



(Approved on August 24, 2021)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, July 15, 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
Karen Harrison, Senior Commission Counsel
Katelyn Greene, Commission Counsel
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 June 2021 Commission Hearing Minutes.**

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

- 3. Approval of Enforcement Consent Calendar.**

Chair Miadich stated he wanted to discuss item three, In the Matter of BluePAC and Douglas Chan; FPPC No. 16/19981, and asked that the item be technically removed from the consent calendar.

Ms. Brereton gave an overview of the presented stipulation and discussed the comment letter received. Chair Miadich asked if Staff felt confident in their investigation to determine whether there were dark money activities. Ms. Brereton stated the matter was thoroughly investigated and the Enforcement Division feels confident in the stipulation as presented.

Commissioner Baker asked about the communications obtained to determine the public commenter

claims. Ms. Brereton stated that communications were obtained voluntarily and through subpoenas and Staff did not encounter any red flags.

Commissioner Baker asked whether records were obtained in regard to the consultant. Ms. Brereton stated that they subpoenaed the information regarding the consultants and that it was not related to the expenditures that were a part of the violations currently at issue.

Commissioner Baker asked why the City of Santa Clara fines were weighed into Staff's considerations in this case. Ms. Brereton stated external fines are considered to prevent further penalization and to encourage participation. Commissioner Wood discussed reducing our fine based on the City's fine and whether we would have a higher fine if the other outside fine was low to compensate. Ms. Brereton stated she cannot think of any instance where it has occurred, but it is possible depending on various factors. Commissioner Wilson asked for the fine imposed by Santa Clara and if there was any situation where individuals would be responsible for the fines. Ms. Brereton stated that the fine was \$8,380 and stated that the respondents are jointly and separately liable for the fine.

Hosam Haggag, Santa Clara City Clerk, stated that BluPAC were very sophisticated and careful in their actions. Furthermore, there were various expenditures Mr. Haggag believed should have been reported. Mr. Haggag requested an exception to the Commission's rules due to the perceived loophole BluPAC used to skirt the dark money laws. Mr. Haggag discussed safe harbor provisions in relation to BluPAC.

Nick Sanders, Sutton Law Firm, stated he wanted to correct the record that BluPAC is still an existing entity working under a different name.

Commissioner Baker asked Ms. Brereton to address the safe harbor issue and if the organization was still active. Ms. Brereton stated that the organization is still active, and she is unaware of any activities they are currently engaged in. Ms. Brereton stated she agrees that the safe harbor does not apply, and they did not evaluate the BluPAC documents under the safe harbor regulations.

Commissioner Baker asked if BluPAC existed as an education entity prior. Ms. Brereton stated that BluPAC were active in 2016 and maybe in part of 2015 but doesn't have the exact date.

Commissioner Wood stated that she agrees with the frustrations regarding the \$50,000 threshold for local elections and the idea that sophisticated actors can play right under the threshold.

MOTION: To approve the stipulation. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

4. Pre-Notice Default.

Ms. Brereton stated that they have not received any communication from the party after sending notice and expects this item to come before the Commission at the next meeting.

5. Presentation on Donor Advised Funds, Relating to Charitable Donations and Behested Payment Reporting.

Karen Harrison, Senior Commission Counsel, gave a brief overview of behested payment reporting requirements and introduced the guest speakers.

Laura Seaman, Chief Executive Officer, and Carol Bradford Worley, Senior Counsel, League of California Community Foundations, gave a brief overview of donor advised funds (DAFs) and how DAFs work.

Ms. Harrison asked what information is provided to the organization that is receiving the check. Ms. Bradford Worley stated that it comes from the California Community Foundation and their grants come with a letter that details the donor, unless the donor chooses to remain anonymous.

Chair Miadich asked what percentage of grants choose to remain anonymous. Ms. Bradford Worley stated no more than 10% of grants are anonymous. Ms. Seaman added that a recent study found that about three percent of grants in California are anonymous. Chair Miadich asked about grants being made at the behest of a public official. Ms. Seaman stated that they do not believe behested payments were considered for the data analysis of that study.

Chair Miadich asked if donors are allowed to utilize the anonymity function for particular transactions. Ms. Bradford Worley stated that they would be able to remain anonymous, even if they

had a named fund with their organization at a different time.

Chair Miadich asked if the donated money becomes an asset for the League of California Community Foundations. Ms. Seaman responded yes, the funds now fully belong to the DAF Sponsor Organization. Ms. Bradford Worley stated that the reason for that is for the tax benefit.

Chair Miadich asked if a donation could be directed to an organization where their relative is the executive director, and if it would violate the standard of benefiting yourself. Ms. Bradford Worley stated that the donor cannot benefit themselves or family members, and they ask for a full budget to show that the funds are sufficient absent of the donations to ensure there are funds that would cover salaries and anything that might benefit individuals.

Commissioner Baker asked about corporate DAFs and where the money comes from in this context. Ms. Bradford Worley stated that they have some small local corporations who make grants from their income into the DAFs, and the grantmaking is set up by a board resolution.

Commissioner Baker asked how they define the scope of political for their practices. Ms. Bradford Worley stated that they make the distinction between lobbying and advocacy and allow grants for advocacy purposes.

Commissioner Wood asked if foreign nationals can contribute to DAFs. Ms. Bradford Worley stated that they can, but it does not happen often.

Commissioner Cardenas asked if a DAF had the obligation under regulations to notify the behesting public official that they have made payment. Ms. Bradford Worley stated no, and they would not know unless the donor notifies them the grant is made at the request of an official.

Commissioner Cardenas asked who are the parties that have a reporting relationship or obligation. Ms. Harrison stated that the duty is on the elected officer or public utility member and there is no duty placed on the payor or the payee to provide information to the reporting official.

Commissioner Wilson asked if the public officials have an obligation to report an anonymous donation as a behested payment. Ms. Harrison stated that it has not been a practice to her

understanding.

Commissioner Cardenas asked about sponsoring organizations. Ms. Seaman stated sponsoring organization refers to the entity that holds the DAFs.

Chair Miadich asked how often sponsoring entities reject a recommendation from a donor advisor.

Ms. Bradford Worley stated that they take the position not to censor grants, and it is quite rare that they reject a recommendation.

The Commission adjourned for break at 11:59 a.m. and reconvened at 12:11 p.m.

6. Prenotice Discussion of Proposed Regulations Related to Behested Payment Reporting.

Ms. Harrison discussed the proposed regulations related to behested payment reporting.

Commissioner Wilson asked for a timeline for when the Commission will vote to approve the regulations. Ms. Harrison stated that it is planned for the September meeting.

Commissioner Baker asked what the Commission's authority is here, and what triggers the 10-day amendment period for the Good Faith Payment. Ms. Harrison stated the 10-days would be triggered by the official knowing there is better information than reported.

Commissioner Wilson asked for clarification about the Commission's scope of authority under the Act. Mr. Bainbridge stated that it depends on how specific the statute is that they are interpreting and carrying out.

Commissioner Wood asked about legislative and campaign staff, and the timeframe for the final evaluation for behested payment. Ms. Harrison stated that the time period is 10 days for the official to amend the report within the period the official learns of more accurate information.

Commissioner Wood asked how the organization knows that the money is at the behest of the official. Ms. Harrison stated that the elected official or officer asked for information from the organization and are aware of their campaign.

Chair Miadich stated that he would like staff to come back next month with ideas on how to define the term payor by regulation.

7. Adoption of Amendments to Existing Regulations and Proposed New Regulations Concerning Disclosures on Electronic Slate Mailer and Certain Forms of Advertisements.

Katelyn Green, Commission Counsel, gave a presentation on the proposed regulations.

Chair Miadich asked if they have the statutory authority for Regulation 18450.11. Ms. Greene stated that if a person coordinated with the committee and pays for another individual to appear, then that committee is paying for that advertisement and are making that expenditure.

Chair Miadich asked if staff prefer or recommend a particular alternative draft for 18450.7. Ms. Greene stated that staff recommend the second option because it is a simplified version.

Chair Miadich asked if they received any comments or feedback from anyone in the regulated community. Ms. Greene stated that they did not.

Commissioner Baker asked where they are grounding the authority to ensure they are not rewriting or extending a statute that they may not have the authority to do so. Mr. Bainbridge stated that because the payment is being coordinated with the committee, it is consistent with the intent of the statute to require that disclosure the spokesperson is being paid.

Commissioner Wood asked if this specific disclosure regulation is necessary due to how specific the Disclose Act is. Ms. Greene stated that is her understanding on why they are doing this regulation.

MOTION: Motion to adopt the regulation package with option two. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

8. Website Search Function.

Larry Crabtree, Chief Information Officer, provided a demonstration of the new website search function. Commissioner Baker asked how the public will know how to operate the search function. Mr. Crabtree showed the onsite instructions to aid the public.

9. Committee Updates.

Chair Miadich stated that during the Law and Policy Committee there was a preview on the behested payment prenotice discussion, and an update from the legislative counsel Ms. Nakano.

Chair Miadich stated the Public Outreach and Technology Committee had a preview on the website

search function updates, and staff have also implemented a timestamp function for the meetings.

10. Legislative Update.

AB 378, gender-neutral language in the PRA, was passed in both houses with bipartisan support.. It was sign by the Governor and the updates will take effect January 1st, 2022.

AB 1367, increasing penalties for egregious personal use of campaign funds, was heard in the Senate Elections Committee on July 12th and passed in committee unanimously 5-0 with bipartisan support. The author took amendments in committee to change the penalty amount from three times to two times the amount of unlawful personal use amount.

Commissioner Baker asked if they are a sponsor of this bill and if they inquire with us before the amendment was made. Ms. Nakano stated that they are a sponsor of this bill, and that they asked staff about a few options.

MOTION: To continue to sponsor AB 1367. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

AB 1590 passed in the Senate Elections Committee 5-0 with bipartisan support on June 29th.

SB 686 was amended on June 23rd to adjust the threshold for inclusion on the statement of members and delete the language codifying recent regulations. The bill passed in the Assembly Elections Committee six to one.

MOTION: To continue to sponsor SB 686. Moved by Commissioner Baker, seconded by Commissioner Wilson. Motion approved 5-0.

AB 775 was recently heard in the Senate Elections Committee and passed 5-0 with bipartisan support. Commissioner Baker asked if there was any feedback on the amendments discussed at the Law and Policy Committee meeting. Ms. Nakano stated the author expressed interested in some of the suggestions.

MOTION: To sponsor AB 775. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

Commissioner Cardenas asked who made the motion to lower the penalty in AB 1367. Ms. Nakano stated that it came from the author. Commissioner Cardenas asked how one would know who made

those changes on the leginfo website. Commissioner Wilson stated that the best way would be to look through the videos, as the legislative history does not detail the full history.

SB 459 was passed in the Assembly Elections Committee last month 6-0.

SB 752 was passed in the Assembly Elections Committee last month 6-0.

11. Executive Staff Reports.

Ms. Brereton stated that there were two streamline matters where she used discretion to remove a violation, Otherwise the report is as submitted.

Commissioner Baker asked when they will get the report regarding the age of cases or complaints.

Ms. Brereton stated that it is annual and usually towards the end of the year.

Mr. Bainbridge pointed the Commission to a reported exemption under Miscellaneous Decisions.

Regulation 18740 provides that an official or candidate is not required to disclose the name of a person under Section 87207 if disclosure would violate California or Federal law.

Ms. Hon stated the report is as submitted and stated she anticipates discussing the budget at the next Commission meeting.

12. Commissioner Comments and Proposed Future Agenda Items.

Commissioner Wood stated that there is a comment letter from the League of Women Voters that we are overcounting contributions and was wondering if any of the staff were working on that. Chair Miadich requested Mr. Bainbridge have his staff look into the letter and address the issues presented.

Commissioner Baker requests visuals when it gets presented.

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

The meeting concluded at 2:16 PM.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved August 9, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission