



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: August 11, 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. In all counts, plaintiffs seek 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. The Court decided the matter in favor of Defendants, denying the motion for re-hearing. The Court's May 20, 2014 judgment became final on July 25, 2014.

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 *In the Matter of Shong-Ching Tong*, FPPC No. 10/449, where Shong-Ching Tong was fined by the Commission for campaign-related violations. 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 order that the case be dismissed, and ordered the Commission to produce the administrative record. The Los Angeles Superior Court heard the petition for administrative mandamus on November 27, 2013, and on December 23, 2013, the Court denied Petitioner Tong's petition.

On March 10, 2014, the Commission received notice that Shong-Ching Tong is appealing the Superior Court's decision to deny his petition for writ of administrative mandate. On July 29, 2014, the 2nd District Court of Appeal dismissed Shong-Ching Tong's appeal because he failed to show that his appeal had merit and was not filed for harassment or delay purposes.

Fair Political Practices Commission v. James L. McGhee

James L. McGhee was a member of the California Board of Psychology until June 1, 2011, and was therefore required to file a leaving office statement of economic interests ("Leaving Office SEI") by July 1, 2011. On May 9, 2012, the Enforcement Division received a referral for Mr. McGhee's failure to timely file a Leaving Office SEI. Despite numerous requests by the Enforcement Division that he file the delinquent statement, Mr. McGhee refused to file a Leaving Office SEI.

On April 17, 2014, the Commission, in a default decision, imposed a \$4,000 fine on Mr. McGhee for his failure to file a Leaving Office SEI, and ordered that he immediately file a Leaving Office SEI with the Commission. (*In the Matter of James McGhee*, FPPC No. 12/321.)

On June 2, 2014, the Enforcement Division filed a complaint against Mr. McGhee with the Sacramento County Superior Court. The complaint seeks an order from the court requiring Mr. McGhee to comply with the Commission's order by immediately filing a Leaving Office SEI with the Commission.

Aldo A. Flores v. Fair Political Practices Commission

In September of 2013, the Enforcement Division subpoenaed bank records belonging to Aldo Flores as a 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. In response to the subpoenas, on September 12, 2013, Flores filed a complaint against the Commission alleging abuse of process and seeking declaratory relief in Los Angeles 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 is filing 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 a judgment in favor of the Commission. A Case Management Conference was held on July 10, 2014, in Los Angeles Superior Court. Aldo Flores failed to appear, and was fined \$250 for his unexcused nonappearance. The Conference was rescheduled for August 11, 2014.