



(Approved April 25, 2024)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, March 21, 2024
10:00 a.m.

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

Staff Present: Galena West, Executive Director
James M. Lindsay, Chief of Enforcement
Dave Bainbridge, General Counsel
Shrdha Shah, Chief of Audits and Assistance
Jue Wang, PhD, Acting Chief of Administration
Valerie Nuding, Commission Counsel
Erika Boyd, Senior Commission Counsel
Zachary Norton, Senior Commission Counsel
Lindsey Nakano, Senior FPPC Legislative Counsel
Jay Wierenga, Communications Director
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:01 a.m.

1. Public Comments for items not on the agenda.

Commissioner Baker thanked Chair Miadich for his time as Chair of the Fair Political Practices Commission and presented a resolution that highlighted the Chair's achievements during his time in the office. Commissioners Wilson, Ortiz, and Wood each thanked Chair Miadich and gave well wishes to his future.

Steve Petzold, Santa Clara, gave public comment asking the Commission to review conflict of interest codes in relation to Citizens Bond Oversight Committees.

Chair Miadich highlighted an emailed comment regarding online ad disclosure on YouTube videos and how the public can skip the ad and miss the disclosure at the end of the ads and asked Dave Bainbridge, General Counsel, to bring this back as a discussion item in the future.

Natalie Wright gave public comment asking the Commission to look into school district employees, school board members, and attorneys and who files Form 700s because attorneys are advising on decisions and are usually at the lowest disclosure level if they file at all.

Chair Miadich asked Mr. Bainbridge if attorneys of school districts have to file Form 700s. Mr.

Bainbridge stated it is based on the code of each district on what is required. Chair Miadich asked if a mandatory requirement to have attorneys file Form 700s would require legislation. Mr. Bainbridge said yes. Commissioner Wood asked how to track whether an attorney submitted their Form 700. Mr.

Bainbridge stated all the school districts would need to share their conflict of interest code and then those would need to be checked with all submissions. He further stated this falls under the local filing official.

Debbie Cam gave public comment on the issue of school districts and attorneys and stated Irvine Unified School District lists legal counsel and consultants on their list of designated filers however the school district believes the code refers to salaried attorneys and contract attorneys do not fall under the code.

Mrs. Arias gave public comment stating she started the You Too Movement that aims to address how for-profit private lawyers are advising school districts to litigate against special needs children and their families.

2. Approval of Commission Meeting Minutes.

MOTION: To approve the January 2024 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Ortiz. The motion passed 5-0.

3-6. Consent Calendar.

Chair Miadich pulled item three for discussion.

MOTION: To approve the consent calendar; items 4-6. Moved by Chair Miadich; seconded by Commissioner Baker. The motion passed 5-0.

In discussion of item three, Chair Miadich asked why this case took six years to be presented to the Commission. James Lindsay, Chief of Enforcement, believes the length of this case is an outlier stating both statutory and regulatory changes caused the delay.

Chair Miadich asked if all behested payments are attributed to the chair of a 501(c)(3) even if the chair didn't have a direct hand in the behesting. Mr. Lindsay stated yes it would be in coordination and

consultation. Chair Miadich asked what the facts that tied the Assembly Member to the solicitations. Mr. Lindsay stated they were long standing relationships when Assembly Member Holden became the Chair. Commissioner Baker asked how Assembly Member Holden is responsible for the solicitations if the payments happened prior to him becoming Chair. Mr. Lindsay stated the payments happened while Mr. Holden was the Chair.

Commissioner Baker asked what action someone has to take to be attributed to the solicitations because it seems to be passive more than hands on. Mr. Lindsay stated if the elected official is referenced in some ways that is a factor. Commissioner Baker stated there is not a lot of detail in the stipulation on what action Mr. Holden took to be tied to the behested payments and she would want more detail in the future. Mr. Lindsay stated it was the late forms where Mr. Holden signed under penalty and perjury where the admission was made. Commissioner Baker asked if any of the behests listed were made by Mr. Holden himself. Mr. Lindsay stated that information is not within the stipulation.

Commissioner Baker asked why the changes in law would cause a delay in the conclusion of this case. Chair Miadich stated behested payment cases were delayed by the Enforcement Division while the streamline regulations were pending to ensure equal treatment.

Commissioner Wilson discussed page seven of the stipulation where it says that staff changes led to the late filings of the behested payment reports. He further asked if staff is allowed to make a behested payment request on behalf of the elected official. Mr. Lindsay stated yes and sometimes that is the entirety of their job.

Commissioner Ortiz stated there is a duty to make a reasonable inquiry and based on the facts, Assembly Member Holden did that. She went on the ask if that means Mr. Holden gets a break on the fine. Mr. Lindsay stated that is certainly a mitigating factor. Commissioner Ortiz asked who pays the fine. Mr. Lindsay stated it is the assembly member.

Commissioner Wood thanked Enforcement staff for adding the public harm language to the stipulation. Gary Winuk, Kaufman Legal Group, gave public comment stating he believes this is an opportunity to look at the policy issues overall and give direction on how the Commission will interpret the issues.

MOTION: To approve item 3. Moved by Chair Miadich; seconded by Commissioner Wilson. The motion passed 5-0.

7. Prenotice Discussion of Proposed Amendments to Regulations 18237 and 18421.2, Cryptocurrency Reporting Requirements.

Valerie Nuding, Commission Counsel, presented the prenotice regulation package.

Chair Miadich asked if the regulation was to codify the current advice being given which aligns with how we treat gold. Ms. Nuding agreed.

Chair Miadich discussed reporting cryptocurrency versus reporting the exchange as cash, will there be a denotation that it is a cash contribution that derived from a cryptocurrency contribution.

Mr. Bainbridge clarified that the contributions are not cash but rather U.S. dollars and there are instructions on the form to denote that the contribution is from cryptocurrency.

Commissioner Wilson discussed the gold analogy and asked if a candidate has received gold bars as a contribution. Ms. Nuding stated the analogy was more for how cryptocurrency is defined as an investment rather than campaign reporting and does not know of gold contributions.

Commissioner Baker asked if a payment of bitcoin is received, is that reported on their statement of economic interest because the point is to know if there is a conflict. Ms. Nuding stated an official would be obligated to avoid conflicts. One of the first things that is looked at for a conflict is the official's finances so if a decision will impact finances, whether it is cryptocurrency or not, that is a conflict.

Commissioner Baker asked how the public would know about the potential of a conflict of interest. Mr. Bainbridge stated the source is what is reported and that is the financial interest not the type of dollars received. Commissioner Baker commented that cryptocurrency would not be mentioned in that case. Ms. Nuding stated that there were not any scenarios showing that any decision could really affect the value of the cryptocurrency itself.

8. Prenotice Discussion of Amendments to Regulation 18227.5.

Erika Boyd, Senior Commission Counsel, presented the prenotice regulation package.

10. Adoption 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 regulation package.

Commissioner Ortiz asked if someone won the primary, why would they withdraw from the general election. Mr. Norton stated he doesn't believe it's a common occurrence. Chair Miadich discussed the current election where a candidate is running for assembly and congress so if they advance in the congressional election, they may drop out of the assembly race. Commissioner Baker stated she is aware of a candidate who withdrew for familial reasons.

Commissioner Wilson asked if inter party transfers applies to people who ran in the primary and lost this year. Mr. Norton stated yes, these regulations would apply moving forward. Chair Miadich stated the Commission does have the ability to fix an effective date.

Chair Miadich discussed a scenario where a candidate who raised money for the primary and general and won both elections and has leftover money for both elections, is it correct that the money can be transferred to a re-election committee. Mr. Norton said that falls under subsequent elections and is correct. Chair Miadich discussed a scenario where a candidate raises money for the primary and general elections but won outright in the primary. In this scenario, all of the money raised for the general election must be given back. Mr. Norton stated that is correct.

Chair Miadich stated there is a comment letter that has indicated there is now legislation that would resolve the ambiguity in scenario one. The Chair discussed bringing the language back after the bill deadline in August and work with the authors to hopefully get scenario two added to the bill language.

Commissioner Ortiz asked what the goal of this regulation is. Mr. Norton stated today is an opportunity for the Commission to make a policy call on perceived loopholes in the law.

Commissioner Baker discussed a scenario where the contribution limits are \$20,000 for the primary and general and the candidate won the general. In four more years, the candidate chooses to run again and carries over the funds from the general. If there is attribution, the contributor from the original general

election may have already maxed out their contribution. If there is no attribution, the original \$20,000 contribution is carried over and the contributor can give \$20,000 again.

Commissioner Baker stated scenario two is not in the current bill language and if the authors cared about it, they would have already included it. Mr. Norton stated staff is prepared to approve scenario two today if that is the choice of the Commission.

Commissioner Wilson asked Mr. Norton to explain what attribution means in a campaign context for the public's knowledge. Mr. Norton stated that when a contribution is carried over, the contribution would be attributed in a last in, first out, or first in, last out, method so once the money is moved over it is attributed to stop the candidate from picking whose contributions they move over. Commissioner Baker stated it is listed on the filing who contributed and when. Commissioner Wilson discussed whether the FPPC has the authority to adopt these regulations given the pending legislation and the fact we are in the middle of an election cycle and is inclined to postpone the action for that reason.

Commissioner Wood stated she is on the fence on whether to move forward with scenario two and doesn't believe the Commission should move forward with scenario one.

Chair Miadich stated the Commission could vote to postpone the entire regulation package and choose to bring back scenario two if Ms. Nakano reported back in the future that scenario two is not going to be addressed in the bill language. Commissioner Wilson stated he is comfortable waiting until September. Commissioner Baker stated she wants to be prepared to act by April rather than waiting until September on scenario two so that if there isn't sufficient interest the Commission can press on.

Chair Miadich asked what the current advice given if someone who won the primary was to reach out to the Commission. Mr. Norton stated the advice is that you can carry over the funds and they don't need to be attributed unless they are seeking a different office.

MOTION: To postpone scenario one until September 2024 and bring back scenario two in April 2024. Moved by Commissioner Baker, seconded by Commissioner Wood. The motion passed 5-0.

The Commission adjourned for break at 12:03 p.m. and reconvened at 12:51 p.m.

9. Adoption of Proposed Amendments to the Commission's Warning Letter, PREP and Streamline Programs (Regulations 18360.1, 18360.2 and 18360.3)

Galena West, Executive Director, presented the regulation package.

Commissioner Baker confirmed that the Commission could hear a matter instead of an administrative law judge. Ms. West confirmed that is an option and that two members of the Commission can agree to hear the matter with an administrative law judge presiding over the matter.

Chair Miadich discussed proposed legislation that could affect 84308 and how that correlates to the proposed regulation. If the proposed bill passed, will there be additional changes to the regulation. Ms. West stated there is an opportunity for there to be an amended regulation in the future.

Commissioner Wilson highlighted the information published on the website and how helpful it is to the public and discussed that going through the PREP program results in a no action closure letter. Ms. West gave an overview of how a respondent would complete PREP and receive the no action closure letter.

Commissioner Baker asked if the public will still know if there was a complaint filed if the respondent goes through the PREP program and whether as the 84308 rules change and will there be a delay like there was for behested payment cases as discussed earlier in the meeting. Ms. West stated behested payment cases were held because the Commission was to decide on whether behested payment should be included in streamline. This situation is different since the Commission is making the decision today after the laws were just enacted. Ms. West agreed that the Enforcement portal will reflect a case was opened and resolved with a no action letter, which is a public document.

Commissioner Ortiz asked what PREP will do for a person who is no longer an elected official. Ms. West stated the benefit is education of that individual so they may not make the same mistakes in the future.

Jay Carson, Nielsen Merksamer, thanked staff for the work on the regulations and including comments from the Interested Persons meeting.

MOTION: To approve the regulation package. Moved by Chair Miadich, seconded by Commissioner Ortiz. The motion passed 5-0.

11. 2023/2024 Fiscal Year Second Quarter Expenditure Report.

Dr. Jue Wang, Acting Chief of Administration, presented the second quarter expenditure report.

12. 2024/2025 Budget.

Dr. Wang presented the 2024/2025 Governor's budget, stating this is considered a preliminary report as it must still go through the May Revision and be signed in June.

Chair Miadich asked if there were any budget cuts. Dr. Wang said not at this time.

13. Legislative Update.

Lindsey Nakano, Senior Commission Counsel, presented her legislative update.

Chair Miadich discussed SB 1404 and how the Commission has been discussing this proposal since 2019 and is hopeful to have a solution to lobbying audits not being completed.

Chair Miadich disclosed an ex parte conversation with Senator Glazer.

Commissioner Wilson asked if the bill addresses additional funding and staffing needs for the FPPC. Ms. Nakano stated the bill would require nine new positions in the Audits and Assistance Division and this bill would have a fee that would cover the costs of the program.

Commissioner Baker disclosed an ex parte conversation with Senator Glazer. She further discussed the fee and how the inclusion of the fee may help this bill move forward since it was stopped in appropriations last year.

Commissioner Ortiz asked if the fee is enough to fund nine positions. Ms. Nakano stated the current fee is \$50 and would continue to go to the Secretary of State but there would be a new fee that would be calculated to fund the nine positions. Chair Miadich stated even if the fee was \$500 it would still be less than some states. Ms. Nakano stated that is correct and some states are as high as \$2,000.

MOTION: To support SB 1404. Moved by Chair Miadich, seconded by Commissioner Baker. The motion passed 5-0.

Chair Miadich discussed AB 2041 and the concerns the Commission had with the bill language last year and believes the current bill is well crafted.

Commissioner Baker asked how the return of the equipment is handled if it is a staff member. Ms.

Nakano stated the return is to the committee and is based on when the candidate is no longer a candidate,

or the officeholder is no longer in office. If the staff member is no longer with the member, it is the member's responsibility to get the equipment returned.

Commissioner Wilson asked if a staff member who no longer works for the campaign is still getting threats, are they able to still get safety equipment. Ms. Nakano asked to come back with an answer at a later time.

MOTION: To support AB 2041. Moved by Chair Miadich, seconded by Commissioner Ortiz. The motion passed 5-0.

While discussing AB 2803, Chair Miadich asked if the prohibition on using campaign funds for legal fees if there is a settlement applies both criminally and civilly. Ms. Nakano stated it is intended to apply to criminal convictions and pleas and not civil settlements.

Chair Miadich stated it would be good for Ms. Nakano to ask the authors office to add mandatory audits of legal defense funds.

Commissioner Baker wants clarification on why one is excluded and not the other because there could be both with different standards of law and clarification on plea versus settlement. Commissioner Baker stated it is extremely rare for a legal defense fund to be audited and if the author does not agree to include the language, she would like to follow up with the idea in the future.

Commissioner Wilson asked how many legal defense funds are out there that would fall under the scope of this. Ms. Nakano stated she would look into that number.

Chair Miadich asked what the fiscal impact of SB 1151 is. Ms. Nakano stated fiscal analysis has not yet been completed.

Commissioner Wilson asked how broad SB 1155 is and if it would apply to the CPUC. Ms. Nakano gave the definition of administrative agencies from the bill.

Chair Miadich asked, under SB 1170, if a person could use campaign funds for a pre-existing condition under this bill. Ms. Nakano stated there are no prohibitions and the bill includes conditions caused by, or is exacerbated by, the campaign trail. Chair Miadich asked about the language where campaign funds

could be used for mental health treatment if coverage has been denied. Ms. Nakano stated it is not clear if the coverage is not included in their health care or if a provider denied the care.

Commissioner Ortiz stated she is concerned that a candidate has to disclose mental health care and how that may impact their campaign.

Commissioner Wood disclosed ex parte communication with Marissa Roy of California Women's List. Marissa Roy, California Women's List, presented her organizations goal for SB 1170.

Chair Miadich discussed the fundraising gap mentioned in the report presented by California Women's List and how there is already scarce resources and now those resources are being used for mental health treatment. Ms. Roy agreed that while the burden is being placed on the candidate, they are choosing to use the resources, and hopefully after treatment, they can raise more funds and spend more time campaigning.

Chair Miadich asked what the vision for the type of auditable records and the level of detail is being reported. Ms. Roy stated she spoke to Ms. Nakano about the current forms and believes a small explanation would be sufficient. Chair Miadich stated more specificity is helpful so that the Commission is not making decisions later.

Chair Miadich asked about the timing of being allowed to use the funds and when the election results are certified causing a possible gap in treatment. Ms. Roy stated the certification of results felt like the end of the campaign and a natural stop for the resources but is open to additional language.

Chair Miadich asked if the intention is for this to only be available to state lawmakers. Ms. Roy stated the intention is for state and local and the exclusion of not applying to incumbents was meant for state candidates and the organization now realizes that was self-limiting and not inclusive.

Commissioner Wilson asked about the scenario where a candidate does not have a mental health impact while campaigning, but their staff member does. Ms. Roy stated the organization did consider staff and opted for the narrow version of the bill in order to see how it is implemented and what changes will be necessary through implementation.

Commissioner Wood discussed the proof of seeing a therapist and having staff verify if that's true and questioned whether the move is to just allow a candidate to see a therapist.

Commissioner Baker questioned what other alternatives there are to take care of mental health and why medical is not allowed. Ms. Roy discussed campaign use for personal use and there is a lack of a causal link between a candidate who becomes sick while campaigning while there is a causal link between campaigning and mental health issues.

Commissioner Ortiz asked about the reporting requirement to justify the mental health treatment. Ms. Roy stated there were fifteen different categories of mental health issues found in their research that could be used as a justification on a campaign report.

Commissioner Wood asked about language where you don't have to justify the services but just that you are seeing a licensed professional.

Chair Miadich shared the concern that flagging campaign funds for mental health treatment and how to also report that information.

Ms. West discussed the difficulty in receiving records and adding language for a way that this to be enforceable.

Sara Carson, Researcher for California Women's List, gave public comment to discuss how the research was conducted.

14. Executive Staff Reports.

The Executive Staff Reports were accepted as submitted.

15. Commissioner Comments and Proposed Future Agenda Items.

Chair Miadich asked for the timing of disclosure on ads and the level of disclosure for oversight committees be brought back to the Commission for discussion.

Commissioner Baker asked if the Commission would be receiving a behested payment report soon.

Chair Miadich thanked staff for their work and assistance during his time as Chair.

MOTION: To Adjourn the meeting. Moved by Chair Miadich; seconded by Commissioner Wilson. The motion passed 5-0.

The meeting adjourned at 3:21 p.m.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved April 15, 2024

Adam E. Silver, Chair
Fair Political Practices Commission