

Memorandum
Fair Political Practices Commission

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

From: Zackery P. Morazzini, General Counsel
Heather M. Rowan, Senior Commission Counsel

Subject: Pending Litigation

Date: October 28 2013

Landslide Communications, Inc. v. State of California, et al

Landslide Communications, Inc., a slate mailer organization, brought suit in the United States District Court, Eastern District of California, challenging a 2013 amendment to the slate mailer provisions of the Political Reform Act (Section 84307.5), alleging that it unconstitutionally burdens and chills protected speech. Named defendants are Ann Ravel in her capacity as Chair of the FPPC and Kamala Harris in her capacity as the Attorney General for the State of California. Plaintiffs engage in “coalition campaigning,” whereby they include several campaigns in one mailing, and target mailers to members of certain parties or groups.

Section 84305.7(c) requires that if a slate mailer organization sends a slate mailer or other mass mailing that identifies itself or its source material as representing a nongovernmental organization with a name that would reasonably be understood to imply that the organization is composed of, or affiliated with, law enforcement, firefighting, emergency medical, or other public safety personnel, the slate mailer must disclose the total number of members in the organization identified in the slate mailer. Plaintiffs allege that this requirement will create a distorted message and will have a stigmatizing effect on the public safety oriented organizations that distribute slate mail. Additionally, Plaintiffs allege that by listing the number of members in the sponsoring organization, they are being forced to include messages that they do not wish to include.

The parties have filed cross-motions for summary judgment and the district court will hear oral arguments on November 4, 2013.

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 filed this action. It is a “defendants class action” lawsuit against defendants responsible either for enforcement of the Act, or maintenance and publication of the campaign reports at issue in this case (including the Commission, Attorney General, Secretary of State and various district and city attorneys).

Plaintiffs challenge 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. In all counts, plaintiffs seek declaratory and injunctive relief, and an award of attorney's fees.

On October 11, 2013, the Ninth Circuit Court of Appeals heard oral arguments in the matter. The parties now await the Court's written decision.

Tony Dane v. Fair Political Practices Commission

Tony Dane, a respondent in an Enforcement Division case, filed a motion to quash an Enforcement division subpoena in a Las Vegas, Nevada court 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 was sufficient to preserve that cause of action. The FPPC filed an answer, and the parties are in the discovery phase of litigation. Dane's attorney recently withdrew as counsel so he is currently not represented in this case. The FPPC intends to file a motion for summary judgment in the next 45 days.

Shong-Ching Tong v. Fair Political Practices Commission

On February 10, 2012, Shong-Ching Tong filed a writ of administrative mandamus against the Commission, seeking relief from the Commission's Decision and Order in Case No. 10/449. On December 19, 2012, the Court dismissed the case due to Petitioner's status as a vexatious litigant. On January 4, 2013, the Court vacated its December 19, 2012, order that the case be dismissed, and ordered the Commission to produce the administrative record. The petition is scheduled to be heard by the Los Angeles County Superior Court on November 27, 2013.