



(Accepted on September 16, 2021)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Tuesday, August 24, 2021
10:00 a.m.

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

Staff Present: Galena West, Executive Director
Christopher Burton, Assistant Chief of Enforcement
Dave Bainbridge, General Counsel
Karen Harrison, Senior Commission Counsel
Zachary Norton, Senior Commission Counsel
Toren Lewis, Commission Counsel
Loressa Hon, Chief of Administration
Lindsey Nakano, Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:00 AM.

- 1. Public Comment for Items not on Agenda.**
- 2. Approval of July 2021 Commission Hearing Minutes.**

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

- 3-5. Approval of Enforcement Consent Calendar.**

Chair Miadich recused himself for item four, as one of the people of interest in the item is a client of the Chair's former law firm.

MOTION: To approve items three and five. Moved by Commissioner Baker, seconded by Commissioner Wood. Motion approved 5-0.

Vice Chair Baker presided over discussion on item four. Vice Chair Baker asked if there was any delay in the process or if the complaint was filed late, as the item is in relation to the 2016 election. Christopher Burton, Assistant Chief of Enforcement, responded with stating that there were no significant delays, and this is a case where it took more time to resolve.

MOTION: To approve item four, In the Matter of Roger Gaylord for Folsom City Council 2016 and Roger Gaylord III. Moved by Commissioner Cardenas, seconded by Commissioner Wilson. Motion approved 4-0.

6. Pre-Notice Discussion of Proposed Regulation 18424.3 Behested Payment Reporting, Donor Advised Funds.

Karen Harrison, Senior Commission Counsel, presented regulation changes to address reporting requirements for behested payments.

Chair Miadich asked Ms. Harrison for the reasoning behind including the donor advisor as one of the pieces of information with the term donor. Ms. Harrison answered that this disclosure reaches the person who had the ability to exercise authority over the donor-advised funds, which can be either the donor or a designated donor advisor. Chair Miadich asked if a donor advisor can make a payment to a 501(c)3 without the donor's consent. Ms. Harrison responded that the donor advisor can make those payments as they oversaw these funds, whether it be current payments or future payments.

Chair Miadich asked for further clarification on anonymous donor-advised funds, in which Ms. Harrison explained that the anonymity can be on two levels, with either the donor's name or the donor-advised fund can be anonymous.

Chair Miadich questioned if a donor-advised fund was controlled by two individuals, the donor-advised fund can make a behested payment of \$9,999 before the \$10,000 threshold in which they would have to start reporting. Ms. Harrison responded that this wasn't discussed to an extent and informs the Chair that they must see how this regulation functions moving forward and adjust accordingly. Ms. Harrison also does not see these issues with straight behested payments.

Commissioner Baker asked in a scenario where the name for the donor advised fund is different from who is making the contributions to the donor advised fund can be dealt with in this scenario. Counsel Harrison stated that there was a typo in which the regulation stated, "the name of the donor or if applicable the donor advisor" should have "and" instead of "or". This is important as the regulation is trying to capture whose making this requested and are striving to get all the names disclosed to the public.

Commissioner Baker asked if all are anonymous and only have the number identifier, is there way where the public can find out who either the donor or donor advised fund are. Ms. Harrison responded by saying

how there is a unique number identifier that is created by the community foundation, and that each donor advised fund is separated from one another.

Commissioner Wood asked if there is a way in which these donor advised funds have a separate number identifier for anonymous payments, so that there is a way to track these payments. Ms. Harrison answered that this is possible, and that attention will be put to this topic to address the concerns that Commissioners Baker and Wood had.

Commissioner Wilson questioned if there is an anonymous donation from a donor advised fund made, but months later the elected official finds out who the donor is, if there is an obligation to report at that time.

Counsel Harrison responded that under the Act, if better information has become available that it is required to amend reports, so it is possible to explain it further.

Chair Miadich asked in the scenario in which information has been revealed from anonymous donor advised funds, what is the timetable for what reports must be amended. Ms. Harrison answered that to her knowledge there is not one and will investigate setting a timetable.

7. Prenotice Discussion of Proposed Regulations Related Recordkeeping Requirements for Lobbyists, Lobbying Firms, and Lobbyist Employers.

Zak Norton, Senior Commission Counsel, discussed the proposed regulations on lobbyist recordkeeping.

Commissioner Baker asked if there is a significant difference from what is occurring now, or if it is just not written out. Mr. Norton responded that this is already being done, but it is not addressed in the regulations. Mr. Norton stated having an audit record-keeping regulation will make it clearer for all parties in terms of their obligations.

Commissioner Baker asked if there has been someone who has not been good in their record-keeping, if the voucher can be used as a backstop. Mr. Norton answered that the current regulations have too much leeway on the term “voucher” and the goal is to tighten up to where the voucher is acceptable in the event where there is no other documentation.

Commissioner Baker asked since FTB audits are not occurring, is it only the discretionary FPPC audits that can occur and in that case are these disclosures going to be audited. Mr. Norton responded that there have not been audits in the past several years, and one issue is that the record-keeping requirements were

inadequate. By expanding the list of required records, it will lead to more extensive audits that will allow for verification with generated documents.

Commission Wilson inquired about the lack of audits done by the FTB and if it is due to the current regulations to gather documentation for audits or if there are other reasonings behind this. Mr. Norton answered that from hearing from FTB, there is a shortage of staff resources, as well as a de-prioritization of these audits since there is a limited scale of documents that FTB can obtain.

Commission Wilson then asked if the audits were shifted to this agency, what resources would be needed to follow up with extensive audits. Mr. Norton responded that the staff feel these regulations are the first step towards addressing these issues.

Commissioner Cardenas asked if it is correct to assume that any contract that is related to an activity expense must be retained for a possible FTB audit. Mr. Norton responded the regulations include quarterly reporting, so if there a contract entered in that timeframe that does pertain to a reportable expense it will need to be retained. Mr. Norton also reiterated that it is for a five-year period.

Chair Miadich asked what happens if the communication includes substantiating that a payment was reported correctly and a back-and-forth on strategy. Mr. Norton responded that information will be redacted, as the regulations state that it will only for communication that relate to reported expenditures.

8. Adoption of Amendments to Existing Regulations and a Proposed New Regulation Concerning Electronic Advertisements and Online Content.

Toren Lewis, Commission Counsel, presented an overview of the regulations changes up for adoption.

Commissioner Baker asked whether there was any statutory language that conflicted with the proposed regulations. Mr. Lewis pointed to the Act to clarify where the statutory authority for the regulations comes from.

Chair Miadich asked if there has been any feedback from the regulated community. Mr. Lewis stated there had not been any feedback.

MOTION: To adopt the regulation package with a January 1, 2022 effective date. Moved by Chair Miadich, seconded by Commissioner Wood. Motion approved 5-0.

9. Digital Transparency Task Force Report and Recommendations.

Commissioner Baker asked if there were any alternatives explored to a state-run database. Commissioner Wood stated she started the process believing in alternative options but after all the meetings, fully believes the state-run archive is the best option.

Commissioner Baker asked about the possible burden places on low budget and grassroots campaigns. Chair Miadich stated the Task Force heard from practitioners who have experience uploading to the City of Los Angeles ad archive and they indicated this was not a burden.

Commissioner Baker discussed the recommended targeting information and whether it was too much proprietary information made public. Chair Miadich believes the current proposal is the right balance because it is akin to what is being disclosed for radio and television ads.

MOTION: Motion to transmit the DTF Recommendations to the Legislature and Governor. Moved by Commissioner Cardenas, seconded by Chair Miadich. Motion approved 5-0.

10. 2021/2022 Budget.

Loressa Hon, Chief of Administration, gave an overview of the allocated 2021/2022 budget.

11. Committee Updates.

Chair Miadich updated the Commission on the Budget and Staffing Committee meeting that was held in August that heard an update on the 2021/2022 budget.

12. Legislative Update.

Lindsey Nakano, Legislative Counsel, gave an update on the final timeline for the legislative session and FPPC related bills.

AB 775 has become a two-year bill and will not move forward this year. The bill will have an urgency clause when it moves forward next year.

Commissioner Baker asked if there is the authority to adopt regulations this fall so there is more certainty on the provisions of AB 775 prior to an election year. Dave Bainbridge, General Counsel, stated there is not authority to prohibit these types of contributions but there could be room to have greater reporting requirements.

Commissioner Wood left the meeting at 11:59 a.m.

13. Executive Staff Reports.

Mr. Burton mentioned the Enforcement team is seeing additional volume from the recall election and wanted to thank the Staff for their hard work.

Mr. Bainbridge discussed the League of Women Voters letter submitted last month. The current reporting system is to report everything coming in and going out. Some of the options going forward include updated some of the reporting forms or updating the ear marking regulations. We have also updated our website T-10 list to show separate totals to clearly see the transfer of committee funds.

Commissioner Cardenas left the meeting at 12:09 p.m.

Galena West, Executive Director, updated the Commission on the signing of the County of San Bernardino contract.

Commissioner Baker left the meeting at 12:10 pm and rejoined the meeting at 12:12 pm.

Jay Wierenga, Communications Director, discussed the op-eds that were written and circulated by the Commission and the reception they received.

14. Commissioner Comments and Proposed Future Agenda Items.

Commissioner Baker asked for a discussion about possible regulatory action related to committees received recurring contributions through automatically checked authorizations.

MOTION: To adjourn the meeting. Moved by Commissioner Wilson, seconded by Commissioner Baker. Motion approved 3-0.

The meeting concluded at 12:14 PM.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved September 3, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission