



FAIR POLITICAL PRACTICES COMMISSION

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To: Chair Remke and Commissioners Casher, Eskovitz, Wasserman and Wynne

From: Zackery P. Morazzini, General Counsel
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Subject: Pending Litigation

Date: November 10, 2014

ProtectMarriage.Com et al. v. Bowen et al.

On January 9, 2009, in the United States District Court for the Eastern District of California, plaintiffs ProtectMarriage.com - Yes on 8, a Project of California Renewal and National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage, challenged the Act's campaign disclosure requirements on contributions to ballot measure committees as unconstitutional. They cite a variety of adverse actions against persons who supported Proposition 8, which was on the November 2008 ballot, alleging that some of these persons were identified through campaign contribution information made public as required by the Act's campaign reporting and disclosure provisions. The Complaint seeks to permanently enjoin the future disclosure of all of plaintiffs' contributors, expunge the records of all of plaintiffs' past contributors, and to invalidate as unconstitutional the Act's \$100 disclosure threshold for contributors to ballot measure committees, the Act's requirement for post-election disclosure of contributors to ballot measure committees, and the Act's failure to purge the records of contributors to ballot measure committees after the election. As to all counts, plaintiffs sought declaratory and injunctive relief, and an award of attorney's fees.

On May 20, 2014, the Ninth Circuit issued its ruling, affirming the District Court's decision in part, and remanding with instructions to vacate the facial challenge portion of the decision. The Court upheld the Act's \$100 threshold for disclosure of contributions and found California's interest in post-election reporting is important and not unduly burdensome. The Court also found the challenge to already-disclosed contributor information non-justiciable as moot.

On June 3, 2014, plaintiffs filed a motion for panel re-hearing requesting that the panel revisit its decision on mootness based on allegedly over-looked "material facts." Defendants filed an opposition brief on July 3, 2014. On May 20, 2014, the Court issued its Order denying plaintiffs' motion for re-hearing, which became final on July 25, 2014.

Plaintiffs subsequently filed a petition for writ of certiorari with the United States Supreme Court on October 14, 2014, requesting that the Court reverse the Ninth Circuit's decision regarding mootness. The Commission filed a Waiver and will not be filing any other response. The Supreme Court will determine whether to hear the case.

Enforcement Cases

Tony Dane v. Fair Political Practices Commission

Tony Dane, a former respondent in an Enforcement Division case, filed in a Las Vegas, Nevada Court, a motion to quash an Enforcement division subpoena that was issued to Wells Fargo Bank. The FPPC then filed a motion to compel production in Sacramento Superior Court and prevailed in both cases. Tony Dane then sued the FPPC in Nevada for malicious prosecution and abuse of process. On June 14, 2012, the Nevada judge dismissed the malicious prosecution claim, but declined to dismiss the abuse of process claim on the basis that Dane had alleged ill will (essentially that the FPPC was out to get him based upon his political beliefs). The judge ruled that under the state's loose "notice pleading" standards this allegation was sufficient to preserve that cause of action. The FPPC filed a motion for summary judgment on December 19, 2013 in Nevada state court. The court granted the FPPC's motion at a hearing on February 7, 2014. A dismissal of the case is pending with the Nevada court.

Aldo A. Flores v. Fair Political Practices Commission

In September of 2013, the Enforcement Division subpoenaed bank records belonging to Aldo Flores as part of a contribution laundering investigation focusing on Assembly Member Rodger Hernandez and his candidate controlled committee. Aldo Flores was served with copies of the Notice to Consumer and copies of the subpoenas. On September 12, 2013, in response to the subpoenas, Flores filed a Complaint against the Commission alleging abuse of process and seeking declaratory relief in the Los Angeles County Superior Court. On October 11, 2013, the Enforcement Division filed an Answer to the Complaint, asserting a general denial to the causes of action. The Enforcement Division has filed a motion for judgment on the pleadings, calendared for December 8, 2014, asserting that plaintiff failed to state facts sufficient to maintain any cause of action, and requesting the court to enter judgment in favor of the Commission. A Case Management Conference was held on July 10, 2014. Aldo Flores failed to appear, and was fined \$250 for his unexcused nonappearance. The Conference was rescheduled for August 11, 2014. Aldo Flores again failed to appear at the Case Management Conference and a new date was set. At the Case Management Conference held on October 21, 2014, Aldo Flores appeared, and an Order to Show cause as to why terminating sanctions should not apply was set for November 7, 2014.

In re the Matter of Fair Political Practices Commission, Orange County Superior Court Case Nos: M15899, M15900, M15901, M15908, M15909, M15910, M15911, M15912, M15913, M15914, and M15930

In August and September of 2014, the Enforcement Division subpoenaed bank records and communications belonging to eleven individuals in Orange County as a part of a contribution laundering investigation. These individuals were served with copies of the Notice to Customer, bank record subpoenas, and communications subpoenas regarding these contributions. In response to the subpoenas, on September 9, 2014, Attorney James M. Crawford filed a Complaint against the Commission in Orange County Superior Court on behalf of these individuals alleging: (1) the subpoenas are overbroad and vague; (2) the subpoenas seek financial discovery without a court order; and (3) the federal and state Constitutional right to privacy protects financial and personal information from disclosure. The Complaint seeks an Order staying or quashing the subpoenas, or in the alternative, a Protective Order limiting the nature and scope of the production in Orange County Superior Court. Petitioners also filed a motion for a continuance of the hearing in the underlying matter. On October 17, 2014, Judge David Hoffer granted the continuance and requested additional briefing from both parties. The Hearing is now set for December 5, 2014.