



(Approved December 16, 2021)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, November 18, 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
Theresa Gilbertson, Senior Commission Counsel
Kevin Cornwall, Commission Counsel
Sukhi Brar, Assistant General Counsel
Zachary Norton, Senior Commission Counsel
Lindsey Nakano, Legislative Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:07 AM.

1. Public Comment for Items not on Agenda

Steve Petzold gave public comment wondering if the Commission offered money for people like him who followed campaigns and spent time and money to track violations. He also believes that the Commission should consider a reward program if there isn't one already. Mr. Petzold also discussed a newspaper referral program in order to publicly shame institutions who violate the law and having a minimum settlement amount of \$500-\$1,000.

2. Approval of Commission Minutes

Chair Miadich wanted clarification on the October Commission Minutes, where on Page 2, Commissioner Baker asked if the structure of the proposed [behested payment] regulation would require officeholders to have constructive knowledge that a staff member is involved. Ms. Harrison confirmed that to be true.

Chair Miadich asked whether that is an accurate statement. Dave Bainbridge, General Counsel, stated the

minutes accurately reflect what was said but clarified constructive notice is not in the regulation and not what was intended when it was drafted.

Commissioner Baker also asked on Page 8, where it stated that Mr. Bainbridge stated that the information learned on recall elections was on “everyone’s radar”. Mr. Bainbridge reaffirmed that this would be a topic that the Commission investigates and would come back later for discussion.

MOTION: To approve October 2021 Commission Meeting Minutes. Moved by Commissioner Wilson; seconded by Commissioner Baker. Motion approved 4-0, with Commissioner Cardenas not yet in attendance.

5-8. Enforcement Consent Calendar

Angela Brereton, Chief of Enforcement, pulled Item 7, County of Stanislaus, from the November Agenda.

Commissioner Baker requested to pull Item 6 from the Enforcement Consent Calendar.

Ms. Brereton discussed Item 5 which is being brought back to the Commission after recommendations and comments from the Commission were added to the stipulation. Ms. Brereton also stated that after negotiations, the stipulations have been updated for the meeting.

Steve Petzold, complainant for Item 8, gave public comment to discuss background on the item.

MOTION: To approve Items 5 and 8 from Enforcement Consent Calendar. Moved by Commissioner Wilson; seconded by Commissioner Baker. Motion approved 5-0.

Item 6 discussion - Commissioner Baker asked if the training that is being required includes conflict of interest and 1090, the exact situations the respondent found himself in. Ms. Brereton responded that the training does include these training items.

Chair Miadich, pointing to the footnote on page 8, inquired about the legal effect of the adoption of the agreement and asked if the contract in question would be void as a matter of law. Ms. Brereton responded that her response from last month that the contract would be void was too quick a reaction and stated that it is unclear in the law, and that since this is the first time that an administrative action has been brought for a 1090 case nothing has been determined yet. Ms. Brereton discussed ideas Staff has come up with regarding a path forward for the contract in question.

Chair Miadich asked Ms. Brereton to bring information on the Commission’s options and research of the legal effect in January.

Commissioner Baker asked if approving the stipulation affects the ability to go forward with a declaratory action. Ms. Brereton responded Staff needs the stipulation to be approved to move forward with any action.

April, public commenter, thanked the Commission for recognizing the severe nature of the violation and the precedent that is being set by the FPPC for the first 1090 administrative action. She discussed the issue at hand is whether Mr. Grace violated the law and not if he was a good guy or not.

MOTION: To approve Item 6. Moved by Chair Miadich; seconded by Commissioner Baker. Motion passes 5-0.

3. Administrative Adjudication

Brian Lau, Assistant General Counsel, stated that oral argument was requested by the parties as allowed by regulation but reminded the Commission that discussion will happen in closed session. Chair Miadich discussed the procedure for oral arguments where each respondent will have five minutes of oral argument time and the Enforcement Division will have five minutes for oral argument and can reserve up to two minutes for rebuttal.

Theresa Gilbertson, Senior Commission Counsel, presented a proposed decision on the case for Lloyd A. Johnson for West Covina City Council 2015, Lloyd Johnson, and John Shewmaker. Ms. Gilbertson detailed actions that Mr. Shewmaker performed on behalf of the campaign for Lloyd Johnson for West Covina City Council. Ms. Gilbertson described how there were multiple infractions on mass mailings, in which were negative mailings that had fake sender identification in violation of Government Code 84305. Additionally, the campaign failed to report this political activity on campaign statements, violating Government Code 84211. Ms. Gilbertson stated the proposed decision accurately finds that the campaign for Lloyd Johnson is liable two counts of failing to report political activity and two counts of failing to include a true and correct sender identification on mass mailings.

Lloyd Johnson, Respondent, stated that he knew nothing about the negative hit pieces and attempted to submit additional evidence. Mr. Johnson discussed that the people whom the negative mailing campaigns were targeting are people he had a relationship with and stated he didn't know about the mailings until they were brought to his attention. Mr. Johnson paid John Shewmaker as a reimbursement as Mr.

Shewmaker self-funded all the campaign actions that were done.

Ms. Gilbertson stated that Mr. Johnson's ignorance for the mass mailings and other actions taken by Mr. Shewmaker is not a sufficient defense. Ms. Gilbertson also stated that the judge found that even though Mr. Shewmaker may have left the campaign by leaving his post as treasurer, there is still significant evidence that Mr. Shewmaker made decisions on behalf of the campaign. This can be proven with payments made by Mr. Johnson to Mr. Shewmaker.

Ms. Gilbertson presented the proposed decision as it relates to John Shewmaker, an agent to the campaign and Lloyd Johnson. Ms. Gilbertson discussed how Mr. Shewmaker violated Government Code 84305 which requires all mass mailings include a sender identification, which allows for the public to identify who is responsible for the mailing. Mr. Shewmaker acted on behalf of Johnson and the committee, creating advertisements, mailings, and robocalls and received payment for these services. At the same time, Mr. Shewmaker caused two negative mass mailings to be sent to potential voters that included a fake sender identification and included an address to an unaffiliated mail center. Mr. Gilbertson stated the total proposed penalty is appropriate and recommends the Commission adopt the proposed decision.

Mr. Shewmaker stated that there was not a full investigation before a conclusion was made and stated the investigators would not investigate anything that deviated from the conclusion. Mr. Shewmaker stated the other two campaigns he worked on were not required to report because they were for different offices and were not investigated which doesn't make sense logically or legally. Mr. Shewmaker stated that if Mr. Johnson did not pay or refund him for the costs that he paid, then this would in turn result in a campaign contribution limit case. Mr. Shewmaker also stated that, as a vendor, he has no obligation to report to the FPPC, as the printer and other vendors do not have to report to the FPPC. Mr. Shewmaker stated that the original investigators testified this was a "nothing case" and another investigator questioned why this case would take six years. Mr. Shewmaker stated investigators have not shown that Mr. Johnson was involved, and stated investigators are trying to put reporting requirements on vendors which is unheard of.

Ms. Gilbertson stated the law provides that an expenditure by an agent for a committee is presumed to be coordinated by the committee that benefits. Mr. Shewmaker was not answering questions of his involvement until the evidence was in front of him. Although Mr. Shewmaker stated that he acted as a

third party, Ms. Gilbertson responded that this did not occur. Ms. Gilbertson also stated that Mr. Shewmaker was hired as a treasurer and political consultant and knew the requirements for sender identification and caused several mass mailings in support of Johnson that did include the correct sender identification.

4. Closed Session

The Commission adjourned for closed session at 10:50 a.m. and reconvened in open session at 11:38 a.m. Chair Miadich reported out of closed session that the Commission has adopted the ALJ's proposed decision with the following changes. First, the Commission will include the recommended technical non-substantive changes from the Enforcement Division. Second, with respect to counts 1 and 2, the Commission will reduce the proposed penalties from \$1,500 each to \$1,000 each.

9. Adoption of Proposed Regulatory Changes Permitting the Use of Secure Electronic Signatures

Kevin Cornwall, Commission Counsel, stated Staff is recommending the adoption of the proposed regulations to help modernize electronic submissions and addressed the concerns submitted by comment letter.

Commissioner Baker asked if Mr. Cornwall disagreed with the statement from the UC letter attached that states the proposed regulation prohibits exploration and development. Mr. Cornwall stated that Staff had to consider all the various districts that the regulation would apply to and further stated that the UC could determine a specific UC campus to have access to the electronic filing system and a different UC campus to submit using electronic signatures.

Chair Maidich asked, using the example of the UC system, can it be more granular in which the UC can select a small sample of filers at a particular campus to test whether electronic signatures are a better way to go versus an electronic filing system? Mr. Cornwall responded that the Chair is correct that it does not have to be an all or none approach, and there can be a select portion of the body can have access to the filing system. Mr. Bainbridge agreed that the regulation does reflect the flexibility that can be implemented for the electronic filing systems in these bodies.

Commissioner Wilson asked when the regulations will take into effect if adopted. Mr. Bainbridge

responded that it will be thirty days after the regulations get sent to the Secretary of State Office but that an effective date can be set in the motion as well.

Commissioner Wood inquired if Mr. Cornwall could explain further that electronic filing is more transparent than digital signatures. Mr. Cornwall responded that electronic filing systems used software that is mainly automated and allows the public to go and access the public records through these systems, rather than submitting a request to the agency and wait for a copy.

Alison Leary, League of California Cities, stated the League of California Cities supports the comments submitted by the University of California and would like to see their comments reflected in the adopted regulations. Ms. Leary also pointed to individuals who sit on multiple boards who would have an easier time filing with electronic signatures.

Mark Morodomi, UC Legal, discussed the specific situation of UC San Diego which uses a legacy FPPC filing system that would be unable to test electronic signatures based on the way the regulation is written. Mr. Morodomi also discussed the difficulty in using NetFile to file Form 700s.

Nick Warshaw, Olson Remcho, wanted to emphasize electronic campaign filing and discussed the burden of paper records during COVID for campaigns and the Secretary of State and encouraged the Commission to pursue legislation in this area.

Chair Miadich asked Mr. Bainbridge to respond to Mr. Morodomi's concern that certain campuses would not be able to test electronic signatures. Mr. Bainbridge stated there is no requirement to use the system currently in place and a new system could be brought in or they could try the electronic signatures. Mr. Bainbridge stated electronic filing cannot be mandated so paper filings are still accepted. The reason for not having electronic signatures on top of that is to not create a third avenue for filing.

Chair Miadich inquired about the concerns from filing officers and wondered about the amount of paper copies that could be reduced if digital signature filing was accepted. Mr. Bainbridge responded with the concern that people would choose the electronic signature filing option over the electronic filing system.

Commissioner Wilson asked if there has ever been the option of adopting with a sunset date, in which it is only effective for one or two years, and then the Commission can later make amendments. Mr.

Bainbridge responded that this scenario has not occurred, but also reiterated that a sunset date is not ideal

and prefers the less formal approach of stating the regulations would be looked at after a certain amount of time.

MOTION: To adopt the proposed language from the UC system with an analysis period of 18-24 months. Moved by Commissioner Baker; seconded by Chair Maidich. Motion approved 5-0.

Mr. Cornwall asked for clarification if this would include the bracketed language on the last page of the UC Letter. Commissioner Baker asked if there are any red flags if accepting the bracketed language. Mr. Cornwall stated that he would recommend including the bracketed information. Commissioner Baker agreed.

The Commission adjourned for break at 12:08 p.m. and reconvened at 1:01 p.m.

10. Adoption of the 2021/2022 Statement of Economic Interests, Form 700

Sukhi Brar, Assistant General Counsel, presented the updates to the 2021/2022 SEI forms and stated the documents would be updated to reflect the adopted language for electronic signatures.

MOTION: To adopt the 2021/2022 Statement of Economic Interests Forms. Moved by Commissioner Baker, seconded by Commissioner Wood. Motion approved 5-0.

11. Adoption of Proposed Regulation Related to Amplification of Online Communications

Mr. Bainbridge stated if the regulation is adopted today, it would be effective January 1, 2022.

Commissioner Wood discussed how the code and regulations approach speech from a falsified place and how we regulate falsities. The regulation doesn't reflect the most aggressive stance that could be taken.

Commissioner Wood also discussed the comment letters received and stated the regulation is a nice middle ground.

Commissioner Baker asked what the language means if the yellow highlighted language was not included. Mr. Bainbridge said it would define some of the product purchased.

Commissioner Baker asked for more information on the feedback from Professor Miller that is discussed in the staff memo. Mr. Bainbridge said it was an informal conversation between Professor Miller and Toren Lewis, Commission Counsel.

Chair Miadich stated he believes the yellow language is incredibly important to this regulation and makes the reporting more transparent.

MOTION: To approve the regulation package with the yellow highlighted language. Moved by Chair Miadich, seconded by Commission Wood.

MOTION TO AMEND: To approve the regulation package without the yellow highlight language. Moved by Commission Baker, seconded by Commissioner Wilson. Motion failed 2-3 with Commissioners Wilson, Wood, and Chair Miadich voting no.

MOTION: To approve the regulation package with the yellow highlighted language. Moved by Chair Miadich, seconded by Commissioner Wood. Approved 4-1, with Commission Baker voting no.

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

MOTION: To approve the regulation package with the yellow highlighted language. Moved by Chair Miadich, seconded by Commissioner Wood. Motion approved 5-0.

12. Adoption of Amendments to Recordkeeping requirements for Lobbyists, Lobbying Firms, and Lobbyist Employers

Zak Norton, Senior Commission Counsel, discussed the proposed regulations and discussed the comment letters received. Mr. Norton went through edits to the regulations based on the comment letters.

Commissioner Wilson asked if there was a specific format lobbyist journals should follow after adoption.

Mr. Norton responded there is not a recommended format.

MOTION: To approve the regulation package with the edits made by Legal Division. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

13. Legislative Development

Lindsey Nakano, Senior Legislative Counsel, presented ten legislative proposals for the 2022 year.

Commissioner Baker asked if there have been any committee roster changes. Ms. Nakano didn't have an update but said she would provide the information once it's received.

Commissioner Baker asked if the proposal for the state digital ad archive is specific and if the proposal includes the targeting information that was discussed earlier. Ms. Nakano stated the proposal would include the recommendations of the Digital Transparency Task Force which does include certain targeting information.

Commissioner Baker asked what the raw data proposal includes. Ms. Nakano stated it would be a download of the data that is included in the archive.

Commissioner Wilson asked for an explanation of how the 24-hour reporting would work for the

lobbying reporting and audit reform proposal. Ms. Nakano stated coverage hasn't been narrowed down yet but envisions the proposal to be a sort of notification of when a firm starts lobbying on a legislative action.

Chair Miadich stated he wished to vote on the proposals as a single item and asked if the Commissioners wished to pull an item for separate consideration. Commissioner Wilson asked to pull item 4.

Commissioner Baker asked to pull item 1.

MOTION: To approve the Legislative Proposal package, minus items 1 and 4. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

MOTION: To approve item 1 of the Legislative Proposal package. Moved by Chair Miadich, seconded by Commissioner Wood. Motion approved 4-1, with Commissioner Baker voting no.

MOTION: To approved item 4 of the Legislative Proposal package. Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 4-1, with Commissioner Wilson voting no.

14. FY 2021-2022 First Quarter Expenditure Report

Loressa Hon, Chief of Administration, presented the 2021-2022 first quarter expenditure report which was accepted as submitted.

15. Executive Staff Reports

Mr. Bainbridge updated the Commission on the creation and staffing of the Diversion Program unit. Mr.

Bainbridge also discussed the previously approved CARs regulations and their status at OAL.

Eugene Solomon, Redondo Beach, gave public comment to request the Commission reconsider a streamline stipulation in the matter of Hometown Voter Guide and Michael Johnson.

16. Commissioner Comments and Proposed Future Agenda Items.

The meeting concluded at 2:43 PM.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved December 6, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission