

Sasha Linker

From: Charles H. Bell
Sent: Thursday, September 21, 2017 8:37 AM
To: CommAsst
Subject: Agenda Item 42 - AB 249
Attachments: CRP v FPPC Prelim Injunction 2004.pdf

Chair Jodi Remke and Commissioners
Fair Political Practices Commission
1102 Q Street, Suite 300
Sacramento, CA 95814

Re: Agenda Item #42/September 21, 2017 Meeting

Dear Chair Remke and Commissioners Audero, Hatch & Hayward:

This is to correct an error in my email of yesterday, point (1):

(1) AB 249 contains provisions the FPPC is currently enjoined to enforce due to their unconstitutionality. AB 249 extends chapter 4 disclaimer provisions, and potential treble damage penalties for violations, to general purpose committees, including political party committees. Those provisions flatly conflict with the federal court injunction in California Republican Party, California Democratic Party and Orange County Republican Party v. FPPC, USDC/ED#CIV-S-04-2144 FCD PAN (ED Cal. Oct. 27, 2004) (copy attached), in which the federal district court for the Eastern District of California, following the Ninth Circuit decision in ACLU of Northern Nevada v. Heller (discussed below), enjoined the FPPC from enforcing the “top two donor” provisions of chapter 4 of the Act against general purpose committees including political party committees. AB 249 doubles down as noted, requiring disclaimer donor disclosure including “top three donor” disclosure for even general purpose committees that engage in ballot measure and independent expenditure activities. Although political party ballot measure ads appear to have been excluded from the requirement to include major funding disclosure, political party independent expenditure ads via electronic media may be required to include section 84502 major funding disclosure (compare amended sections 84504.5(d), 84504.3 and 84504.3(a), which have confusing exclusions and requirements.)

Thank you for your consideration. This is my opinion and not that of, or made on behalf of, any client or my firm. I will not be able to attend the meeting in person.

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