



FAIR POLITICAL PRACTICES COMMISSION

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(Unapproved and subject to change)

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION MINUTES OF MEETING, Public Session

Thursday, August 16, 2012

CALL TO ORDER

Chair Ann Ravel called the meeting to order at 10:00 AM at 428 J Street, Eighth Floor, Sacramento, California. Chair Ravel and Commissioners Elizabeth Garrett and Lynn Montgomery were present. Commissioner Rotunda attended by telephone. Commissioner Eskovitz was absent.

WELCOME AND CHAIR'S REPORT

Ann Ravel, FPPC Chair

Chair Ravel highlighted recent activities of the Commission. She explained that Commission staff will post Judges Statement of Economic Interest online. In addition, Statements of Economic Interests will be posted online for all those running for a legislative seat this year; incumbent legislator statements have been posted online since March; and it is the view of the Commission that it is in the public interest to also post statements of the 130 non-incumbents listed on the ballot, for the November 2012 election.

She further noted, since this is an election year and because funding of independent expenditures are difficult for the public to track, the FPPC will provide weekly election reports on the FPPC website (www.fppc.ca.gov), with information about political committees making independent expenditures in connection with legislative races.

The Chair expressed her appreciation for the increased funding and thanked the Governor's office and the Legislature for their response to the Durkee fraud case. A portion of the increased funding was allocated for staff to conduct presentations both in person and on the internet, in an effort to educate and provide professional assistance to local committees and candidates.

She continued, the Secretary of State indicated costs of approximately \$700,000 to update CalAccess, the online system where campaign statements are filed, in order to comply with

certain provision of the Commission-sponsored bill. The bill, AB 481, was amended to require committees to file a Principal Officer Certification with the FPPC, instead of the SOS. The SOS sent a letter supporting the amended language, and the bill was heard again in Senate Appropriations.

Lastly, the Chair announced the retirement of Senior Commission Counsel Larry Woodlock. She read a letter to the Commission and concluded by sharing that Larry's expert knowledge of constitutional law, eloquence in court and love of a good intellectual bout served the people of California well. He will be missed by his friends and colleagues at the FPPC.

PUBLIC COMMENT

1. Public Comment.

This portion of the meeting is reserved for comment on items not on the agenda. Under the Bagley-Keene Act, the Commission cannot act on items raised during public comment, but may respond briefly to statements made or questions posed; request clarification; or refer the item to staff.

Chair Ravel opened the floor for public comment. Commissioner Rotunda introduced Ellen Sturtz, Activist from Equality California, who was a member of the public present in his office at the noticed remote location. Ms. Sturtz addressed the Commission and requested to speak on agenda Item 5: In the Matter of ProtectMarriage.com – Yes on 8, A Project of California Renewal and David Bauer, FPPC No. 11/448. Chair Ravel with agreement from the Commissioners removed Item 5 from the consent calendar, to be discussed later in the agenda.

PROPOSED CONSENT CALENDAR ITEMS 2 - 25

Prior to the start of the Commission meeting, a stipulation, decision and order for agenda Item 3: In the Matter of Committee for Measure G – Loomis and Paul I. Mineer, FPPC No. 09/0702 (Default Decision) was presented to the Commission. Chair Ravel with expressed agreement from the Commissioners removed Item 3 from the consent calendar, to be discussed later in the agenda.

2. Approval of July 2012 Commission Meeting Minutes.

Campaign Reporting Violations

4. In the Matter of Lynwood Teachers Association PAC and Michael Jochum, FPPC No. 11/337. Total Proposed Penalty: \$7,500.
6. In the Matter of Alvina Sheeley, and Alvina Sheeley for Election F-SUSD Governing Board 2011, FPPC No. 11/1124. Total Proposed Penalty: \$5,000.

Campaign Reporting Violations – Streamline

7. In the Matter of Committee for Brea Olinda Schools-Yes on Measure E, and Terry Swindle, Treasurer, FPPC No. 12/402. Total Proposed Penalty: \$200.
8. In the Matter of Victoria A. Medina, FPPC No. 11/616. Total Proposed Penalty: \$200.
9. In the Matter of Dennis Mountjoy, Dennis Mountjoy for Senate 2008, and Peggy Mew, Treasurer, FPPC No. 11/626. Total Proposed Penalty: \$400.
10. In the Matter of Orange Park Association and Laura Thomas, President, FPPC No. 12/330. Total Proposed Penalty: \$200.
11. In the Matter of Sal Torres; Friends of Sal Torres; and Leslie Torres, Treasurer, FPPC No. 11/234. Total Proposed Penalty: \$400.
12. In the Matter of Friends of Terri Valladolid for Southwestern College Board 2010, and Terri Valladolid, Treasurer, FPPC No. 11/341. Total Proposed Penalty: \$800.

Conflicts of Interest

13. In the Matter of Thomas Bartee, FPPC No. 10/581. Total Proposed Penalty: \$3,000.
14. In the Matter of Barbara Delgleize, FPPC No. 11/186. Total Proposed Penalty: \$2,000.
15. In the Matter of Sares-Regis Group, FPPC No. 11/187. Total Proposed Penalty: \$3,500.

16. In the Matter of Edmund Sotelo, FPPC No. 12/029. Total Proposed Penalty: \$12,500.
17. In the Matter of Dr. Thomas Holden, FPPC No. 12/026. Total Proposed Penalty: \$10,500.

Lobbying – Streamline

18. In the Matter of Vitas Innovative Hospice Care and Ronald Fried, FPPC No. 11/133. Total Proposed Penalty: \$600.

Statement of Economic Interests – Non-Filer

19. In the Matter of Doreen Cease, FPPC No. 10/910 (Default Decision). Total Proposed Penalty: \$4,000.

Statement of Economic Interests – Non-Filer - Streamline

20. In the Matter of Angel Colon, FPPC No. 11/132. Total Proposed Penalty: \$200.
21. In the Matter of Yvonne Franco, FPPC No. 12/409. Total Proposed Penalty: \$200.
22. In the Matter of Mary Moran, FPPC No. 12/320. Total Proposed Penalty: \$200.

Statement of Economic Interests – Failure to Report

23. In the Matter of Curtis Cannon, FPPC No. 12/034. Total Proposed Penalty: \$4,000.
24. In the Matter of Brian DeForge, FPPC No. 11/336. Total Proposed Penalty: \$1,000.
25. In the Matter of Frank Lopez, Jr., FPPC No. 11/1042. Total Proposed Penalty: \$1,000.

Commissioner Garrett made a motion to approve the Consent Calendar Items 2 through 25, with the exception of Items 3 and 5. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

- 3. In the Matter of Committee for Measure G – Loomis and Paul I. Mineer, FPPC No. 09/0702 (Default Decision).** Staff: Commission Counsel Dave Bainbridge. Respondent Committee for Measure G – Loomis is a primarily formed ballot measure committee formed to support the passage of Measure G in the City of Loomis. Respondent Paul I. Mineer was at all times relevant to this matter, the treasurer of the committee. Respondents failed to file semi-annual campaign statements in a timely manner for the July 1, 2008, through December 31, 2008, reporting period, due February 2, 2009; the January 1, 2009, through June 30, 2009, reporting period, due July 31, 2009; and the July 1, 2009, through December 31, 2009, reporting period, due February 1, 2010, in violation of Government Code Section 84200, subdivision (a) (3 counts). **Total Proposed Penalty: \$6,000.**

Gary Winuk, FPPC Chief of Enforcement addressed the commission and explained that the Enforcement Division spoke with Mr. Mineer and reached a settlement agreement. Mr. Mineer agreed to the issuance of the Stipulation, Decision and Order and to the Commission imposing an administrative penalty of \$1,000.

