CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

December 7, 2001

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:45 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Chairman Getman announced that the Commission would be discussing the date of the January meeting during closed session, noting that there was a filing deadline on January 10, 2001, the date scheduled for the meeting.

Item #1. Approval of the Minutes of the November 5, 2001 Commission Meeting.

The minutes of the November 5, 2001 Commission meeting were distributed to the Commission and made available to the public. There being no objection, the minutes were approved.

Item #2. Public Comment.

Jim Knox, representing California Common Cause (CCC), raised the issue of the enforcement of the PRA with regard to Indian tribes. He expressed concern that the FPPC Enforcement Division has had difficulty obtaining compliance by various tribes for a number of years.

Mr. Knox explained that CCC filed a complaint with the FPPC Enforcement Division 1 1/2 years ago, following a two-year study conducted by CCC investigating campaign financing by the tribes. He stated that CCC staff identified 300-plus possible violations, a vast majority of which were determined by FPPC staff to be violations. Nearly two-thirds of the discrepancies involved Indian tribes, and FPPC staff did not dispute the facts in most of those cases. However, no enforcement action had been taken. Mr. Knox expressed concern that the statute of limitations on these cases would run out in the coming months. He suggested that the Commission's lack of action may be an indication that the Commission has concluded that it may not have jurisdiction over Indian tribes.

Mr. Knox argued that the Commission must proceed with these cases and resolve any jurisdictional issues if it is uncertain of its authority. He noted that the tribes contribute more campaign funds than any of the traditional large campaign contributors. He asked that the Commission clarify its position and its plans regarding its authority over Indian tribes.

Chairman Getman replied that the Commission would not publicly comment on any pending enforcement cases, and that Mr. Knox's portrayal of the Commission's work on the resolved

cases was inaccurate. She requested that the Enforcement Division correct the record later in the meeting.

Items #3 and #4.

Item #3: Proposition 34 Regulations: Adoption of Regulations Regarding Section 85200 ("One-Bank-Account" Rule);

Item #4: Proposed Regulations 18520, 18521, 18523, and 18523.1. Proposition 34 Regulations: Adoption of Proposed Regulation 18537.1 Interpreting Section 85317 (Carry Over of Contributions).

In advance of his presentation, Assistant General Counsel John Wallace presented copies of the federal rules dealing with transfers between candidate's own federal campaign committees. He explained that § 85317 allows contributions to an elective state officer to be carried over without limit and without attribution of contributions to specific contributors. Proposed regulation 18537.1 implements the statute by providing that funds raised for a primary election may be carried over to the general election for the same office, and that the same rules would apply in special elections. He noted that Government Code section 82022 defines these as two separate elections, and noted that Proposition 34 treats them as separate elections for both contribution and expenditure limit purposes. All other cases allow transfer with attribution to specific contributors.

Mr. Wallace explained that the Commission received a letter from the legislative leadership opposing the draft regulation. Staff disagreed with the comment letter's assertion that there was no ambiguity in the statute, noting that the statute may be read to allow carryover from the primary to the general elections or it may be read to allow carryover from one election to another election years later to the same seat. Staff also disagreed with the letter's assertion that the regulation does not effectuate the intent of the voters. Mr. Wallace pointed out that the ballot arguments indicated that the limits of Proposition 34 should be strictly enforced. He believed that the proposed regulation was the most faithful to the intent of the voters when they adopted Proposition 34. He pointed out that § 85317 is not the same as the federal rule, and noted that Proposition 34 is not the federal election system and that the Commission is not bound by federal law. Staff disagreed with the letter's assertion that attribution to specific contributors is unconstitutionally burdensome on the rights of contributors. Staff recommended that the Commission adopt the regulation as proposed.

In response to a question, Mr. Wallace stated that the federal rule treats contributions received before an election differently than contributions received after an election. The federal rules recognize that each of those elections is a different federal office. If the Commission chose to pursue a federal approach, staff requested that they investigate it more thoroughly, possibly incorporating some of the limitations included in the federal statutes and regulations.

In response to a question, Mr. Wallace stated that the federal rules would allow carryover without attribution if the candidate is running for reelection to the same office, noting that there are other limits that should be considered.

Chairman Getman stated that it would be best to make the carryover issue decisions at the same time as the redesignation decisions because the current wording of the proposed redesignation and carryover regulations incorporate several different terms to mean the same thing, undermining the notion that the language of § 85317 has a special meaning. She asked for clarification of the approach staff was recommending with regard to the term, "same elective state office."

Mr. Wallace responded that staff will be asking the Commission to remove some redundancy. He explained that under Proposition 73, the Commission treated both the election and reelection to a seat as separate distinct offices based on the year of the election, and Mr. Wallace believed that Proposition 34 rules have not changed that.

Commissioner Knox questioned why the statute did not specify "primary" and "general" elections if the statute intended to adopt a restrictive interpretation of § 85317.

Mr. Wallace responded that much of the language of the federal rules, which were the model of § 85317, was not included in Proposition 34. He noted that the language also did not state that it was intended to apply to a subsequent election to the same office, thus the statute was susceptible to both interpretations.

Chairman Getman noted that proposed Regulation 18520 considers the language in § 85200, referring to a "specific office." Other regulations use, "specific term of elective office," "specific term of elective state office," and "a specific office and a term of office." Since all of those terms apparently mean going from one term of office to another term of the same office, she questioned how the Commission could justify defining "same elective state office" in the same manner.

Mr. Wallace responded that different regulations are being applied in different contexts. He agreed that there were a lot of variations, but that the Commission is really trying to define "office." A Senate seat in 1992 would be considered one office, and reelection to the same Senate seat in 1996 would be considered a new office. He pointed out that staff considered the fact that term limits did not exist when the PRA was enacted. The limiting language on "office," meaning a "specific term of office," is appropriate and consistent with past Commission decisions.

Commissioner Swanson noted that an incumbent would see this as the same term of office, but that a challenger would see it as a new office. Therefore, each new term is a new office.

Mr. Wallace agreed. For most people, a primary and general election are two elections for that seat. He believed that the PRA supports that definition.

Chairman Getman pointed out that the statute allows carryover for a subsequent election for the same elective state office.

Commissioner Swanson stated that if an official is running for a second term in a two-term office, the second term is a new election.

Commissioner Knox agreed that it was a new election, but questioned whether that meant that it was the same elective office. The common sense construction of the language provided that a person who has run for office in 1998, and wants to run again in 2002, would be considered by most people to be engaged in a subsequent election for the same elective office. He agreed that there was ambiguity in the language, but that staff's interpretation was not the stronger of the two views.

Commissioner Swanson pointed out that the discussion was about whether carryover should be allowed and whether it would require attribution regardless of whether it is considered the same elective office or not. A new election, at the end of a term of office, is a new election. Primary and general elections are elections for the same term of office.

Chairman Getman stated that §§ 85200 and 85317 discuss "elective state office" and that it is clear that "elective state office" refers to a particular kind of office, such as senate, assembly, or governor. Section 85200 provides that every time someone runs for an "elective state office" a statement of intention must be filed to be a candidate for a "specific office." The Commission has used "specific office," to mean "specific term." A statement of intention must be filed at the beginning of the election cycle and is not required again for the general election. If the language, "a subsequent election for the same elective state office," is considered with regard to § 85317, it would support the argument that the candidate is running for another election cycle for that same elective state office for which the candidate will file a statement of intention under § 85200. If "subsequent election for the same elective state office," is defined to mean the primary and general elections, the regulations under § 85200 would define many terms in many ways and could cause unintended consequences.

Mr. Wallace responded that the issues illustrate that there is ambiguity in the statute, and that the Commission should decide which interpretation reflects the intent of the voters. Staff believed that there was nothing in the ballot materials supporting an approach other than that recommended by staff.

Commissioner Downey pointed out that staff's belief that there is ambiguity in the statute is important. He pointed out that Senator Burton's argument that, "By any reasonable reading of the statute this permits contributions that are unspent in one state election to be used in <u>any</u> future election to the same office without attribution to specific contributors…" can be rebutted. He argued that the statute concludes, "Campaign expenditures in connection with a subsequent election for the same elective state office." Since it does not state "any," only one subsequent election is referenced in the statute, thus demonstrating the ambiguity. Section 82022 defines "election" to be "any primary, general, special or recall election held in the state." Since there is no clear direction from the definitions, there is ambiguity. When there is ambiguity, the Commission must consider the voter pamphlet and not the actual intent of the drafters. The voter pamphlet required strict contribution limits, and therefore the Commission should adopt the stricter of the two interpretation, limiting the non-attribution scheme to the primary and general elections, and not the reelection campaigns.

Commissioner Downey agreed that a challenger who lost an election would view the next election as an election for a different office. He believed that there was an ambiguity to the statute and that the Commission should limit the circumstances for non-attribution.

Commissioner Knox disagreed, noting that Commissioner Downey put undue weight on the term "a subsequent election" as compared to "any subsequent election." In this context, "a" and "any" mean precisely the same thing. If the draftsmen or the voters had intended that this should refer only to a general election following a primary election, then they would have written, "the next subsequent election" or, "the immediate subsequent election." He believed that use of the word "a" indicates that it refers to any and all subsequent elections for the same elective state office.

Chairman Getman stated that there is no way to read, "same elective state office" except to read it as, "the same office." She believed that the Commission was reading it that way in § 85200, and that "elective state office" means a particular type of office. If a candidate is running for the "same elective state office," then the candidate is running for that same particular type of office. The term "specific office," in § 85200 is the term that means, "a specific term" of that elective state office. There was still a question regarding what, "a subsequent election" means.
She believed that there was ambiguity in the term "subsequent election." She stated that the statute would have been clear if it had been written, "Contributions raised in connection with one election for elective state office to pay campaign expenditures incurred in connection with reelection."

Commissioner Downey disagreed, noting that a candidate who lost an election and is also running for the same office several years later would not be running for reelection.

Chairman Getman agreed, noting that using the term, "reelection" would not have allowed carryover from primary to general elections. If the intent was to allow carryover for reelection campaigns and from primary to general elections, expansive language such as, "subsequent election" would have to be used. If the Commission accepts that reading, it might make regulation 18520 and the redesignation regulations easier to write. "Specific office" would mean a specific term, "specific term of elective state office" and "elective state office" would mean a particular type of office.

Ms. Menchaca stated that Chairman Getman's approach was generally correct, but would not resolve viewing the term, "same elective state office" differently because it would not necessarily have to mean the same thing in other contexts. She believed that it would require that staff present that analysis.

Chairman Getman disagreed, noting that, if the candidate lost, the campaign would have to be closed out.

Ms. Menchaca agreed, but noted that another campaign could be opened right away.

In response to a question, Technical Assistance Division Chief Carla Wardlow stated that there is nothing in the statute that would preclude a candidate from opening a committee years before the election.

Ms. Menchaca pointed out that the statement of intention must be filed before raising campaign funds.

Commissioner Downey noted that a losing candidate with a surplus of funds at the end of an election could file a statement of intention for the same office some years hence and transfer the funds to the new committee.

Chairman Getman questioned why a contributor should not be allowed to contribute to both elections as long as both contributions were within the limits.

Ms. Menchaca suggested that staff research the term "subsequent election" separately from "a same elective office," because "subsequent election" could mean "reelection," possibly excluding the primary from the general election as well.

Chairman Getman suggested that the Commission was trying very hard to define everything to try to get around the language of the statute.

Commissioner Downey stated that, using Senator Burton's example, attribution must be done when switching offices, and has the same impact on the contributors.

Commissioner Knox responded that the statute does not restrict attribution when it is for a different office.

Commissioner Downey stated that the contributors, through no fault of their own, are hamstrung in the amount that they can give to the next campaign simply because it is for a different office.

Mr. Wallace stated that if the Commission wanted to take the broader approach staff would like to try to put some of the federal limits in the regulation. He anticipated that the federal law had some restrictions with respect to designation of contributions and when the contributions are received.

Chairman Getman stated that she was not comfortable with a regulation that seems inconsistent with the language of the statute. The regulations should be clarifying ambiguities in the statute, but the proposed regulation makes the statute less clear. She suggested that the Commission compare regulations with different interpretations to find a correct reading.

Mr. Wallace agreed.

Ms. Menchaca explained that, if the Commission chose to consider the broader approach, staff would need to do further research to determine what effect the broader approach would have on other provisions of Proposition 34.

Commissioner Swanson requested that staff provide more information comparing the federal regulations with the proposed regulation, specifically exploring whether the Commission's intent conflicts with the federal regulations and whether the Commission's regulations were required to comply with the federal regulations.

Scott Hallabrin, representing the Assembly Ethics Committee, appearing on behalf of the authors of Proposition 34: Senator John Burton, Assembly Speaker Robert Hertzberg, and Senator Ross Johnson. He reiterated their opposition to the regulation, seeing no need for a regulation because § 85317 was clear on its own merits. They were baffled by the staff's interpretation that the language applied to the transfer of funds from the primary to the general elections. He agreed that the Commission should consider the plain meaning of the language. Even if the Commission concedes that it is ambiguous, the body of Proposition 34 and the ballot arguments must be considered for guidance and Proposition 34 has been set up as a "per election" contribution limit.

In response to a question, Mr. Hallabrin explained that there is a requirement for attribution and transfers between other committees of the same candidate because the "per election" contribution limits can be violated. If a person were running for Lieutenant Governor, then decides to run for Senate, attribution would be necessary to ensure that the transferred monies do not exceed contribution limits because the contribution limits for Lieutenant Governor are higher.

Mr. Hallabrin stated that if carryover were not allowed, it would raise the constitutional issue of a contributor not being able to give the maximum contribution from one race to the next. He did not agree that the scenario existed anytime attribution is required. He believed that the candidates should be able to carry leftover monies into the next election without attribution.

Commissioner Swanson pointed out that all incumbents would want to do that, but that the Commission should be trying to make an even playing field. An incumbent always has an advantage.

Mr. Hallabrin responded that it is an inherent advantage and that the courts have upheld that advantage.

Chairman Getman asked Mr. Hallabrin what harm would be brought if the carryover were limited.

Mr. Hallabrin responded that he did not know whether there was harm from a policy perspective, but that there was a constitutional problem. He noted that their concerns were with the carryover issue, not with redesignation.

Lance Olson, with Olson, Hagel, Waters and Fishburn, commented that the federal rules permit a candidate to carry monies over from the general to the primary for a subsequent election for the same elective office. He did not agree that the federal rules were very complicated, and he believed that the federal rules would be consistent with § 85317. He suggested that the Commission develop a rule providing that funds received after an election should be designated for the next election.

Chairman Getman stated that she did not feel comfortable approving the regulations as drafted because they created some internal inconsistencies and greater ambiguities with respect to the language of the PRA. She believed that § 85317 contained ambiguities in the definition of "subsequent election." The term, "same elective state office" is fairly clear and means the same type of office. The question was whether "a subsequent election" means just the primary to general elections, or any other election in connection with that same office.

Commissioner Downey agreed that the regulation should be further explored, and was not ready to make a motion.

Commissioner Swanson agreed. She stated that the ambiguities should be clarified. She stated that even if every word appears to be clarified, there might still be questions about the intent of the Commission. She believed that "subsequent" means the next election to the same elective office.

Chairman Getman noted that Commissioner Swanson's reading would be the opposite of what the Commission had previously voted for.

Commissioner Downey stated that if the Commission gives a broad interpretation to § 85317, it would result in a terrific undermining of the attribution rule of § 85306(a) and that there a certain offense taken to that by some members of the Commission. Most subsequent campaigns are reelection campaigns.

Chairman Getman agreed, noting that the Commission is trying very hard not to undermine the attribution rule and not to create an easier set of circumstances for incumbents.

In response to a question, Chairman Getman agreed that the Commission will also address the redesignation issue when the staff brings back the next draft addressing the carryover issue again.

Commissioner Knox stated that the draft of regulation 18520(a) defines "specific office" to mean "specific term of elective office." Draft regulation 18520(b) uses the term, "the specific term of office." He suggested that if the Commission is defining that, the reference to "specific term of office, " should be changed to "specific office."

Mr. Wallace agreed.

Commissioner Knox noted that draft regulation 18520(b) uses the term, "new original statement," and suggested that it could be deleted.

Chairman Getman suggested that subparagraph (c) could be deleted altogether.

Mr. Wallace responded that staff would revisit both of those issues.

The Commission adjourned for a break at 11:00 a.m.

The Commission reconvened at 11:17 a.m.

Item #5. Proposition 34 Regulations: Repeal of Emergency Regulation 18404.2 and Adoption of Regulation 18404.1 (Termination of Committees).

Commission Counsel Holly Armstrong presented a revised draft regulation 18404.1 for adoption and 18404.2 for repeal. She explained that regulation 18404.2 deals with committees formed prior to January 1, 2001, controlled by candidates who never held or no longer hold the office for which the committee was formed, and requires that those committees be terminated no later than December 31, 2002. The substance of that regulation has been incorporated into the substance of draft regulation 18404.1.

Ms. Armstrong noted that current officeholders elected prior to January 1, 2001 would not have been required to terminate their old local committees under the proposed regulation originally drafted. Staff had not intended that, and revised the original proposal to include subsection (a)(2)(C) to address the omission. She noted that it was within the scope of the notice published by the Office of Administrative Law and that there was no opposition voiced by any member of the public on the issue of termination of local committees after a candidate's election to state office. The new provision would make the same provision applicable to those candidates who are currently holding an elective state office as of the effective date of the regulation.

Chairman Getman clarified that one letter of opposition had been received from David Bauer.

Ms. Armstrong stated that the basis of the letter was that the regulation would impose unreasonable financial burdens on candidates and campaign treasurers because of the potential for audits and fines levied by the Commission after the Committee had been terminated. She explained that an auditor from Franchise Tax Board had previously testified to the Commission that audits are routinely performed on committees that had already been terminated and that the addition of the termination date should not radically alter that practice. The regulation also includes a provision for an extension of the termination date in order to comply with the requirements of the regulation.

Chairman Getman questioned why subsection (a)(1) included the language, "In addition to compliance with subsection (a)(1) of this regulation." She explained that subsection (a)(1) is directed toward candidates who never held or no longer hold the office, and committees controlled by those candidates. Subsection (a)(2) is directed toward candidates who hold the office. She questioned how candidates who hold the office comply with subsection (a)(1), which is directed toward different candidates.

Ms. Armstrong responded that staff wanted to ensure that candidates currently holding office knew that they had to close old committees for unsuccessful campaigns.

Chairman Getman expressed concern that the language may need to indicate that they no longer hold the term of office for which the committee was formed.

Ms. Armstrong stated that the language applies when the candidate never held or no longer holds the office.

Chairman Getman stated that subsection (a)(2) discusses closing candidate-controlled committees for candidates who currently hold an elective state office. However, candidates who currently hold elective state office may have more than one candidate-controlled committee. She suggested that subsection (a)(2) was meant to apply to candidate-controlled committees that were formed for the current term of office that they currently hold, but that the draft regulation does not comport with that intent. She suggested that the regulation be clarified so that subsection (a)(2) deals with candidate-controlled committees for the candidate's current term of office, and that subsection (a)(1) deals with any other candidate-controlled committees that the candidate may have had for any other office or any other term of office.

Commissioner Downey presented a hypothetical situation and asked for clarification of how the rule would apply. After some discussion, Ms. Armstrong suggested that the word "elective" could be deleted.

Chairman Getman suggested that staff review it during the lunch break.

Ms. Armstrong agreed.

There were no questions or comments from the Commission regarding decision 1, or on the remainder of the regulation.

Mr. Hallabrin stated that subdivision (d) deals with the same issue as subsection (a)(2)(C), and suggested that it would be better placed under subdivision (b).

Chairman Getman requested that staff work on final language during the lunch break.

Item #6. Proposition 34 Regulations: Emergency Adoption of Proposed Regulation 18428 (Reporting by Affiliated Entities) (§ 85311).

Senior Commission Counsel Larry Woodlock presented the emergency regulation, noting that it deals with reporting by affiliated entities. He explained that the regulation needed to be amended to bring it into conformity with the new statute. Regulation 18428 was last amended to incorporate the Proposition 208 affiliation criteria and new criteria were created by Proposition 34.

Mr. Woodlock explained that subdivision (a) refers to former regulation 18531.1 and should be substituted with a reference to § 85311 and regulation 18225.4, which treats affiliated entities in the expenditure context. Subdivision (b) includes language that was taken from Proposition 208's version of § 85311. He recommended that the language be replaced with language that would align the sentence with the affiliation criteria of the current statute. Subdivision (c) was added to the regulations because of Proposition 208 and is no longer consistent with Proposition 34. It defines entities reporting obligations solely by their relationships and no longer belongs in the regulations, and Mr. Woodlock recommended that it be deleted.

In response to a question, Mr. Woodlock stated that the regulated public was confused by the regulations as to who is affiliated and how the reports are supposed to be completed. Since primary elections are scheduled for March and people are beginning to file for those elections, the regulated public needed an answer now. Without these recommended changes, those people may file unnecessary reports or inadvertently violate the statute.

In response to a question, Mr. Woodlock believed that the issue should be considered an emergency because of the sudden and dramatic shift in the law.

Commissioner Downey moved that the emergency regulation be adopted.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson, and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #7. Proposition 34 Regulations: Adoption of Regulation 18421.4 (Reporting Cumulative Amounts).

Commission Counsel Scott Tocher presented the regulation, noting that a similar regulation had been adopted in June, 2001, and expired in October, 2001. At that time, the Commission asked staff to redraft the regulation addressing an ambiguity that was in the emergency regulation. The previous regulation language might have been read to mean the general purpose committees would have to report cumulative totals for contributions made and received when only cumulative contributions made must be reported.

Mr. Tocher explained that subdivision (a) addressed contributions received and made by candidate-controlled committees. Subdivision (b) addressed contributions made by recipient committees. Subdivision (c) addressed cumulative expenditures made for candidates who have elected to abide by expenditure limits. Subdivision (d) clarifies the date of application for candidates for statewide elective office.

Commissioner Swanson moved that the regulation be approved.

Commissioner Downey seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #8. Proposition 34 Regulations: Adoption of Regulations 18539 and 18550 (New Online/Electronic Disclosure Reports).

Mr. Tocher explained that emergency regulations 18539 and 18550 expired in October, 2001. At that time, the Commission directed staff to redraft the regulation for adoption. The regulation concerns online disclosure within 24 hours of contributions received and made over a certain

amount during the election cycle, which is 90 days before an election. The previous regulation contained references to electronic forms that do not yet exist, and staff was asked to eliminate that reference and reexamine the necessity for including the form contents in the regulation.

Mr. Tocher stated that sections 85309 and 8550 already refer to the contents, and the specific information which is to be disclosed may not be necessary to have in the regulation. The simplest version of the regulation is 18539 option 1.

In response to a question, Mr. Tocher stated that option 2 would provide a shortcut for someone looking for the information that they would be required to disclose, rather than looking at the statute. He did not believe that there was any ambiguity in the statute that would require clarification by regulation.

Commissioner Knox stated that he was inclined toward option 1.

Colleen McAndrews, from Bell, McAndrews, Hiltachk and Davidian, stated that the rule requiring filing of late contribution reports and late independent expenditure reports on Saturdays or Sundays emanates from regulation 18116. She strongly urged the Commission to remove that provision.

Ms. Wardlow explained that the regulation provides that when reports filed under the PRA are due on a Saturday, Sunday, or official state holiday, the deadline is changed to the next working day, except for late contribution reports and late independent expenditure reports. The regulation would have to be amended to remove the language excepting the late contribution reports and late independent expenditure reports.

Mr. Tocher noted that the reports required by the regulations being discussed would have the deadline moved to the next business day.

Ms. McAndrews agreed, noting that, otherwise, they have to fax or e-mail reports on Saturday and Sunday that no one reads because the state offices are closed. There would be no harm to the public to have the reports filed on Monday. She asked that the Commission apply that policy to the old late contribution reports and late expenditure reports.

Jim Knox, from California Common Cause, urged the Commission to proceed with caution because late contributions made on a weekend before an election are extremely critical and often extremely devious. There are election offices that do remain open on the weekend before the election. If a "stealth contribution" is made on a Friday night and is not reported until Monday, it would not get into the newspapers until Tuesday. A lot of newspapers have a policy of not printing election news on election day, so people would have four days before an election to contribute to an election and the public might not learn about the contribution until after the election.

Ms. Wardlow pointed out that the Secretary of State's office is open the weekend before an election and publishes the late contribution reports on that weekend.

David Hulse, with the Secretary of State's office, stated that his office is open on Saturday of the weekend before the primary and general elections and the two weekends before that. Paper late contribution reports can be viewed there at those times. Electronic reports would be posted immediately on the website.

Chairman Getman noted that the regulation requires the use of identification numbers issued by the Secretary of State and the statute does not have that requirement. If option 2 is not adopted, there will be no requirement that filers include their identification number on the reports.

Ms. Wardlow pointed out that there are approved forms that have that information on the form, and that not every piece of information required on every form is in a statute or regulation.

Chairman Getman suggested that it is not then required.

Ms. Wardlow responded that it is required to the extent that the Commission has approved the late contribution and late independent expenditure reports, which are identical to the forms that are being used and include the identification number as well as the other items listed in the regulation.

Chairman Getman noted that the online disclosure reports, which are not going to be accompanied by a form, are required by statute to be equivalent to another provision of the statute that has no requirement in it for including a committee identification number. If it is included in the regulation, then it will be clear that the online report has to include the identification number.

Mr. Hulse responded that the identification number of a committee would be designated already.

Chairman Getman agreed, but noted that it was not a requirement of the statute, but a requirement of the form. She suggested that the Commission approve option 2 because it includes requirements that are not in the statute but were included at the Secretary of State's request ensuring that filers use the committee numbers. That would enable cross-checking and searching on the Secretary of State's database.

Mr. Hulse responded that if it is not in the statute, then option 2 would be preferable.

Ms. Menchaca encouraged adoption of option 2 because the Secretary of State has had questions relating to additional information that may or may not be useful for this report. She suggested that the Secretary of State present amendments to this regulation instead of wondering whether particular information should or should not be required. If the Commission chose option 2, it would give staff the opportunity to bring that issue back to the Commission.

Chairman Getman clarified that the election-cycle reports are filed within 24 hours, and the regulation would provide that they do not need to be filed over the weekend.

Mr. Tocher agreed, by virtue of regulation 18116.

Ms. Wardlow noted that during the late contribution period, the late contribution reports would have to be filed on the weekend.

In response to a question, Ms. Wardlow stated that the information required under option 2, subparagraph (a)(5) was required by statute.

Commissioner Swanson favored option 2.

Mr. Tocher noted that staff recommended that the language, "and number of pages" be deleted from option 2, subdivision (a)(2). He explained that, since a paper form would not be required, there would be no pages.

In response to a question, Chairman Getman explained that the regulation would help create an online form. A filer would have no idea how many pages there are in the online report. She agreed that the language should be deleted because it could create a requirement that would be impossible to comply with.

In response to a question, Ms. Wardlow explained that subparagraph (a)(3) referred to language requested by the Secretary of State's office because they get so many of these reports and it is difficult to determine whether someone is filing a duplicate or an amendment. She explained that an amendment is normally filed separately from new information.

Mr. Hulse noted that amendments to all electronically filed reports must be submitted as a separate document. Page numbers do not count in electronic filing.

Chairman Getman stated that the Commission preferred option 2, deleting from the title the words, "and Independent Expenditures," and deleting option 1. Additionally, subparagraph (b) will be deleted, eliminating the need to identify the first line of option 2 as subparagraph (a). Subparagraphs (1) through (6) will be changed to subparagraphs (a) through (f), and the words, "and number of pages" will be deleted from subparagraph (b).

Commissioner Swanson moved approval of the regulation with the amendments outlined by Chairman Getman.

Commissioner Downey seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Chairman Getman stated that the only change that would be required to proposed regulation 18550 would be the deletion of the words, "and number of pages," under subdivision (a)(2), and the deletion of subdivision (c).

Commissioner Swanson moved approval of regulation 18550 with the amendments outlined by Chairman Getman.

Commissioner Downey seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #12. In the Matter of Arturo Rodriguez, FPPC No. 99/621, OAH No. N-2001040523.

Senior Commission Counsel Amy Holloway reported that the Commission had requested changes to a previous proposed ALJ decision, and the judge issued the revised proposed decision, addressing the three statutes that were violated. She requested that the Commission adopt the decision.

In response to a question, Ms. Holloway stated that notice was provided to the respondent of the revised decision.

Chairman Getman reported that the Commission would consider the decision during closed session.

Item #2. (Cont.) Public Comment.

Enforcement Chief Steven Russo reported that the original complaint received from Common Cause alleged 332 possible violations. The subject of the complaint involved alleged violations by gambling interests in the state of California and it was not specifically targeted to Indian tribes. Of the 332 alleged violations, 148 involved alleged violations by contributors, 74 involved alleged violations by recipient committees, and 110 involved alleged violations by candidates involved with slate mail. Enforcement staff found that, of the 110 slate mail violations, there was insufficient evidence to establish that there was any coordination with the candidates. Mr. Russo stated that Common Cause acknowledged there was insufficient evidence to prove violations concerning the slate mailers, so these allegations were dropped from the complaint. Of the remaining alleged violations, 9 were withdrawn by the complainant, 8 were dropped because the statute of limitations had already expired when the complaint was received, and 45 were unsubstantiated. Enforcement staff committed 575 hours of staff time sorting through the allegations in the complaint, which ultimately yielded allegations against approximately 12 respondents. Six of those cases, involving 57 allegations, were prosecuted by the Enforcement Division, and produced $10,500 in fines. There remain potential cases against only 6 respondents.

Mr. Russo explained that he could not discuss the details of the remaining cases because they were open enforcement matters and were still under investigation. He noted that the statute of limitations on the oldest violation would not expire civilly until July, 2002, and administratively not until July, 2003. The newest violation of those remaining cases does not expire civilly until January, 2004, and administratively in January, 2005. The cases are well within the scope of cases that can be prosecuted without any problem from the statute of limitations.

Mr. Russo stated that there is an issue of Indian sovereignty that exists with regard to some or all of the cases. He noted that it is an important issue throughout the state of California and is an

issue that requires a lot of work, research, and consultation with other agencies to make sure it is handled correctly. How these cases are handled could have an effect on what can be done in California for years to come, and staff is giving them all of the consideration that they deserve. He expected that it will take some time to make sure the Enforcement Division does it right.

Jim Knox responded that CCC contacted the Enforcement Division when they were about to file the complaint, and advised them of the scope of the complaint. They offered to file the background data, which included 6 file boxes of campaign reports, but Enforcement staff rejected their offer. Six weeks later Enforcement staff asked for the files.

Mr. Knox explained that the 110 slate mailers related to in-kind contributions from Indian tribes, and should have been included in the count of complaints related to the Indian tribes. Mr. Knox stated that CCC did not withdraw its complaint with regard to the slate mailers. He challenged the assumption that there was not sufficient coordination with the candidates, because many of the candidates reported those in-kind contributions which were part of slate mailers.

Mr. Knox stated that the CCC realized that they were raising a policy issue with the complaint and hoped that the Commission would tackle it. The issue was whether a slate mailer should be considered an in-kind contribution to a candidate, by the person who pays for the slate mailer, or an independent expenditure.

Mr. Russo responded that Enforcement's analysis of the slate mailer violations differs from CCC's analysis, and that Enforcement's analysis included consideration of what can or cannot be proved. Enforcement staff did not believe that there was sufficient evidence to establish that there were unreported in-kind contributions or independent expenditures, so the cases were not prosecuted.

Mr. Russo stated that Enforcement Division has done its best to prosecute the cases fairly and efficiently, and that they were proceeding as the cases warrant.

Chairman Getman stated that CCC does good and just work, but that the Commission, and especially the Enforcement staff, does good and just work too.

The Commission adjourned to closed session at 12:15 p.m.

The Commission reconvened at 1:30 p.m.

Chairman Getman announced that the Commission agreed to have the January meeting on Tuesday, January 15, 2002 at 9:45 a.m. She noted that there may not be a February meeting.

Item #12 (Cont.). In the Matter of Arturo Rodriguez, FPPC No. 99/621, OAH No. N-2001040523.

Chairman Getman announced that the Commission agreed to adopt the Administrative Law Judge's decision in the case.

Items #13, #14, #15, #16, #17, #18, #19, #20, #21, #22, #23 and #24.

There being no objection from the Commission, the following items were approved on the consent calendar.

Item #13. ***In the Matter of Barstow Faculty College Association*, FPPC 2000/135.** (19 counts.)

Item #14. ***In the Matter of Frank Russo and Frank Russo for Assembly Special Election Committee*, FPPC No. 2000/375.** (8 counts.)

Item #15. ***In the Matter of Charles Calderon, Calderon for Senate '98, Calderon for Attorney General, and Phillip Pace, FPPC No. 2000/61***. (10 counts.)

Item #16. ***In the Matter of Democratic State Central Committee of California, and Katherine Moret*, FPPC No. 2001/495.** (11 counts.)

Item #17. ***In the Matter of the California Republican Party, and Shawn Steel, FPPC No. 00/160*.** (20 counts).

Item #18. ***In the Matter of Delores Zurita, Committee To Elect Delores Zurita, and Satra Dee Zurita, FPPC No. 00/143***. (10 counts).

Item #19. ***In the Matter of Curt Pringle, Friends of Curt Pringle, Betty Presley, and Jeff Flint, FPPC No. 99/821*.** (12 counts).

Item #20. ***In the Matter of California Assisted Living Facilities Association, FPPC No. 01/494*.** (11 counts).

Item #21. ***In the Matter of Dean Zaharias, FPPC No. 99/543*.** (3 counts).

Item #22. ***In the Matter of Gary Linden, FPPC No. 01/419***. (1 count).

Item #23. ***In the Matter of Michael Sauerbrun, FPPC No. 01/442***. (1 count).

Item #24. ***In the Matter of Fernando Marin, FPPC No. 01/382*.** (1 count).

Chairman thanked staff for their efforts, especially for their work on item 14, in providing a more explicit statement explaining how the fines were determined.

Item #5 (Cont.). Proposition 34 Regulations: Repeal of Emergency Regulation 18404.2 and Adoption of Regulation 18404.1 (Termination of Committees).

Commission Counsel Holly Armstrong suggested that the words, "specific term of" be inserted in proposed regulation 18404.1(a)(1), line 7, and that the words, "in addition to compliance with subsection (a)(1) of this regulation" be deleted from line 9 of the proposed regulation.

Chairman Getman stated that the language, "Controlled committees formed for the office that they are holding," should be included in (a)(2). Otherwise, it would look like a person currently holding an office could keep all controlled committees open until 9 months later. She suggested that subparagraph (a)(2)(A) be reworded to read, "Controlled committees formed for that office that have no debts must be terminated."

Commissioner Knox pointed out that it could lead back to the quagmire of defining what "office" refers to. He also noted that the proposed regulation includes the term "specific term of elective state office" which is being addressed in proposed regulation 18520, and may need to be changed to the term "specific office," meaning that office for that term.

Ms. Menchaca noted that subdivisions (2)(A) and (2)(B) discuss termination of controlled committees, and suggest that an older committee whose term ended would have to be closed.

Chairman Getman stated that the committee would have violated the law if the old committee was not closed nine months after the term ended. Subdivisions (A) and (B) need to make clear that they apply only to the committee for the current office. Regulation 18520 defines "specific office" to mean a specific term of elective office. If the regulation indicates that they no longer hold the specific office for which the committees were formed, it would mean that they no longer hold the specific term of elective office for which the committees were formed. She suggested that (a)(1) would read, "Committees controlled by candidates who never held or, as of the effective date of this regulation, no longer hold the specific office for which the committees were formed must be terminated." Subdivision (a)(2) would read,

> "For those candidates holding an elective state office as of the effective date of this regulation,
>
> (A) Controlled committees formed for that specific office that have no debts must be terminated.
>
> (B) Controlled committees formed for that specific office that have debts must be terminated."

Commissioner Downey suggested that the regulation may need to be reworked and considered at the next meeting.

In response to a question, Ms. Armstrong stated that the emergency regulation was still in effect and would not expire until January 18, 2002.

Chairman Getman stated that, since the emergency regulation does not expire until after the next Commission meeting, staff could rework the language and present it at that time.

Item #10. Regulation Calendar for the Year 2002: Setting of Priorities (Adoption).

Ms. Menchaca presented the regulation calendar for the year 2002, noting that the proposed calendar had been presented to the Commission and the public, and it incorporated ideas presented by the different FPPC divisions as well as legislative mandates. The proposed

calendar included timelines for the conflict of interest codes project and provided for an update on Proposition 34 issues in May, 2002.

In response to a question, Mr. Wallace stated that regulation 18704.2 was scheduled to be addressed later in the year because there were so many Proposition 34 items that needed to be scheduled first. Additionally, it allowed time for public feedback. He noted that staff would be meeting with representatives from small jurisdictions on December 19, 2001, and that staff would try to schedule it for the Commission's consideration earlier in 2002 if they are able to.

Michael Martello, City Attorney of Mountain View, representing the League of California Cities, City Attorney's Group, commented that foreseeability in the land use context is a major issue that must be addressed. Additionally, the conflict of interest code/statement of economic interest issue that is already included on the calendar should consider better defining when nonprofit corporations that work with public agencies should be considered public officials, which is presently covered by the Commission's 1977 Siegel opinion.

Mr. Martello noted that the City of Berkeley worked with the FPPC in 1996 on this issue, and that it is significant because all cities have nonprofit organizations, and city officials need to know whether they have filing obligations. He requested that the Commission include consideration of this issue, under regulation 18425, on the 2002 calendar.

Chairman Getman noted that this was discussed as a part of the Phase 2 project, and that the Commission decided to include *In re Siegel* as a footnote in a regulation.

Mr. Wallace agreed, noting that it was included in regulation 18704.1, and that staff concluded at that time that it was such a large project that it could not be done at that time.

Commissioner Downey moved that the regulation calendar be approved.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted, "aye." The motion carried by a vote of 4-0.

Item #9. Conflict of Interest Regulations Improvement Project-Adoption of Proposed Amendments to Regulations 18232, 18702.1, 18705.5, 18706 and 18708.

Commission Counsel Bill Williams presented the regulations, noting that the issues concerning the time frame for reimbursement of expenses as set forth in regulation 18232 and the need for a clarifying amendment for regulation 18702.1 were being presented for consideration. Additionally, he suggested that consideration of amendments to regulation 18706 be deferred until after the clarifying amendments were considered.

Mr. Williams stated that staff was presenting clarifying amendments to regulation 18232, delineating the scope of the exception. It would link the term "consultant" to the definition of

"consultant" contained in regulation 18701(a)(2) and would exclude salary from income. Staff recommended adoption of the amendment.

There was no objection to the amendment.

Mr. Williams presented an amendment to subdivision (c) of the regulation, extending the time period for expense reimbursement from 60 to 90 days. Staff made no recommendation, but Mr. Williams stated that there would be no substantive harm to the extension of the reimbursement period. He noted that the 60 day time period was not inconsistent with the time period for reimbursement, and that the regulated community had not expressed any problems with it.

Commissioner Knox moved that regulation 18232 be approved, retaining the 60-day period and making the staff's proposed amendment on consultants.

The motion was seconded by Commissioner Downey.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Mr. Williams stated that removing liability for a public official's inadvertent receipt of closed session materials was addressed in regulation 18702.1. Staff proposed inserting the word, "knowingly" in subdivision (c), and recommended that the Commission adopt the proposed amendment.

Mr. Williams noted that agenda packets are automatically sent to public officials and may include references to closed session issues. The amendment would preclude the official from being liable.

Commissioner Swanson moved that the amendment be approved.

Commissioner Downey seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Mr. Wallace explained that staff was proposing an amendment to regulation 18705.5 to assure that a public official's indirect interest in a business entity would not be analyzed as a "personal financial effect." Staff recommended adoption of the proposed amendment.

Commissioner Swanson moved approval of the amendment for discussion.

Commissioner Knox seconded the motion.

Mr. Williams explained that the amendment would provide that a material financial effect analysis could be done as a "business entity," instead of as a "personal financial effect". He

noted that the threshold for materiality on a "personal financial effect" is much lower than the threshold for a "business entity."

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Mr. Williams explained that staff prepared a clarifying amendment to regulation 18708, specifying that the disclosure document that must be prepared must also be placed in the public file within 30 days of the decision. Staff recommended adoption of the proposed amendment.

Commissioner Swanson moved approval of the amendment.

Commissioner Downey seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Mr. Wallace presented proposed regulation 18706, noting that the regulation is a codification of the standard of foreseeabilty set out in the *Thorner* opinion. Staff last year issued the *Olson* advice letter, setting out a more detailed analysis for evaluating foreseeability. Staff proposed that the factors in that analysis be included in subdivision (b) of the regulation. Additionally, staff believed that, if the Commission wanted to limit those factors, they should be limited to real estate professionals. Factors 2 and 3 should be merged or factor 3 should be deleted.

Mr. Wallace reported that staff had received a letter of support from the California Association of Realtors, requesting that the Commission retain both factors 2 and 3.

Chairman Getman noted that, if it is confined to real estate professionals, there might be a presumption that the regulation does not apply in other circumstances.

Mr. Wallace responded that the regulation could work in other contexts.

Commissioner Knox did not believe that there should be one set of regulations for one profession.

Stan Wieg, representing the California Association of Realtors, stated that they supported the broadest possible use of the standard, noting that the rationale would work for many different kinds of businesses.

Mr. Martello stated that the real estate professionals need better guidance in the regulations. He noted that the regulation will be subject to change when the Commission works on the "foreseeability " issues in the land use context, because there are many issues involved.

Scott Hallabrin, representing the Assembly Ethics Committee, stated that if it is made broader, subdivision (c) should include language indicating any other license or professional certification.

Mr. Wallace stated that subdivision (c) was included because the legislation requested that the Commission adopt something dealing with the real estate license issue, and that it is probably useful to keep it in the regulation. He did not see any problem with expanding it to other license situations. The point of the provision is that holding a license means nothing if there is no economic interest involved such as a source of income or an investment interest.

Mr. Wieg agreed with Mr. Wallace, noting that it had been included in the regulation because there had been a misperception that having a license automatically disqualified someone.

Ms. Menchaca suggested that the wording of subdivision (c) could be put in subdivision (a).

Commissioner Knox suggested adding, after the words "brokerage license" on line 8 of the proposed regulation, "or any other professional license."

Mr. Wieg stated that factors 2 and 3 should be kept in the regulation. It would be valuable because it would give clearer guidance. He also suggested that, as the Commission proceeded with follow-up, the issue of standard of care be further researched.

Mr. Wallace recapped that the language from line 7 to line 11 (up to the bracketed section) will be deleted; the bracketed language on line 13 and 14 will be deleted; the bracketed language on line 20 will be removed; the numbering options on page 2, lines 3 and 4 will be (4) and (5), and that the language, "or any other professional license," will be added after the word "license" on page 2, line 8.

Commissioner Downey moved approval of the regulation.

Chairman Getman seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Item #11. Approval of 2001/02 Statement of Economic Interests (Form 700) and Form 700 Certification.

Ms. Wardlow explained that there was one typographical error on the Form 700 that should be corrected to show a March 1 filing deadline instead of an April 1 deadline.

Commissioner Swanson moved that the forms be approved.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a vote of 4-0.

Items #25 and #26.

There being no questions, the Commission took under submission the following items:

Item #25. Executive Director's Report.
Item #26. Litigation Report.

The meeting adjourned at 2:15 p.m.

Dated: December 7, 2001

Respectfully submitted,

_____
Sandra A. Johnson
Executive Secretary

Approved by:

_____
Chairman Getman