



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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# EXECUTIVE STAFF REPORTS

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*October 18, 2018 Commission Hearing*

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# I. ENFORCEMENT DIVISION

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STAFF: GALENA WEST, CHIEF OF ENFORCEMENT

During the period of September 6, 2018 through October 4, 2018, the Enforcement Division received 98 complaints, opened 8 for investigation, and rejected 48. The Enforcement Division received 204 non-filer referrals during this time.

During this time, the Enforcement Division closed a total of 89 cases including:

- 39 warning letters,
- 1 advisory letter,
- 11 no action closure letters,
- 26 as a result of the adoption of stipulations at the September Commission meeting, and
- 12 committees were administratively terminated.

The Division had 1038 cases in various stages of resolution at the time of the September Monthly Report and currently has approximately 1096 cases in various stages of resolution, including the 13 cases before the Commission as listed in the October 2018 Agenda.

On May 1, 2015, the Division received from the Secretary of State's office 2,460 \$50 Annual Fee referrals for 2013 fees not paid timely. Of those, 7 remain pending. On October 22, 2015, the Division received the \$50 Annual Fee referrals for 2014, which totaled 1,786. Of those, 14 remain pending. We are receiving 2015, 2016, and 2017 referrals periodically through the new Electronic Complaint System.

On the next page, you will find a chart that details the annual statistics for enforcement complaints, referrals and cases. The information in the chart has been gathered from public reports, information from the defunct and inactive database, and data that has been converted into current form, so the numbers are close estimates in some instances.

	<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
1	Complaints Received	1,228	609	1,180	564
2	Referrals Received	614	596	350	1,616
3	Total Complaint and Referrals Received	1,842	1,205	1,530	2,180
4	Cases opened	1,405	2,273 <sup>1</sup>	1,315	1,480
5	Cases closed	1,869	1,253	1,803	1,477
6	Cases with resolutions approved by the Commission <sup>2</sup>	332	333	311	340
	a Streamline cases approved by Commission	234	258	234	262
	b Mainline cases approved by Commission	86	69	70	66
	c Default cases approved by Commission	12	6	7	12
7	Total fines imposed by the Commission	\$744,868	\$703,821	\$894,257	\$1,126,933
8	Warning letters issued	673	442	489	505
9	Administrative terminations	69	116	668	297
10	Cases closed with violations found <sup>3</sup>	1,074	891	1,468	1,142
11	Advisory letters issued	10	19	14	17
12	No action closure letters	453	343	321	318

<sup>1</sup> In 2015, the Enforcement Division received information regarding 2,460 \$50 Annual Fee non-payers in May and another 1,786 in October of that year. None of these came through the typical “referral” process and had to be evaluated for: whether the committee had been terminated locally or with SOS, whether the committee never qualified, whether the fees were paid prior to the referral, and whether records existed to evaluate the committee, before the information could be opened into a case. Therefore, these do not appear in the Referral line since they do not follow that process.

<sup>2</sup> Total for lines 6a, 6b, and 6c.

<sup>3</sup> Total for lines 6, 8, and 9.

## II. LEGAL DIVISION

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STAFF:

DAVID BAINBRIDGE, GENERAL COUNSEL

BRIAN LAU, ASSISTANT GENERAL COUNSEL

TRISH MAYER, ASSISTANT CHIEF

JOHN FESER, SENIOR COMMISSION COUNSEL IV

### A. Pending Litigation

*California State Association of Counties and California School Boards Association v. FPPC*

On September 11, 2018, petitioners served a first amended petition for writ of mandate and complaint for declaratory relief. The complaint was filed in Los Angeles County Superior Court, Central District. Petitioners allege that Regulations 18420.1 and 18901.1 are invalid as a matter of law, that the Commission has exceeded its jurisdiction in adopting these Regulations, and that the Regulations are unenforceable.

The Attorney General's Office is representing the Commission. A responsive pleading must be filed on or before October 26, 2018. A trial setting conference is set for November 14, 2018, at 9:30 a.m. in Dept. 86.

*Howard Jarvis Taxpayers Association, et al. v. Edmund Brown, et al.*

On December 12, 2016, the Howard Jarvis Taxpayers Association and retired State Senator and Judge Quentin L. Kopp filed a lawsuit against Governor Brown and the Commission to invalidate a new law that would allow public funds to be used for political campaigning. In September of 2016, the Governor signed Senate Bill 1107 which authorizes the use of public funds to finance campaigns if a jurisdiction adopts a law or ordinance creating a public financing program. Plaintiffs allege the new law improperly eliminates the prohibition against public financing of campaigns, implemented pursuant to Proposition 73 in 1988, because it was done without voter approval. In addition, plaintiffs allege that the new law violates the Political Reform Act<sup>4</sup> (the Act) because it does not "further the purposes of the Act," an express requirement in the Act for legislative amendment. The Attorney General's Office is representing both Governor Brown and the Commission in this litigation. A hearing was held in Superior Court on August 4, 2017. After taking the matter under submission, the Court issued a Ruling, dated August 23, 2017, "entering a judgment declaring that the amendments made to Government Code section 85300 by Senate Bill No. 1107 are void and have no legal effect; and

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<sup>4</sup> The Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source, unless otherwise indicated.

an injunction restraining Respondents from enforcing the unconstitutional amendments made by Senate Bill No. 1107.”

In closed session at its meeting on September 21, 2017, the Commission voted to appeal the Superior Court decision. The Notice of Appeal was filed with the Third District Court of Appeal on January 9, 2018. The opening brief must be filed on or before October 11, 2018.

### **B. Outreach and Training**

On September 15, 2018, Senior Commission Counsel Sukhi Brar participated in a panel entitled “The Disclose Act: Lessons Learned and Unresolved Issues” at the California Political Attorneys Association Retreat in Olympic Valley, CA. Sukhi provided updates on advice given thus far on the newly enacted Disclose Act. Also on the panel were Lacey Keys of Olsen Hagel & Fishburn and Elli Abdoli of Neilsen Merksamer Parrinello Gross & Leoni, LLP.

### **C. Advice**

In July 2018, the Legal Division responded to the following requests for advice:

- **Requests for Advice:** Legal Division Political Reform Consultants and attorneys collectively responded to more than 1,063 e-mail and telephone requests for advice.
- **Advice Letters:** Legal Division received 17 new advice letter requests under the Political Reform Act and completed eight letters.
- **Section 1090 Letters:** Legal Division received nine new advice letter requests concerning Section 1090 and completed three letters. This year to date, we have received 57 advice requests regarding Section 1090.

### **D. Miscellaneous Decisions**

None to report.

### **E. Potential Upcoming Regulations**

#### **November 15, 2018.**

- **Cost of Living Adjustment (Adoption)** – The Commission will consider a cost of living adjustment to Contribution Limits, Voluntary Expenditure Ceilings, and the Gift Limit Sections 83124, 85316(b)(4), and 89503(f).
- **Regulation 18702.2. (Prenotice)** – Discussion of materiality thresholds under the Act’s conflict of interest provisions for real property interests including clarification of the 500-foot property rule.

**December 20, 2018.**

- Regulation 18756. Electronic Filing System Certification (Adoption) – The Commission may consider additional certification requirements for Form 700 Electronic Filing System Certification under Section 87500.2 to ensure systems can exchange data with the Commission’s electronic filing system.

**Scheduling to be Determined.**

- Discussion of the definition of nondonor funds for purposes of Section 84222.
- Discussion of campaigning by governmental agencies under Commission Regulations 18420.1 and 18901.1.

**F. Conflict of Interest Codes****Adoptions and Amendments***State Agency Conflict of Interest Codes*

- San Francisco Bay Conservation and Development Commission
- State Board of Education
- Tax and Fee Administration, Department of

*Multi-County Agency Conflict of Interest Codes*

- 375 Beale Corporation
- Bay Area Water Supply and Conservation Agency (dba San Francisco Bay Area Regional Water System Financing Authority)
- Colusa Groundwater Authority
- Golden Gate Bridge, Highway and Transportation District
- Turlock Unified School District

**Exemptions**

None to report.

**Extensions**

- California Child Welfare Council
- California Climate Action Team
- International Trade and Investment Advisory Council

## G. Probable Cause Hearings

*Please note, a finding of probable cause does not constitute a finding that a violation has occurred. The respondents are presumed to be innocent of any violation of the Act unless a violation is proven in a subsequent proceeding.*

1. ***In the Matter of County of Los Angeles, Hilda Solis, Mark Ridley-Thomas, Sheila Kuehl, Janice Hahn, Kathryn Barger, and Public Finance Strategies, LLC dba TBWB Strategies, Case No. 17/150.*** On September 21, 2018, after hearing, probable cause was found to believe that Respondents committed the following violations of the Act:

Count 1: The County qualified as an independent expenditure committee but failed to file a semi-annual campaign statement covering the period from January 1, 2017 – June 30, 2017, by July 31, 2017, in violation of section 84200. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.

Count 2: The County made independent expenditures that cost a total of \$158,500 on or around January 23, 2017, in the form of digital advertisements which ran approximately between February 6 and February 20, 2017. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.

Count 3: The County made independent expenditures that cost a total of \$173,800 on or around January 31, 2017, in the form of digital advertisements which ran approximately between February 21 and March 7, 2017. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.

Count 4: The County made independent expenditures that cost a total of \$180,000 on or around February 1, 2017, in the form of cable television advertisements which ran between February 13 and February 26, 2017. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.

Count 5: The County made independent expenditures that cost a total of \$24,750 on or around February 9, 2017, in the form of television, radio, and digital advertisement production costs. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County for this violation.

- Count 6: The County made independent expenditures that cost a total of \$38,472 on or around February 22, 2017, in the form of digital advertisements. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn Barger and TBWB are jointly and severally liable, along with the County for this violation.
- Count 7: The Committee made independent expenditures that cost a total of \$220,000 on or around February 28, 2017, in the form of cable television and radio advertisements which ran between February 28 and March 7, 2017. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.
- Count 8: The County made independent expenditures that cost a total of \$4,900 on or around March 2, 2017 in the form of cable television advertisements which ran between March 8 and March 31, 2017. The County failed to file a 24-hour report disclosing the independent expenditures in violation of section 84204. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.
- Counts 9-14: The County failed to file independent expenditure verifications for the independent expenditure identified in counts 2 through 8 in violation of section 84213, subdivision (b). Respondents Solis, Ridley Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.
- Count 15: The County, having qualified as an independent expenditure committee, failed to include its name and "paid for by" on the advertising it paid for in its campaign in support of Measure H in violation 0 section 84506, subdivision (a) and Regulation section 18450.4, subdivision (b)(1). The County's total cos for the advertising was approximately \$814,412.50. Respondents Solis, Ridley-Thomas, Kuehl, Hahn, Barger and TBWB are jointly and severally liable, along with the County, for this violation.

*The following matter was decided based solely on the papers. The respondents did not request a probable cause hearing.*

2. ***In the Matter of Union Labor Party (Sponsored by Teamsters Union Local 665) and Mark Gleason, Case No. 18/182.*** On September 25, 2018, probable cause was found to believe Respondents committed the following violations of the Act:

- Count 1: Gleason and the Committee failed to timely file a semi-annual statement for the reporting period of July 1, 2016 through December 31, 2016, due January 31, 2017, in violation of Section 84200.



Count 2: Gleason and the Committee failed to timely file the semi-annual campaign statement for the reporting period of January 1, 2017 through June 30, 2017, due July 31, 2017, in violation of Government Code Section 84200.

Count 3: Gleason and the Committee failed to timely file the semi-annual campaign statement for the reporting period of July 1, 2017 through December 31, 2017, due January 31, 2018, in violation of Government Code Section 84200.

## III. EXTERNAL AFFAIRS AND EDUCATION DIVISION

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STAFF: DEBORAH HANEPHIN, MANAGER

### **Phone Advice Requests**

The External Affairs and Education Division responded to 1235 requests for technical assistance via phone in September. Approximately 10% of the calls were received during the lengthened phone hours.

### **Training Efforts**

Political Reform Consultants conducted the following workshops and outreach activities:

Alex Castillo conducted a workshop for Form 700 filers in the Town of Windsor. Approximately 30 public officials attended.

Alex Castillo also delivered a Candidate/Treasurer workshop in Santa Ana. There were 50 attendees.

### **Additional Training**

Our video tutorials were accessed a total of 259 times in September. The Form 700 videos received 145 views while the Candidate/Treasurer video received 84 views. Filing officer videos were viewed 30 times.

### **Filing Schedules**

Staff created filing schedules for the March 2019 special elections in Signal Hill and West Hollywood.