



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, May 20, 2021
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Cardenas,
Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Angela Brereton, Chief of Enforcement
Dave Bainbridge, General Counsel
Loressa Hon, Chief of Administration
Lindsey Nakano, Legislative Counsel
Katelyn Greene, Commission Counsel
Kevin Cornwall, Commission Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:01 AM.

1. Public Comment for Items not on Agenda.

Steve Petzold, Santa Clarita, discussed his disappointment with the Commission for approving the College of the Canyons stipulation the previous month and stated that the definition for a voluntary donation should have follow up.

2. Closed Session. Pending Litigation. (Gov. Code § 11126(e)(1)).

The Commission adjourned into closed session at 10:07 a.m. and reconvened in open session at 10:44 a.m.

The Commission received an informational update from staff on pending litigation and there was no action taken by the Commission.

3. Approval of April 2021 Commission Hearing Minutes.

MOTION: To approve the March 2021 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Wood. Motion approved 5-0.

4. Approval of Enforcement Consent Calendar.

Commissioner Baker asked if it was a matter of prosecutorial discretion when they make something a count versus an aggravating factor, or if there were particular guidelines. Angela Brereton, Chief of Enforcement, stated that the counts brought before the Commission are prosecutorial discretion and aggravating factors can be included to elaborate on the penalty.

MOTION: To approve the Enforcement Consent Calendar. Moved by Commissioner Wilson, seconded by Commissioner Cardenas. Motion approved 5-0.

5. Motion to Vacate Default Decision and Order, In the Matter of Corso for Council 2014, Taxpayers for Oceanside Neighborhoods, and Dana Corso; FPPC No. 15/245.

Brian Lau, Legal Counsel, discussed the legal standard under the Administrative Procedure Act regarding the motion to vacate before the Commission. The Commission has complete discretion in granting the motion. Mr. Lau stated that the Commission's options are either to deny the motion, in which case the default will stand, or to approve the motion, in which case the administrative adjudication begins anew.

Chair Miadich asked what the standard is for adequate service. Mr. Lau stated that the APA cites the code of civil procedures as any service that complies with what would be sufficient in a civil proceeding. The code of civil procedures allows substitute service at a place of business as with a showing of reasonable diligence to personally serve and which is shown in the process servers declaration. The other requirements are that it's left with a person apparently in charge, over the age of 18, and mailed to the same address.

Commissioner Wood asked what excusable neglect is. Mr. Lau stated that it is something either parties did that they find excusable and ultimately the APA provides a lot of discretion to the

Commission in making these determinations.

Commissioner Baker asked what stage in the enforcement process would the motion go back to if the motion were to be approved. Mr. Lau stated that it would enter back into negotiations, and the respondent would have the opportunity to move forward and the right to the administrative adjudication formal hearing before an ALJ or the Commission.

Angela Brereton, Chief of Enforcement, stated that they encourage and recommend that the Commission deny Ms. Corso's motion to vacate the default. Ms. Brereton stated that they followed all the rules included in the code of civil procedure and made reasonable and diligent attempts to serve Ms. Corso with the documents. Ms. Brereton gave an overview of all communication and service to Ms. Corso over the course of the case.

Commissioner Wilson asked if Ms. Brereton and her staff provided extensive staff resources and fully complied with the statutory requirements for process serving. Ms. Brereton stated yes.

Commissioner Wilson asked if more staff resources were expended on this particular case than would be normal. Ms. Brereton stated yes.

Commissioner Cardenas asked this if there was a historical precedent for evading accountability by receiving service and process to an even greater degree than Ms. Corso and is there not in the civil code some kind of prescription against this this type of outlaw behavior. Ms. Brereton stated that this case is not typical, but it did feel like active evasion on Ms. Corso's part.

Dana Corso, Respondent, stated that her email was hacked and that her West Lilac property had a 1500 feet driveway thus it wouldn't be possible to hear a car honking to signal her. Ms. Corso stated that she has evidence to prove that she did have correspondence with the FPPC and that she did not try to evade service.

MOTION: To deny the motion. Moved by Commissioner Cardenas, seconded by Chair Miadich. Motion approved 4-1, with Commissioner Baker voting no.