Commissioner Garrett made a motion to approve the Stipulation, Decision and Order. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

- 5. In the Matter of ProtectMarriage.com – Yes on 8, A Project of California Renewal and David Bauer, FPPC No. 11/448.** Staff: Senior Commission Counsel Galena West and Program Specialist Luz Bonetti. This matter originated as a Franchise Tax Board audit. Respondents ProtectMarriage.com – Yes on 8, A Project of California Renewal, a state primarily formed committee, and Respondent Committee's treasurer, David Bauer, failed to file late contribution reports in a timely manner, in violation of Government Code Sections 84203 and 84605, subdivision (a) (6 counts); failed to file in a timely manner, contributions of \$1,000 or more received during the 90-day election cycle ending on November 4, 2008, in violation of

Government Code Section 85309, subdivision (b) (8 counts); failed to file contributions of \$5,000 or more in a timely manner, in an online campaign report within ten business days of receipt, in violation of Government Code Section 85309, subdivision (d) (2 counts); failed to properly dispose of an anonymous \$10,000 contribution received on or about October 28, 2008, in violation of Government Code Section 84304 (1 count); and failed to disclose occupation and/or employer information regarding persons who contributed \$100 or more, in violation of Government Code Section 84211, subdivision (f) (1 count). **Total Proposed Penalty: \$49,000.**

Gary Winuk, Chief of Enforcement, addressed the Commission. He explained that this matter originated as a Franchise Tax Board audit and commended them for their efforts.

Ellen Sturtz, of Equality California addressed the commission and read the Scott Rose Comment Letter in its entirety. In a second letter, Ms. Sturtz asked the Commission to further investigate the matter to determine if Protectmarriage.com violated Federal laws that could lead to further investigation and prosecution.

Gary Winuk, Chief of Enforcement, stated that it is the policy of the Enforcement Division to refer all serious violations of the law that could be criminal in nature to the appropriate law enforcement agency. However, in this case there was no evidence that the Division became aware of to support such a referral.

Commissioner Garrett made a motion to approve staff's recommendation. The motion was seconded by Commissioner Montgomery.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

GENERAL ITEM 26 - 27

26. Adoption of Amendments - Conflict of Interest Regulation 18706: Staff: General Counsel Zackery P. Morazzini and Senior Commission Counsel William J. Lenkeit. Staff proposes to amend the conflict of interest regulations over the next several months. The process begins with a proposed amendment to Regulation 18706, determining when a material financial effect of a governmental decision is "reasonably foreseeable." The proposed amendments are intended to provide better guidance to public officials in determining if a conflict of interest exists under the Act.

Senior Commission Counsel William J. Lenkeit addressed the Commission. He explained that Regulation 18706 interprets Step 6 of the Commission's eight-step analysis for determining when a public official has a conflict of interest under the Political Reform Act. Step 6 is the determination of whether the material financial effects of the decision are reasonably foreseeable.

Mr. Lenkeit further explained that the Commission had attempted to better define the statutory test of "reasonably foreseeable" in adopting the current language in Regulation 18706 (in 1998) codifying past advice letters that defined "reasonably foreseeable" to mean "substantially likely." Mr. Lenkeit stated that the "substantially likely" test fails to provide any additional clarity and can be incorrectly interpreted to mean a result that is "more probably than not," despite the fact that the statutory "reasonably foreseeable" test appears to encompass more than just the most likely result.

Mr. Lenkeit recommended deleting the "substantially likely" test and proposed regulatory language removing any "counting words" attempting to quantify the likelihood of an effect in favor of identifying factors that would assist officials in determining when an effect is "reasonably foreseeable."

Commissioner Garrett and Rotunda asked Mr. Lenkeit for an explanation of a "tentative" approval.

Chair Ravel explained that the reason staff decided to present the Conflict of Interest Regulations incrementally, is to ensure that staff and other affected parties have the opportunity to engage in thoughtful discussions of each regulation individually.

Mr. Lenkeit further explained that the tentative adoption, with a delayed effective date, was necessary to allow time to make corresponding changes to other provisions.

Mr. Shawn Mason, Chair of the League of California Cities, addressed the commission, referenced his comment letter which includes proposed language for the regulation. He asked the Commission to not adopt staff's recommendation. Mr. Mason recommended language for the regulation that defined "reasonably foreseeable" as a "substantial possibility," with a further explanation that an effect "need not be likely" for there to be a "substantial possibility."

James Harrison addressed the commission. He explained that the five existing guidelines have been very helpful and are supplemented by 35 years of advice letters. In his view, redefining "reasonably foreseeable" would make the test less clear because public officials

and the regulated community would not have the benefit of past advice in interpreting the new definition.

Chair Ravel explained that she has read every advice letter, since assuming office. Upon review of the letters, it appears that it's fairly easy to explain the eight steps of deciding whether one has a financial conflict of interest under the Political Reform Act. However, foreseeability is somewhat challenging to explain.

Mr. Lenkeit asked the Commission to tentatively approve the proposed language.

Chair Ravel asked James Harrison to share his experience with advising clients on foreseeability.

Mr. Harrison explained that even though there are challenges with explaining foreseeability, the guidelines set forth by FPPC staff provide public officials some factors to evaluate.

Commissioners Garrett and Rotunda agreed that the “substantially likely” test appeared narrower than the statutory “reasonably foreseeable” test and supported staff’s attempt to better define the statutory test with the following changes:

- A comma after the word “subject of” on page 1, line 10.
- Changing subdivisions (a) and (b) reference from “directly involved” and “indirectly involved” to “explicitly involved” and “not explicitly involved.”
- Moving subdivision (c) to the first sentence of subdivision (b), replacing the phrase “can be recognized as a realistically possible result” to “can be recognized as a realistic possibility and more than hypothetical or theoretical,” and removing the phrase “on the other hand” from page 3, line 13.
- Adding existing subdivision (b), paragraph (5), to the proposed language as subdivision (b), paragraph 1.
- Removing the optional language in subdivision (b) and adding the word “appropriate” prior to “due diligence” at page 2; line 11.
- Merging paragraphs (2) and (3) of subdivision (b).

Commissioner Montgomery expressed support of the language and looks forward to closely reviewing the rest of the conflict of interest regulations. She advised staff draft supplemental FAQs.

The Commission agreed and advised Mr. Lenkeit to present a new draft of Conflict of Interest Regulation 18706, with the suggested changes, at the next Commission for review and approval.

The Commission agreed by general consensus to continue this item to the September 13, 2012, Commission meeting.

27. Adoption of Amendment to Campaign Form Instructions: Staff: Chief of the Technical Assistance Division Lynda Cassady. Instruction pages for several campaign forms have been updated to reflect changes in the Political Reform Act and FPPC regulations. The forms were circulated for public comment in July. The major changes explain that most state campaign committees no longer must file with local filing officers. The Form 410 instructions also provide information related to FPPC regulations 18227.5 and 18247.5.

Lynda Cassady, Chief of the Technical Assistance Division addressed the Commission and recommended the approval of the amendments to Campaign Form Instructions. She added, she will return with revisions, to be considered by the Commission, if SB 1001 passes through the legislature and is approved by the Governor.

Note: SB 1001 (Yee), would require the Secretary of State (SOS) to charge lobbying firms and lobbyist employers a fee of \$50 per year for each lobbyist required to be listed on its registration statement and would require the SOS to charge each recipient committee a \$50 per year fee until the committee is terminated. The bill also establishes the Political Disclosure, Accountability, Transparency, and Access Fund in the State Treasury. One-half of the fees collected from lobbyist registration and all of the fees collected from recipient committees would be deposited in the fund for purposes of the maintenance, repair, and improvement of the online disclosure program implemented by the SOS.

Chair Ravel addressed the two suggestions in the comment letter of support submitted by Common Cause. (1) She explained that staff will return with amended language if SB 1001 passes through the Legislature, as addressed by Ms. Cassady. (2) She also expressed agreement with Common Cause, with regard to switching from paper filing to electronic filing. The Commission strongly supports working with any group that encourages electronic filing and invites Common Cause to work with the Commission in this effort.

Commissioner Garrett made a motion to approve staff's recommendation. The motion was seconded by Commissioner Montgomery.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

ENFORCEMENT INFORMATIONAL ITEM 28

28. Return of Laundered Funds (No Action Agenda Item)

In the Matter of Glen Gerson and Malibu Conference Center, Inc., FPPC No. 11/803. Staff: Senior Commission Counsel Neal Bucknell and Special Investigator Janet Seely. On May 17, 2012, the Commission approved a Default Decision and Order in this case, which imposed a penalty in the amount of \$25,000 for five counts of laundering money into the campaign account of Barbra Williamson (who was seeking reelection to the Simi Valley City Council in 2008). Thereafter, the Enforcement Division notified Ms. Williamson of her duty to return the laundered funds, totaling \$5,000, to the State of California pursuant to Government Code Section 85701. On July 20, 2012, the Enforcement Division received full payment from Ms. Williamson. As required by law, the disgorgement payment will be turned over to the General Fund of the State of California in connection with the complete resolution of this matter.

Gary Winuk, Chief of Enforcement, addressed the Commission. As stated by Chair Ravel in the May 17, 2012 Commission meeting, this is the first matter from the Enforcement Division's new team, which concentrates on self-initiated investigations of more serious campaign violations and conflicts of interest. This case is significant because the Division is looking at issues that affect public trust.

Chair Ravel opened the floor to questions. Hearing none, she proceeded to the next agenda item.

FRANCHISE TAX BOARD INFORMATIONAL ITEM 29

29. Franchise Tax Board Audit Program: Pam Parra and Andrea VanWalleghem from FTB will address the Commission to discuss FTB's audit team/process/achievement.

Gary Winuk, Chief of Enforcement introduced Pam Parra and Andrea VanWalleghem to the Commission and commended them and their team for their diligent work.

Ms. Parra and VanWalleghem, explained that the Political Reform Act of 1974 (the Act) requires FTB to perform audits of the campaign statements and reports filed by state and local committees, lobbyists, lobbying firms, and lobbyist employers. FTB was selected to

perform these audits to ensure the audit function's independence and objectivity. Consequently, FTB established its audit program in 1975 to perform the audits and prepare reports regarding the accuracy and completeness of the filings. The program has continued to serve in this capacity for more than 35 years.

While the program originally consisted of four district offices with a staff of nearly 100, its size was significantly reduced after a performance audit determined that the use of random selection, audit sampling, and materiality analysis could streamline the audit process and reduce the number of audits performed without compromising the program's mission. Over the years, budget cuts have resulted in further staff reductions. The program's current staffing level is 13 positions. Although these staff reductions have presented serious challenges, particularly as statutory and regulatory requirements have become more complex, they continue to fulfill their responsibilities under the Act by producing informative and useful audit reports in a timely manner.

The Franchise Tax Board audits various types of entities, including committees controlled by candidates for local, state, and statewide office, state ballot measure committees, state general purpose committees, primarily formed committees, lobbyists, lobbying firms, and lobbyist employers. In most cases, entities are randomly selected for audit by the Commission. They are required to issue audit reports for these randomly-selected entities within one year of the date of selection.

On an annual basis, 200 to 300 audits are completed, and they consistently meet statutory deadlines for completing audits of randomly-selected entities. Approximately 70 percent of these are subject to statutory deadlines. In addition to completing the audits, they have provided assistance to local filing officers and ethics commissions in the form of training and sharing audit procedures.

EXECUTIVE STAFF REPORTS ITEM 30

Executive Director's / Legal Division Report. Staff: Executive Director, John Wallace; General Counsel, Zackery P. Morazzini

Legislative Report. Staff: Legislative Coordinator, Tara Stock

Litigation Report. Staff: General Counsel, Zackery P. Morazzini

Enforcement Division Report. Staff: Chief of Enforcement, Gary Winuk

Technical Assistance Division Report. Staff: Chief of T.A.D., Lynda Cassady

Administrative Division Report. Staff: Chief of Administration, Tina Bass

Executive Director addressed the commission and declared Item 30 “as submitted,” with the exception of the Legislative Report.

Tara Stock, Legislative Coordinator addressed the Commission and provided an update on Commission related legislation. The deadline for each house to pass bills was August 31, 2012. The last day for the Governor to sign or veto bills is September 30, 2012.

Chair Ravel opened the floor final questions and/or comments.

General Counsel Zackery P. Morazzini addressed the Commission and commended the FPPC Enforcement Division and Chief Gary Winuk for their great work. This agenda had more conflict of interest cases, than that of any previous meeting of the FPPC Commission. Commissioner Garrett made a motion to adjourn. The motion was seconded by Commissioner Montgomery.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

Chair Ravel adjourned the meeting.