



(Approved on October 21, 2021)  
**CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION**  
**MINUTES OF HEARING, Public Session**  
**Thursday, September 16, 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  
Toren Lewis, Commission Counsel  
Kevin Cornwall, 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 August 2021 Commission Hearing Minutes.**

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

**3-8. Approval of Enforcement Consent Calendar**

Chair Miadich pulled item 3 from Consent Calendar. Commissioner Wood pulled item 6 from Consent Calendar. Commissioner Cardenas pulled item 4 from Consent Calendar.

**MOTION:** To approve items 5,7,8 from Enforcement Consent Calendar. Moved by Commissioner Baker, seconded by Commissioner Wood. Motion approved 5-0.

In discussion of item 3, Chair Miadich questioned the fine amounts since the party in question has been involved in local and state campaigns for over 25 years and the assumption should be they have knowledge and sophistication with the Act. Chair Miadich also asked whether the harm mentioned in

the stipulation is correct and whether the harm should be edited. Chair Miadich also asked whether notices regarding possible major donor filings being required were sent by the committee. Angela Brereton, Chief of Enforcement, agreed with Chair Miadich that the respondent has experience and stated his experience was considered when writing the stipulation. Regarding the public harm, Ms. Brereton stated that the papers before the Commission are stipulated but would make sure the stipulations are consistent moving forward. In addition, she stated that they would include information about major donor notifications in the future.

Commissioner Cardenas asked whether the individual in question has had prior dealings with the Enforcement Division. Ms. Brereton answered that there was a prior case in 2014.

Commissioner Baker asked if the individual was aware or put on notice because of the case in 2014.

Ms. Brereton responded that as a practice, prior infractions are considered regarding penalties but since the infractions were so close in time, the prior case was not considered an aggravating factor.

Commissioner Baker asked for count 1, where ten contributions were grouped, if those infractions could have been separated to create a larger maximum fine. Ms. Brereton answered yes but that it was divided to align with a comparable case, but the monetary amount was higher per count than in the comparable case. Ms. Brereton stated that in December a policy discussion about how to determine number of counts can be included in the Enforcement presentation. Commissioner Baker asked if the stipulation is rejected today, would language in the stipulation be made clearer to show public harm. Commissioner Baker asked if the respondent voluntarily amended before or after the complaint. Ms. Brereton stated amendments were filed before the election, but she is not sure if it was filed before the complaint.

Commissioner Wilson questioned what the maximum fine could be. Ms. Brereton answered that it could be a maximum fine of \$30,000 as the counts are currently written. Commissioner Wood agreed that some discussion of the policy regarding how to determine number of counts would be helpful.

Chair Miadich stated that the prior should be considered for the reporting issues since there was enough notice.

Gary Winuk, attorney for Respondent, stated that his client is not sophisticated because local officials have differences in reporting guidelines as well as less competition. He stated that his client hired a professional treasurer to come into compliance and is no longer in public office. Mr. Winuk further stated that the individual has corrected previous errors that were alerted to him when occurred and objected to outside information being considered.

**MOTION:** To reject item 3 and direct Enforcement to negotiate a new stipulation. Moved by Chair Miadich, seconded by Commissioner Baker. Motion approved 5-0.

Commissioner Cardenas asked if the company identified in the stipulation (BAYCA, Inc.) is owned by the respondent as well as others identified. Ms. Brereton responded that there are specific rules regarding aggregating contributions in the statute and different rules apply when an individual wholly owns a business compared to when an individual is a part owner with other people and only entities that were wholly owned are included in the stipulation.

Commissioner Cardenas questioned what would occur if the spouse owned the company and is the sole director for the company. Ms. Brereton responded that the spouse would be seen as an individual with different requirements, so we would not add the entities that are owned by a spouse.

Commissioner Baker asked questions about sole ownership and partial ownership, and what if the respondent is a co-owner of the business but is a controlling shareholder. Ms. Brereton responded that there are separate rules regarding that situation, in (former) statute 85311. There is also advice in the Legal Division that clarified when aggregating contributions from an individual, it must be somebody acting as the sole director and controller of contributions. Commissioner Baker asked if the evidence must be more than just understanding that a person has 50 percent plus one share of the company. Ms. Brereton responded that yes there must be witness and documentation evidence to support this claim, to prove probable cause.

Commissioner Cardenas questioned if Ms. Brereton is aware of staff, after reviewing accounts, identifying the Respondent as the owner of the company. Ms. Brereton could not answer the question since it's not stated in the stipulation but that all the entities listed were ones that could be brought

forward regarding adding contributions together. A request was made for more information on the topic to increase the Commissions' understanding generally.

**MOTION:** To approve item 4. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 4-1, with Commissioner Cardenas voting no.

Commissioner Wood pulled item 6 to infer more about which comparable case is being used for this item. Ms. Brereton stated comparables are found in close as time to the current case as possible since Commission perspective changes over time but that all factors are taken into account when choosing. Commissioner Wood questioned if the streamline program would have lower penalties. Ms. Brereton responded in agreement.

**MOTION:** To approve item 6. Moved by Commissioner Baker, seconded by Chair Miadich. Motion approved 5-0.

#### **9. Notice of Intent to Present Default Decision and Order at the October Commission Meeting**

Ms. Brereton gave an update on the noticed item.

#### **10. Prenotice Discussion of Proposed 18421.10**

Toren Lewis, Commission Counsel, discussed the proposed regulation to provide the public with more information whenever a committee makes a payment for amplification of an electronic advertisement.

Commissioner Baker asked if the practice right now is to buy likes and follows that do not translate into real people, so this regulation is really going after the veneer of popularity. Mr. Lewis responded that the regulation is to require a specific description of what is being paid for so that the public knows the root of the expenditure. Commissioner Baker questioned how accurate is the reporting for a campaign who purchases 10,000 retweets and do they know if they received the full 10,000 paid retweets. Mr. Lewis responded that in the cases of bots, it would be very clear. The payment is for a specific number of likes or retweets and if that service didn't happen, it would be an issue between the campaign and the vendor, but the reporting would still be for the amount spent.

Chair Miadich had a follow-up question to Commissioner Baker about the level of description in the

regulation for specific number of likes and retweets purchase and whether she believed this was going too far. Commissioner Baker agreed with this statement and emphasized an uneasiness for this description being required for these types of purchases.

Chair Miadich asked if the campaign can buy several likes, and then allocate those likes through multiple communications. Mr. Lewis responded that there are two common types of purchasing likes, the purchased followers correspond to the account and continually like and retweet within the account or the purchase could be for likes and retweets on a single post. Mr. Lewis also discussed a very common scenario where a customer is seeking to buy followers, and those followers (bots) will engage in retweets and likes. Chair Miadich questioned if the intention is to capture things when people send mass text blasts or is it separate. Counsel Lewis does agree that there can be some rephrasing in the language to include this scenario.

Commissioner Baker asked if the commission is going after boosting and prolonging a message or the creation of a veneer of popularity and doesn't believe they should be jointly put together. Mr. Lewis agreed that there are differences between the two actions. Commissioner Baker questioned if the focus should be on the creation of a veneer of popularity. Chair Miadich and Commissioner Wood both agree with this point and believe the language on boosting could be removed from this regulation.

### **11. Prenotice Discussion of Proposed Regulatory Changes Permitting the Use of Secure Electronic Signatures**

Kevin Cornwall, Commission Counsel, presented regulations for electronic signatures on various FPPC forms as an alternative to paper filings and filings via certified electronic filing systems. This is in response to the heightened use of electronic signature systems within the past few years.

Chair Miadich asked if there were any stakeholder input feedback on this regulation. Mr. Cornwall responded that Commission staff has reached out to several organizations and government agencies about this potential regulation. Mr. Cornwall stated that no substantial response has been received, but there should be no expectation of any resistance and rather acceptance of this type of change.

Commissioner Wilson questioned if there will be any local entities looking to moving into the direction of this regulation and concept. Mr. Cornwall responded that multiple cities, including larger cities, have systems in place that are like what this regulation is presenting.

Taylor Kayatta, an attorney from the Secretary of State Office commends the commission on establishing regulations for a state-established electronic filing system. Mr. Kayatta made some suggestions, including what verbiage is used in the regulations.

## **12. Committee Updates.**

Chair Miadich gave an update on the Law and Policy Committee meeting which heard regulatory options for recurring contributions and an update on legislation.

## **13. Legislative Update**

Lindsey Nakano, Legislative Counsel, updated the Commissioners that the Legislature finished official business on September 10<sup>th</sup> and will be on interim recess until January 3<sup>rd</sup>.

Three commission-sponsored bills passed through the legislature, which includes AB 1367 (penalty for egregious use of campaign funds) and AB 1590 (shifts collection of penalty for failure pay committee fee to the SOS). SB 686, increases disclosure for LLC's that qualify as committees or sponsors, also passed in both houses. AB 319, expanding the foreign contribution prohibition, was supported by the Commission, and was passed in both houses. All four of these bills have or will be sent to the Governor's office, and letters from Staff have been sent to the Governor requesting his signature.

Two bills that were related to the commission but not taken a position on, SB 459 and SB 752, did not move forward. Ms. Nakano will plan to present concepts for legislative proposals in 2022 at the next Commission Meeting.

## **14. Executive Staff Reports**

Mr. Brereton stated that there are two streamline cases where she used discretion to exclude violations. Both had factors of lack of experience and knowledge of the Political Reform Act, as well as very low spending. Chair Miadich stated he wants an Enforcement update at the December 2021

meeting.

Mr. Bainbridge stated that the California State Association of Counties v. FPPC had a dismissal request that was filed with the appellate court from the plaintiffs and appellants. If the judge grants that request, the appeal will be withdrawn, and the case will be over.

Loressa Hon, Chief of Administration, discussed a software that is being procured to help staff comply with the ADA requirements of documents on the website. The Administration Division is still waiting for approval from the Department of General Services and will hope to have it approved next month.

Jay Wierenga, Communications Director, stated that the Campaign Legal Center reached out to the FPPC to learn more about some of the transparency efforts, which includes the heat map on the website as well as other efforts made by the Commission. Commissioner Wood ask Mr. Wierenga if there was an ability to add further context to the numbers on the heat map mentioned, whether it be including the number of elected officials in each county so that no specific county looks like an ethics hot sport. Mr. Wierenga stated that it can be done to add context to the violations and explained the initial reason for the heat map.

#### **15. Commissioner Comments and Proposed Future Agenda Items.**

Commissioner Baker asked for an update on the status of the CARS system as an election year is coming soon.

**MOTION:** To adjourn the meeting. Moved by Commissioner Wilson, seconded by Commissioner Cardenas. Motion approved 5-0.

The meeting concluded at 12:40 PM.

Respectfully Submitted,  
Sasha Linker  
Commission Assistant  
Approved October 11, 2021

Richard C. Miadich, Chair  
Fair Political Practices Commission