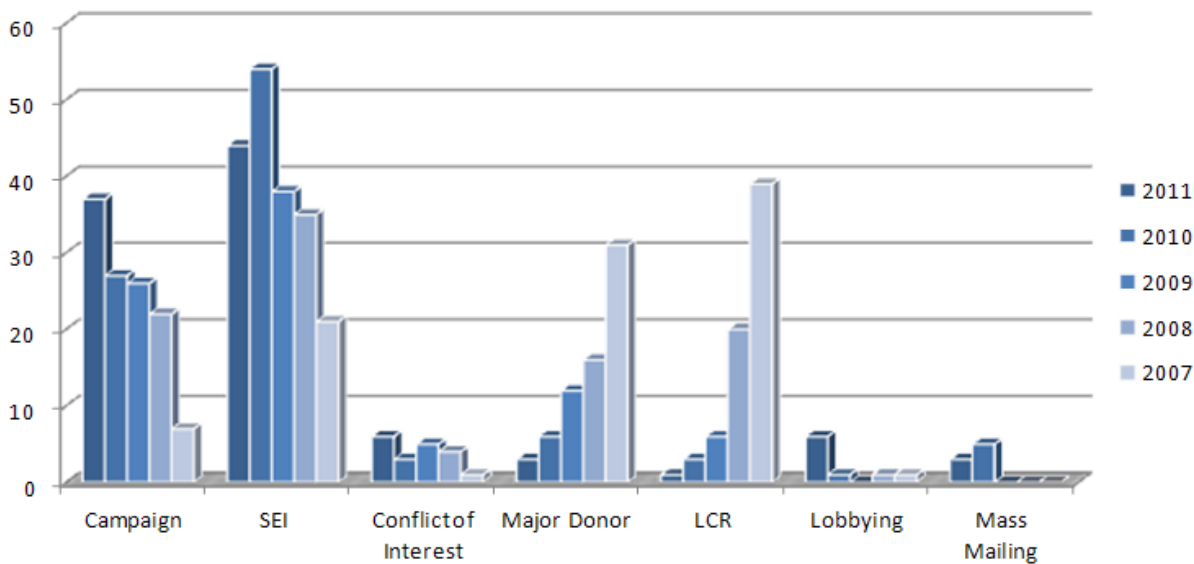
# PROSECUTING MORE SERIOUS TYPES OF CASES

## CHARTS 1 AND 2

TYPE OF CASES PROSECUTED



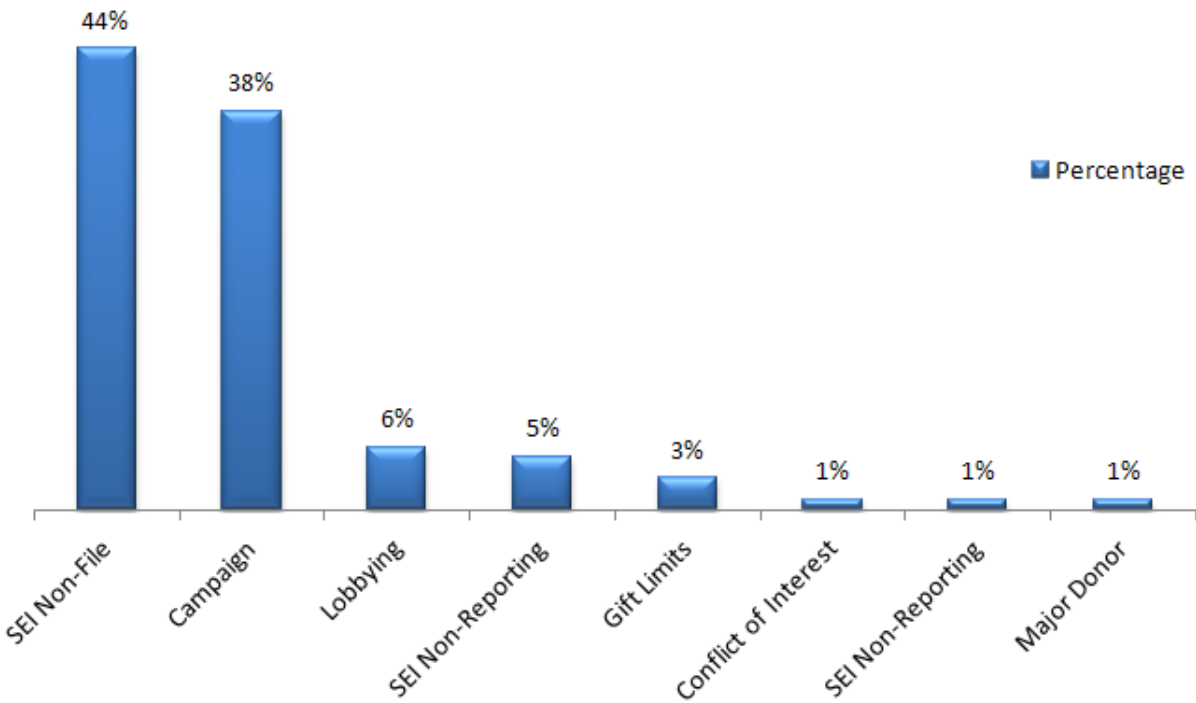
HISTORICAL PROSECUTION TRENDS, BY TYPE



# PROSECUTING MORE SERIOUS TYPES OF CASES

CHART 3

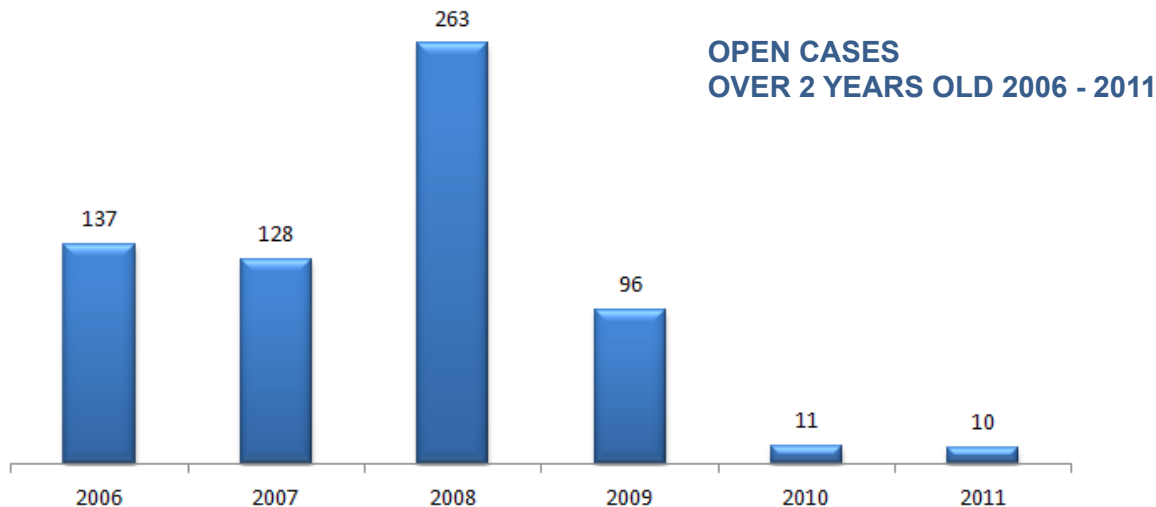
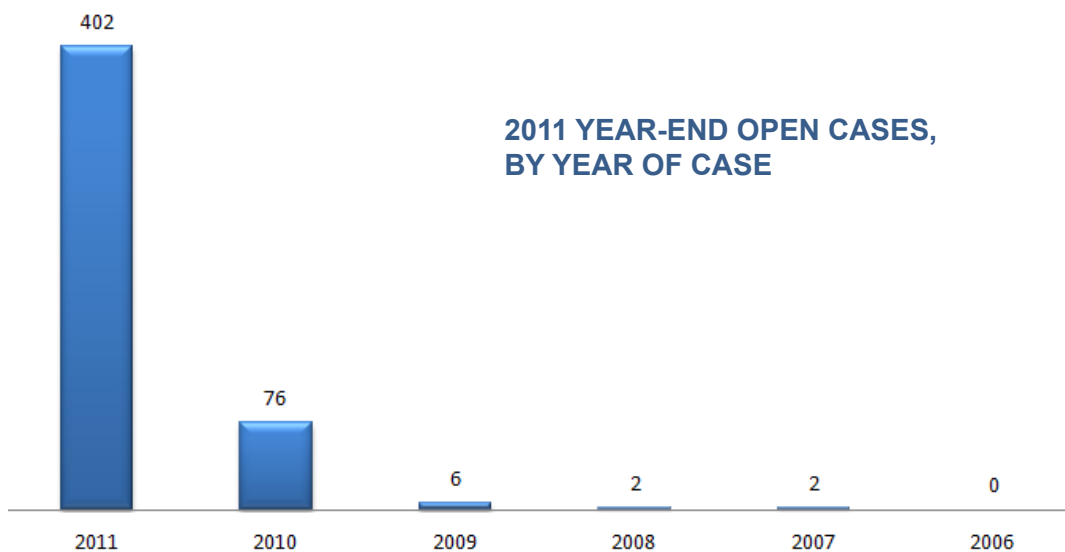
2011 WARNING LETTERS ISSUED, BY TYPE



# MORE TIMELY CASE RESOLUTION

**CHART 4 AND 5**

**TOTAL OPEN CASES: 488**



# MAJOR CASES

## TRENDS IN PROSECUTIONS

In 2011, the focus of Enforcement cases shifted to the more serious violations of the Act such as money laundering and conflicts of interest cases. These types of cases require more advanced investigative techniques and are more legally complex to prosecute.

A few examples of the cases which involve serious violations that were prosecuted this year include:

- **Money Laundering - James Larry Minor**

James Larry Minor made ten campaign contributions, each in the amount of \$3,900, to the Jeff Stone for State Senate Campaign 2009 committee in a name other than his own, and made one contribution in 2006, in the amount of \$3,300, to The Committee to Elect Brenda Salas campaign committee in a name other than his own. In addition, he made a contribution in excess of the campaign contribution limits, a total contribution of \$39,000, to the Jeff Stone for State Senate Campaign 2009 committee. For money laundering, he was fined \$60,000.

- **Statement of Economic Interest Violation - Antonio Villaraigosa**

The FPPC initiated an investigation into potential gift and reporting violations by Respondent Villaraigosa from 2005 through 2010. On his annual SEI, Antonio Villaraigosa is required to disclose all income received, including all gifts received with a value of fifty dollars or more during the relevant period. Under the Political Reform Act (the Act) and supporting FPPC regulations, tickets or passes to certain events are not considered reportable gifts if they fall within an exception to the gift rules.

Antonio Villaraigosa did not list the complimentary tickets and passes on his annual SEI's because he believed they fell within the exceptions. Nonetheless, FPPC staff

# MAJOR CASES

determined that Antonio Villaraigosa received a total of 21 gifts from 2005 through 2009, with an individual value of fifty dollars or more that were not reported on his 2006, 2007, 2008 and 2009 annual SEIs, respectively. FPPC Penalty: \$21,000 (Total Proposed Penalty by Los Angeles City Ethics Commission: \$20,849, for a Combined Proposed Penalty: \$41,849)

- **Conflict of Interest Violation – David Cole**

Respondent David Cole was a member of the Pinole City Council, and as such, was also a board member of the Pinole Redevelopment Agency in Pinole, CA, from 2000 to 2007. At all relevant times, Respondent Cole owned and operated Pinole Valley Landscape (PVL) with his wife, Susan Cole. PVL provided services to and received substantial income from The Kivelstadt Group (TKG), a real estate developer and property management company active in the City of Pinole, whose projects included Pinole Valley Shopping Center, Pinole Vista Shopping Center, and Pinole Gateway. The evidence obtained during investigation revealed that Respondent Cole, through PVL, earned \$253,353 from TKG from 2003 through 2006.

For violations of his Statement of Economic Interest he was fined \$111,500. The largest fine in FPPC history.



# MAJOR CASES

## ENFORCEMENT DIVISION INVESTIGATIONS

### Embezzlement – Kinde Durkee

After an eighteen month investigation conducted first by the FPPC Program Specialists (auditors) and then by the FBI, Kinde Durkee, one of the leading professional campaign treasurers in California, was arrested and accused of embezzling millions of dollars from numerous campaign committees. Ms. Durkee served as the campaign treasurer for over 400 committees, ranging from Senator Dianne Feinstein and Assembly Member Jose Solario to local advocacy committees. She is currently awaiting trial.

***“The Kinde Durkee case was the most extensive campaign treasurer fraud in the history of California.”***

**Ann Ravel, Chair of the FPPC**

## COLLECTIONS PROGRAM ACTIVITY

The Enforcement Division actively pursues all cases that go into collections. Currently, there are over 68 cases being actively pursued through state tax intercepts, civil judgments and demand letters, and property tax liens.

## AUDITS

In 2011, the Division completed 9 audits of which 1 case was closed with a warning letter. The Division also reviewed and opened 43 FTB audit referrals of which 13 cases received warning letters, 12 were prosecuted, 1 received an advisory letter, and the rest were closed without action.

# ENFORCEMENT DIVISION BACKGROUND

## BACKGROUND

The Enforcement Division of the Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (“Act”)<sup>1</sup>. The Act governs disclosure of political campaign contributions and spending by candidates and ballot measure committees. It also sets ethics rules for state and local government officials that impose strict limits on decisions or votes that affect the official’s financial interests. The Act also regulates lobbying financial disclosure and practices related to the legislature and state agencies.

The Enforcement Division is charged with the enforcement of the provisions of the Act through administrative or civil prosecution of violations of its provisions. The Division has 27 staff members. The staff consists of 8 attorneys, 7 investigators, 1 chief investigator, 4 auditors, 3 political reform consultants and 1 full-time and 2 part-time support staff, along with a Division Chief.

## MISSION

The mission of the Enforcement Division is to resolve all complaints ***fairly, effectively, and efficiently***. In its implementation of this mission, the Division established 3 key goals: prosecute more serious cases, resolve complaints more timely, and ensure all cases are resolved appropriately and fairly.

## COMPLAINT SOURCES

The Division receives complaints from the public and referrals from other governmental agencies. Complaints can be sworn, which means the complainant makes the complaint under penalty of perjury. They can also be pro-active, which means the complaint is initiated

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

# ENFORCEMENT DIVISION BACKGROUND

by the Enforcement Division. Pro-active cases can be based upon information received from media reports, audit findings, FPPC streamlined enforcement programs, or when violations are otherwise identified by staff. The Enforcement Division then initiates investigations when there is sufficient information to believe a violation of the Act has occurred based on the complaints received.

## VIOLATIONS

The following are examples of common types of violations under the Act:

- Conflict of interests
- Campaign money laundering
- Mass mailings (failure to properly identify or report)
- Nonfilers and disclosure violations on Statements of Economic Interests forms
- Nonfilers and disclosure violations on campaign statements and reports
- Improper receipt of campaign funds and violations of contribution limits
- Improper expenditures of campaign funds, including using campaign funds for personal use
- Gift limit violations
- Lobbying violations

## CASE PROCESSING

The processing of a case begins in intake where a complaint is initially analyzed by a political reform consultant (PRC). If there is sufficient information to believe a violation of the Act occurred, it will be further processed at intake by a PRC or it will be referred to an attorney to develop an investigative plan based upon the legal elements of the alleged violation. If needed, an investigation of the allegations will occur. This is followed by a legal review by the assigned staff attorney, who recommends proper case resolution.

# ENFORCEMENT DIVISION BACKGROUND

Campaign audits are performed either by the Franchise Tax Board, or by the FPPC audit staff. Audit reports are analyzed by the FPPC audit staff and referred to an attorney if an administrative prosecution action is warranted.

## CASE RESOLUTION

There are several different types of resolutions for cases, as follows:

- **Closure without further action** – This is for cases where either no violation of the Act was found, there was insufficient evidence to establish a violation of the Act, procedural deficiencies in the case existed, or other circumstances exist that preclude further prosecution of the case. These closures result in a letter sent to the respondent informing them of the case closure.
- **Advisory Letters** – These are sent when there is insufficient evidence to establish a violation of the Act, the violations are de minimus, or where the respondent(s)'s conduct leads to the conclusion that they require further information to ensure future compliance.
- **Warning Letters** – These are sent in cases where the evidence establishes that the respondent(s) conduct violated the Act, but the circumstances surrounding the violation do not warrant the imposition of a fine.
- **Imposition of Fine** – This is for cases when the respondent(s) violated the Act. Imposition of the fine can be accomplished through a stipulated agreement, default judgment, or decision and order from an Administrative Law Judge. All fines must be approved by the Commission.
- **Civil Judgment** – In some cases, the circumstances may warrant the filing of a civil action to seek the appropriate penalty for the violation.