



FAIR POLITICAL PRACTICES COMMISSION
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Memorandum
Fair Political Practices Commission

To: FPPC Vice Chair Escovitz and Commissioners Casher, Wasserman and Wynne

From: Zackery P. Morazzini, General Counsel
Heather M. Rowan, Senior Commission Counsel

Subject: Pending Litigation

Date: February 20, 2014

Charles R. “Chuck” Reed v. Fair Political Practices Commission

San Jose Mayor Reed filed a petition for a writ of administrative mandamus in Sacramento Superior Court seeking relief from the Commission’s Decision and Order in case 12/761. Following an administrative hearing that the parties agreed to present to the Commission in September 2013, the Commission found that Mr. Reed had violated Section 85501 of the Act by using campaign committee funds to fund independent expenditures in support or opposition of other candidates, and issued a \$1.00 fine. Mayor Reed challenges that decision alleging Section 85501 is unconstitutional, and that the Commission otherwise misapplied provisions of the Act. A hearing on the writ petition has been scheduled for March 14, 2014.

Landslide Communications, Inc. v. State of California, et al

Landslide Communications, Inc., a slate mailer organization, brought suit in the United States District Court, Eastern District of California, challenging a 2013 amendment to the slate mailer provisions of the Political Reform Act (Section 84307.5), alleging that it unconstitutionally burdens and chills protected speech. Named defendants are Ann Ravel in her capacity as Chair of the FPPC and Kamala Harris in her capacity as the Attorney General for the State of California. Plaintiffs engage in “coalition campaigning,” whereby they include several campaigns in one mailing, and target mailers to members of certain parties or groups.

Section 84305.7(c) requires that if a slate mailer organization sends a slate mailer or other mass mailing that identifies itself or its source material as representing a nongovernmental organization with a name that would reasonably be understood to imply that the organization is composed of, or affiliated with, law enforcement, firefighting, emergency medical, or other public safety personnel, the slate mailer must disclose the total number of members in the organization identified in the slate mailer. Plaintiffs allege that this requirement will create a

distorted message and will have a stigmatizing effect on the public safety oriented organizations that distribute slate mail. Additionally, Plaintiffs allege that by listing the number of members in the sponsoring organization, they are being forced to include messages that they do not wish to include.

After hearing arguments on the parties' cross-motions for summary judgment, the district court granted Defendants' motion for summary judgment and denied that of the Plaintiff. The deadline for Plaintiffs to appeal this decision passed on January 27th, 2014.

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 filed this action. It is a "defendants class action" lawsuit against defendants responsible either for enforcement of the Act, or maintenance and publication of the campaign reports at issue in this case (including the Commission, Attorney General, Secretary of State and various district and city attorneys).

Plaintiffs challenge 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, and to invalidate as unconstitutional the Act's \$100 disclosure threshold for contributors to ballot measure committees, the Act's requirement for post-election disclosure of contributors to ballot measure committees, and the Act's failure to purge the records of contributors to ballot measure committees after the election. In all counts, plaintiffs seek declaratory and injunctive relief, and an award of attorney's fees.

On October 11, 2013, the Ninth Circuit Court of Appeals heard oral arguments in the matter. The parties now await the Court's written decision.

Tony Dane v. Fair Political Practices Commission

Tony Dane, a 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 judge 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 was sufficient to preserve that cause of action. Dane's attorney recently withdrew as counsel so Dane is currently not represented in this case. The FPPC filed a motion for summary judgment on December 19, 2013 in Nevada state court. The hearing on that motion was set for January 22, 2014. The judge continued the hearing, however, because Mr. Dane moved out of state and claimed to have not received notice of the hearing date.

Shong-Ching Tong v. Fair Political Practices Commission

On February 10, 2012, Shong-Ching Tong filed a writ of administrative mandamus against the Commission, seeking relief from the Commission's Decision and Order in Case No. 10/449. On December 19, 2012, the Court dismissed the case due to Petitioner's status as a vexatious litigant. On January 4, 2013, the Court vacated its December 19, 2012, order that the case be dismissed, and ordered the Commission to produce the administrative record. The Los Angeles Superior Court heard the petition for administrative mandamus on November 27, 2013, and the Court denied Petitioner Tong's petition. Final judgment was entered favoring the FPPC in January.