



CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, August 17, 2023
10:00 a.m.

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

Staff Present: Galena West, Executive Director
Christopher Burton, Acting Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Loressa Hon, Chief of Administration
Lindsey Nakano, Senior FPPC Legislative Counsel
Julianna Contreras, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:10 a.m.

1. Public Comments for items not on the agenda.

Hank Krzciuk Grace, thanking the Commission for prosecuting the GC 1090/conflict of interest case in his jurisdiction since it led to the DA's prosecution as well. Asked for a status of his other open complaints.

Dale Helvet - Request for updates on complaint FPPC Case No. 2018-01194.

Steve Petzold – Clarification of Form 700 about income requirements.

2. Approval of Commission Minutes.

MOTION: To approve the June 2023 meeting minutes. Moved by Baker, seconded by Commissioner Wood. The motion passed 4-0.

3-7. Consent Calendar.

Commissioner Wood requested agenda item #7 for discussion. Commissioner Baker requested agenda item #6 for discussion.

MOTION: To approve consent calendar items 3-5. Moved by Commissioner Baker, seconded by Chair Miadich. The motion passed 4-0.

6. In the Matter of ACLU of Northern California; FPPC No. 18/511.

Commissioner Baker inquired about the staff memo that lacked information on "comparables," as mentioned on page 6, Commissioner Baker was curious as to why there were no cases resembling the ACLU of Northern California matter. Chris Burton, Acting Chief of Enforcement, explained that this particular case is unique, and his team researched to see if any other case was applicable. There were comparable cases related to the specific violation types, such as failure to disclose advertisement disclaimers and campaign reporting violations, but not this specific case in determining the appropriate fine. Mr. Burton also stated that a different standard is applied to public mailers, and after assessing the situation, it was determined that there was no good comparable to use. Enforcement has seven other criteria to consider when assessing a proper penalty. Commissioner Baker also asked about the time it took to resolve the case since the ACLU case is from 2018 and how the recent guidelines the FPPC adopted relate to it. Mr. Burton explained that the delay was due to this particular case needing a deeper analysis based on the details and staff turnover at the time. However, the Enforcement Division is now working to resolve these cases sooner and more efficiently, as well as presenting cases to the Commission that carry a higher level of public harm. Chair Miadich and Commissioner Baker both agreed that the timeline on this case was too long and that in future cases, Enforcement should handle them more quickly.

MOTION: To approve stipulation FPPC No. 18/511. Moved by Chair Miadich, seconded by Commissioner Wilson. The motion passed 4-0.

7. In the Matter of Dawn Addis, Dawn Addis for Assembly 2020, and Steve Black; FPPC Nos. 20/118 and 20/119.

Commissioner Wood expressed concern about a contributor who failed to disclose information in Form 615 despite having undergone lobbyist training eight months prior. Commissioner Wood stated that this case may set a precedent for future comparisons and cause harm to the public's understanding of the issue. In particular, the failure to disclose should be considered a charging factor rather than an aggravating one. In response, Mr. Burton stated that they drop counts where applicable and negotiate settlements in the interest of all parties involved. Mr. Burton examined the previous similar case and found a violation of

the ban on contributions and no charge for the missing reporting. Considering Commissioner Wood's concerns, Mr. Burton stated Enforcement will look closely at charging the non-reporting violation in future cases. Chair Miadich requested clarification on how these cases will be examined in terms of aggravating and mitigating factors and the seriousness of the charges. Chair Miadich stated that, in this case, it appears that the lobbyist did not intend to cause harm, and the Assemblymember returned the contribution. Commissioner Baker asked if the candidate solicited the lobbyist or the client. Mr. Burton responded that she solicited both. Commissioner Baker asked why this was not included in streamline. Mr. Burton stated it was not a violation included in streamline and a violation not included cannot be added. Commissioner Baker did not approve the fine amount as she thought it to be disproportionate for the candidate and will follow her around the rest of her career; therefore, she opposed the stipulation. Chair Miadich stated that the Legal Division should bring back revisions to the streamline program in the future.

MOTION: To approve. Moved by Chair Miadich, seconded by Commissioner Wood. The motion passed 3-1.

8. Prenotice Discussion of Proposed Regulation 18318, Collections. Executive Director's Authority for the Settlement of an Order for Monetary Penalties.

Karen Harrison, Senior Commission Counsel, discussed the pre-notice of proposed Regulation 18318, which was presented at the April Commission meeting. During the discussion, collections issues were brought up in relation to the presentation that recommended certain actions from the April meeting. One of the recommendations was for a regulation that clarifies the Executive Director's ability to enter into a settlement agreement in full satisfaction of a monetary penalty order under specific circumstances. Chair Miadich asked about the standards or factors that the Executive Director would use to determine the amount likely to be collected within a reasonable time frame. Ms. Harrison responded that during the time when demand letters were being sent, the individual's financial status was taken into account after all attempts to collect the debt had been made. The Executive Director will provide regular reports to the Commission to monitor how her authority is being exercised, and the Commission can address any issues

and make necessary changes to the regulation. Commission Wilson suggested reaching out to other agencies for feedback on their collections processes. Ms. Harrison confirmed that they are currently requesting feedback and will report back on her findings at the next meeting. Commissioner Baker asked what the process is for when the Executive Director reports it to the Commission. Ms. Harrison clarified that it would be informational.

9. Prenotice Discussion of Proposed Amendment of Regulation 18531.2; Refunding of General Election Contributions after Withdrawal of Candidate, and Amendment of Regulation 18537.1; Carry Over of Contributions.

Zachary Norton, Senior Commission Counsel, presented the pre-notice discussion of proposed amendments to Regulations 18531.2 and 18537.1. Mr. Norton discussed Issue one, refunding contributions when a candidate chooses to withdraw from a primary election. Issue two, concerns the disposition of general election contributions when a candidate receives a majority of the votes for office in the primary election, so the candidate is elected to the office without advancing to the general election. This is currently the subject of two conflicting advice letters and what a candidate must do with the remaining campaign funds for the general election after a withdraw from the primary election has occurred.

Chair Miadich clarified Issue One- pertaining to two conflicting advice letters *Kaufman* and *Brown*. Staff states that there is a conflict in the letters in interpreting Regulation 18531.8 - the term “withdraw” this where a candidate does not run in the primary election because legally the candidate is no longer qualified, therefore cannot run in the general election and should constitute as withdraw of the candidate. Staff has proposed the *Kaufman* letter to be a more consistent and correct approach in use to the current statute. Commissioner Baker asked staff to provide more information on the legislative intent of the authors and why it was considered. General Counsel Dave Bainbridge stated this was a ballot measure and typically there is very little legislative intent considering it was a part of Prop 34. Staff will provide the Commission with further inspection of the intent at a future meeting.

Commissioner Wilson suggested Mr. Norton consult with Legislative Counsel Lindsey Nakano and check

if there is an available analysis of the legislative bills as they have moved through the legislature, or if any letters of intent can be found in the daily journal in the Assembly and Senate.

Mr. Norton discussed Issue Two- the existing law concerning the return of contributions, transfer of contributions, and carry over of contributions.

Commissioner Baker asked if this interpretation was within the Commission's authority. Commissioner Wood explained that the Commission is tasked with carrying out the purposes of the Act and can set policy, not just interpret the statute.

General Counsel Dave Bainbridge addressed the comment Commissioner Wood made regarding Section 85306, concerning when a candidate transfers to a different office. Mr. Bainbridge stated that Section 85306 applies to any transfer to another committee controlled by that candidate. Where it could be same office or different office and potentially the Regulation 18531.7 exception does apply if it is the same office for the subsequent election. Section 85306 applies in both instances, not only when a candidate transfers to a different office. Commissioner Wilson suggested Mr. Norton look into the trends found with the Superintendent of Public Instruction.

In response to the Commissioners' concerns, Mr. Norton stated that whether the candidate runs in the general election is not up to the candidate, the rules regarding the election and how it is run are followed.

Commissioner Baker asked that the regulation be clarified to show what the attribution can be used for – the next election, primary? Mr. Bainbridge stated that it would be the next primary.

The Commission agreed that they would like to see more of the legislative history and the purpose underlying the statute as well as case law. Mr. Bainbridge clarified that they would be bringing back all options.

10. Presentation on FPPC Email Advice Functions.

Sukhi Brar, Assistant General Counsel, gave a presentation about the FPPC Email Advice Functions. Ms. Brar answered a question posed by Commissioner Wilson regarding the process for submitting email advice requests and the confidentiality of requestor information. Ms. Brar confirmed that requestors'

names only appear along with their email or work email in FPPC email advice and among staff handling the email. While a requestor does not always need to disclose their name, they must provide sufficient facts for Ms. Brar to provide helpful advice. Requestors are only permitted to inquire about their own responsibilities under to the Act and are not allowed to seek advice about a third party. Commissioner Baker and Commissioner Wood suggested a phone call log for tracking purposes. Dave Bainbridge, General Counsel, stated that emails are highly effective, responsive, and preferable as phone conversations are difficult to track and cannot be recorded. However, phone calls are still acceptable. Chair Miadich and Commissioner Baker suggested implementing a survey to obtain public feedback on the process.

11. Budget Act 2023-24.

Loressa Hon, Chief of Administration, presented the Budget Act for 2023-2024.

12. Audit Division Update.

Shrdha Shah, Chief of Audits and Assistance, presented a PowerPoint presentation about audit requirements and an overview of the audit process and timeline for the fiscal year 2022-23 updates and common findings.

13. Legislative Update.

Lindsey Nakano, Senior FPPC Legislative Counsel, presented an update on all Commission-related bills and position to support two bills. Commissioner Baker requested support for SB 724.

MOTION: To support AB 868. Moved by Chair Miadich, seconded by Commissioner Wood. The motion passed 4-0.

MOTION: To support SB 724. Moved by Commissioner Baker, seconded by Chair Miadich. The motion passed 4-0.

MOTION: To support SB 569. Moved by Commissioner Baker, seconded by Commissioner Wilson. The motion passed 4-0.

14. Executive Reports.

The Executive Staff Reports were accepted as submitted.

13. Commissioner Comments and Proposed Future Agenda Items.

MOTION: To adjourn the meeting. Moved by Chair Miadich, seconded by Commissioner Baker.

The meeting adjourned at 1:47 p.m.

Respectfully Submitted,
Julianna Contreras
Commission Assistant,
Approved

Richard C. Miadich, Chair
Fair Political Practices Commission