5. Prenotice Discussion of Amendments to Regulation 18435.5, Slate Mailer Requirements and Regulation 18450.11, Spokesperson Disclosure, and Adoption of Regulation 18450.6, Advertisements in Other Languages, Regulation 18450.7, Advertisement Disclosure for Advertisements in Formats Not Specifically Addressed, and Regulation 18450.8, Advertisements on Listening Applications that are Both Audio and Visual.

Commissioner Baker asked about the placement of the “Paid for” disclosure on regulation 18435.5. Ms. Greene stated that there is currently no guidance on the placement of the disclosure except that the information is required to be on the outside of the slate mailer, and she would assume that it would be any place in the body of the email since it is considered the ‘outside’ of an electronic slate mailer.

Chair Miadich asked what would happen for an advertisement that has multiple languages, and how would they determine what is primarily or not primarily. Ms. Greene stated they consider primarily the majority of the advertisement, and their intention with this is to have a somewhat flexible standard. Commissioner Baker asked if primarily was used in a similar context in the disclosure regulations for people to draw guidance upon. Ms. Greene stated that she does not believe so.

Chair Miadich asked how staff would prove a violation for a projected advertisement during the short display period, since it is transient in nature. Ms. Greene stated that they will consider other options. Commissioner Wood asked whether other states were implementing disclosure on projections. Ms. Greene said she would look into other jurisdictions. Commissioner Wilson asked if this regulation is adopted, would it require a substantial allocation of staff resources to track the regulation. Galena West, Executive Director, stated that enhanced record keeping would always help but it would be the collecting records and authenticating the record.

Commissioner Cardenas asked about advocacy through the spoken word, such as an influencer who was paid by an interest to advocate for their position. Dave Bainbridge, General Counsel,

stated that topic it will be coming back for pre-notice next month.

Chair Miadich asked if multiple images, rather than a static image, would satisfy the current regulation. Ms. Greene stated that they currently do not have guidance on that issue.

Commissioner Wilson asked if regulation 18450.11 would cover an employee from a PR firm who did all the work for the candidate. Ms. Greene stated yes because it includes business and individuals.

Commissioner Cardenas asked if a payment comes from a committee, but it goes through an agent of the committee, how would they know. Mr. Bainbridge stated that it would be reported as an expenditure by the committee on their campaign reports.

The Commission adjourned for a break at 11:58 a.m. and reconvened at 12:11 p.m.

6. Repeal, Adoption, and Amendment of Regulations in Response to SB 1239 and AB 909 (CARS).

Kevin Cornwall, Commission Counsel Legal Division, presented for adoption, repeal, and amendment of various regulations in anticipation of CARS becoming certified by the Secretary of State. Mr. Cornwall stated that the only change from the last time these regulations were heard was the removal of gendered language. Mr. Cornwall stated that the most substantive change would be to regulation 18422.5, which they are presenting for repeal and adoption, to reflect that the top contributor lists will no longer be submitted and handled by the FPPC but instead incorporated into the Secretary of State's website based on CalAccess filings.

Chair Miadich asked if the goal was to adopt these regulations in place ahead of the rolling schedule for the website. Mr. Cornwall stated yes, and that they would request they become effective once it's certified by the Secretary of State.

Chair Miadich asked if there could be something added to the FPPC website to help signal to the public that those regulations have become effective based on the rolling implementation of

CARS. Mr. Bainbridge stated there are two staff who meet with SOS regularly to ensure the regulations are consistent with how the system's operating.

Chair Miadich asked if the FPPC website would have to immediately remove the top contributor list and rely on SOS or maintain the list until we are assured that the functionality is working.

Mr. Cornwall stated that the information will be based on a database system, and that they would have already implemented the necessary aspect for a seamless transition.

MOTION: To adopt the CARS regulations. Moved by Chair Miadich, seconded by Commissioner Wood. Motion approved 5-0.

7. FY 2020-2021 Third Quarter Expenditure Report.

Loressa Hon, Chief of Administration, stated that she would like to submit the report as is and discussed the category that looks as though the agency over expended. Ms. Hon explained the reason is that this past year the agency had to spend on additional equipment purchases to prepare for the pandemic.

8. Opinion request regarding campaign and advertising disclosure by public agencies.

Mr. Bainbridge stated that the California State Association of Counties and the California School Board Association are requesting for an interpretation of the regulations that define when a public agency is participating in campaign activity that has to be reported under the act. The two requestors had recently challenged the validity of these regulations in court and the court rejected their challenge, deeming that the regulations were valid. The requestors have requested the opinion of the Commission of what the agency's interpretation of these two regulations have been and whether there is a per say rule that deems any form of communication that is listed in the regulation as a campaign expenditure or not.

Chair Miadich asked for the timing and whether the opinion could come back next month. Mr. Bainbridge stated yes, they could get it back to them by next month.

Chair Miadich asked if their issued opinion would bind staff going forward to render advice consistent with the interpretation stated in their opinion. Mr. Bainbridge stated that opinions are technically only effective from a legal standpoint for the requester, but in practice opinions have a lot of authority in guiding the interpretation of the law because it is an official opinion.

MOTION: To adopt the staff recommendation that they have an opinion that interprets the regulations at issue consistent with previous interpretations. Moved by Commissioner Baker, seconded by Chair Miadich. Motion approved 5-0.

10. Committee Updates.

Chair Miadich stated that they had a presentation from Senior Counsel Ms. Harrison on behested payments, and an update from the legislative counsel Ms. Nakano. Chair Miadich and Commissioner Baker will be hearing an updated legislation report, as well as where staff are in the pre-notice of the online social media regulations next month.

11. Legislative Update.

Ms. Nakano added upcoming legislative deadlines from the senate and assembly calendars to the report. AB 236 and SB 686 relating to LLC disclosure passed in their respective policy committees and both passed out of appropriations. SB 686 was on suspense and appropriations and was heard this morning. The bills do have costs associated with them, and the Commission has determined that the FPPC will need one additional special investigator position for these bills and the SOS has put costs on the bills in the amount of \$561,000 in first year costs and \$121,000 annually thereafter. In response to a Cal Chambers letter, the author for AB 236 submitted amendments to the bill taking Cal Chambers changes which were adopted on the floor today, so SB 686 and AB 236 are no longer identical. Chair Miadich asked about the threshold and look back periods that were amended into AB 236. Ms. Nakano stated that the monetary threshold is \$10,000 from \$1,000 and the look-back period is two calendar quarters.

Commissioner Baker asked if they would remove their opposition to the bill. Ms. Nakano stated

that Cal Chambers will change their position to neutral with the two changes and the striking of the codification of the regulations. Commissioner Cardenas asked if anyone ore organization were in support of the assembly bill prior to its amendment. Ms. Nakano stated the California Clean Money Campaign and the League of Women Voters had indicated support.

AB 378 on gender neural language, AB 1367 increasing penalties for egregious personal use of campaign funds, and the AB 1590 the committee bill that includes the committee annual fee proposal are all moving along without opposition. A prior version of AB 1367 included additional language that would require all recipient committees to maintain a single campaign bank account, and they removed that language with the intent of having further discussions with stakeholders.

12. Executive Staff Reports.

Ms. Brereton stated that staff have engaged in trainings with two different entities. Jeffrey Kamagaki, Supervising Special Investigator, and Bridget Castillo, Senior Commission Counsel, gave a training to San Francisco Ethics enforcement staff and Christopher Burton, Assistant Chief of Enforcement, gave a training presentation to the California District Attorneys Association. Otherwise the report is as submitted.

Ms. West stated they are renewing the ongoing local contract to provide services to the County of San Bernardino for the next two year period, and the motion to delegate to the Chair the power to revise the Commissioner compensation policy after soliciting public comment from interested persons so upon completion the Chair will provide a copy of the updated policy to each Commissioner and posted to the website.

13. Commissioner Comments and Proposed Future Agenda Items.

Chair Miadich stated that it would be beneficial for the Commission to hear from staff about donor advised funds as a vehicle for making behested payments, and whether the Commission

has regulatory authority surrounding the issue of check box contributions. Commissioner Baker suggested how donor advised funds are treated differently than some other contributors.

Commissioner Cardenas suggested the staff and Commission looking into the honest ads act.

MOTION: To adjourn the meeting. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

The meeting concluded at 1:12 PM.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved June 7, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission