



END OF YEAR REPORT

2012

ENFORCEMENT
DIVISION



EXECUTIVE SUMMARY

DIVISION OVERVIEW

The Political Reform Act of 1974 (the “Act”) created the Fair Political Practices Commission (“FPPC”) and charged it with, among other things, the duty to enforce the provisions of the Act. In adopting the Act, the voters declared that “previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities” and that the Act be “vigorously enforced.”

The FPPC is focused on investigating and prosecuting the most serious violations of the Act, including campaign money laundering and conflicts of interest. Additionally, the Division diligently ensures that campaign disclosures are taking place before elections, when they matter the most.

The FPPC Enforcement Division is committed to providing timely and impartial investigation and prosecution of serious violations of the Act.

The FPPC Enforcement Division’s jurisdiction is statewide, covering all levels of government. In fulfilling its mission, the Division handles over a thousand complaints a year, and prosecutes hundreds of cases per year.

An enforcement matter will be fully investigated when there is sufficient information to believe that a violation of the Act has occurred. Information regarding potential violations of the Act comes from citizen complaints, referrals from other governmental agencies, media reports, audit findings or may be identified internally.

When sufficient evidence exists to prove a violation of the Act, the Enforcement Division will bring a prosecution action to the Commission, or may issue a warning letter, depending upon the facts of the case and the public harm caused. If the evidence is insufficient to warrant prosecution, a case may be closed with an advisory letter or without violation.

The Enforcement Division also operates a campaign audit program of both mandatory and discretionary audits, with renewed emphasis on pre-election compliance.

“The FPPC agenda reflects a new emphasis on serious violations, such as conflicts of interest, which undermine public trust in government.”

Ann Ravel, Chair of the FPPC



EXECUTIVE SUMMARY

PROSECUTING SERIOUS CASES

- Prosecutions of money laundering were at their highest level ever in 2012.
- Prosecutions of serious campaign cases continued at a high level in 2012.
- Conflict of interest prosecutions continued at record high levels.
- Reporting of behested payments and lobbying trended as increased areas of focus.

PRE-ELECTION PRO-ACTIVE CASES

- Aggressive in pursuing multiple instances of non-disclosure before the 2012 elections.
- Included in this pre-election focus was the compelled disclosure of sources of an \$11 million anonymous out-of-state contribution.
- Establishment of pro-active program covering ballot measure committee advertisement disclosure, candidate pre-election statements, large contribution disclosure, and slate mailer disclosure.

PROSECUTIONS

- **In 2012, 712 cases closed with proven violations.**
- 178 of these cases resulted in prosecutions approved by Commission.
- 534 resulted in warning letters.



EXECUTIVE SUMMARY

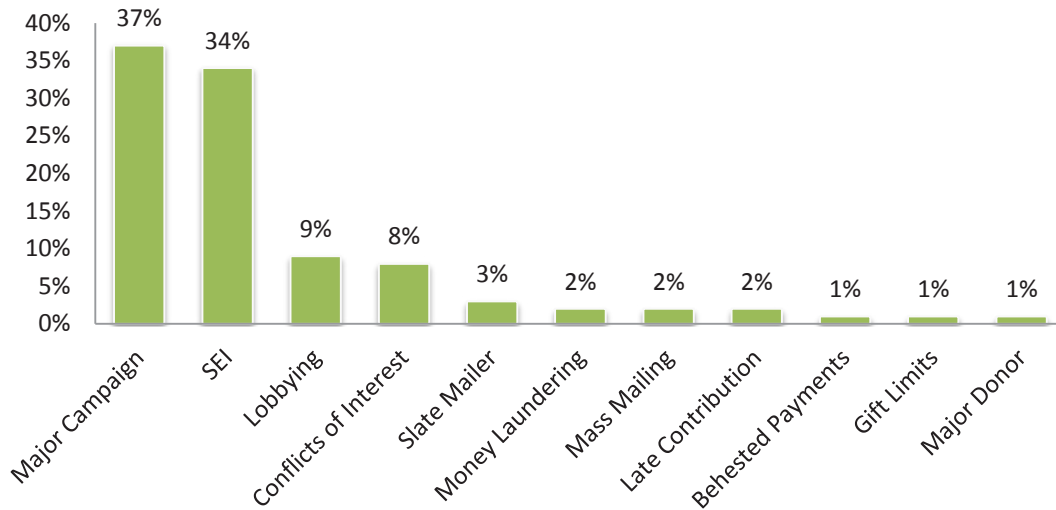
MAJOR CASES

- **Money Laundering** - Forced disclosure of true source of Americans for Responsible Leadership's \$11 million contribution.
- **Behested Payments** - Sacramento Mayor Kevin Johnson fined \$37,500 for failure to report millions in behested payments.
- **Misuse of Campaign Funds** - Former Governor Arnold Schwarzenegger fined \$30,000 for misusing campaign funds.
- **Embezzlement** - FPPC investigation led to campaign treasurer Kinde Durkee being sentenced to prison for the theft of clients' campaign funds.
- **Conflicts of Interest** - Fined the Oxnard Mayor, four City Council members, the City Manager, and four other top city staff for conflicts of interest and/or unreported gifts over the gift limit in a targeted operation to enforce ethics rules in Oxnard in partnership with the Ventura County District Attorney.
- **State Employee Conflicts of Interest** - Continued focus on conflicts of interest at the State level, including fining the acting Deputy Director of the Department of General Services Real Estate Division for making a governmental decision in which he had a financial interest.

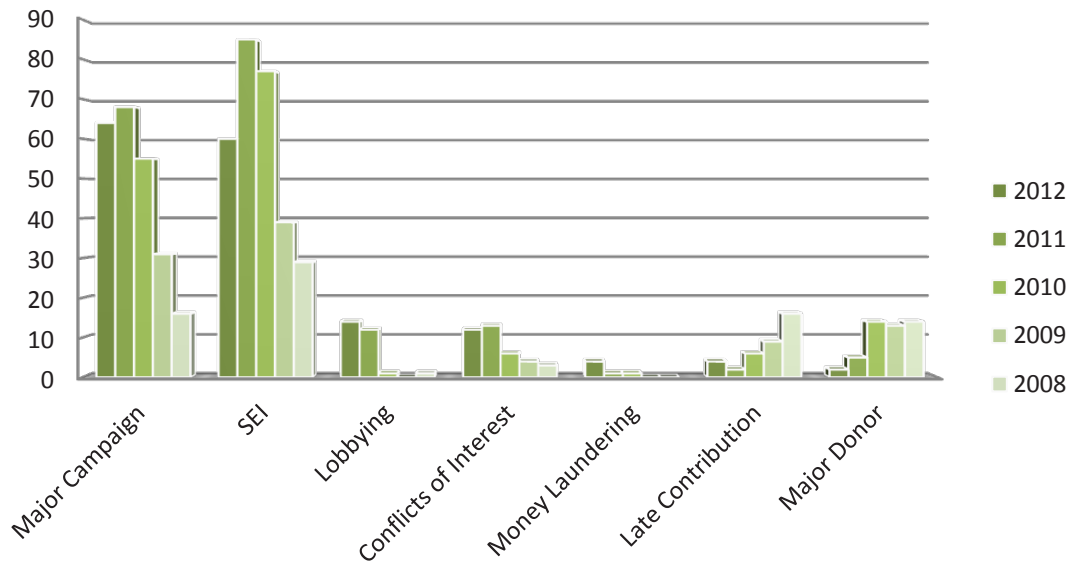


PROSECUTING SERIOUS CASES

TYPES OF CASES PROSECUTED



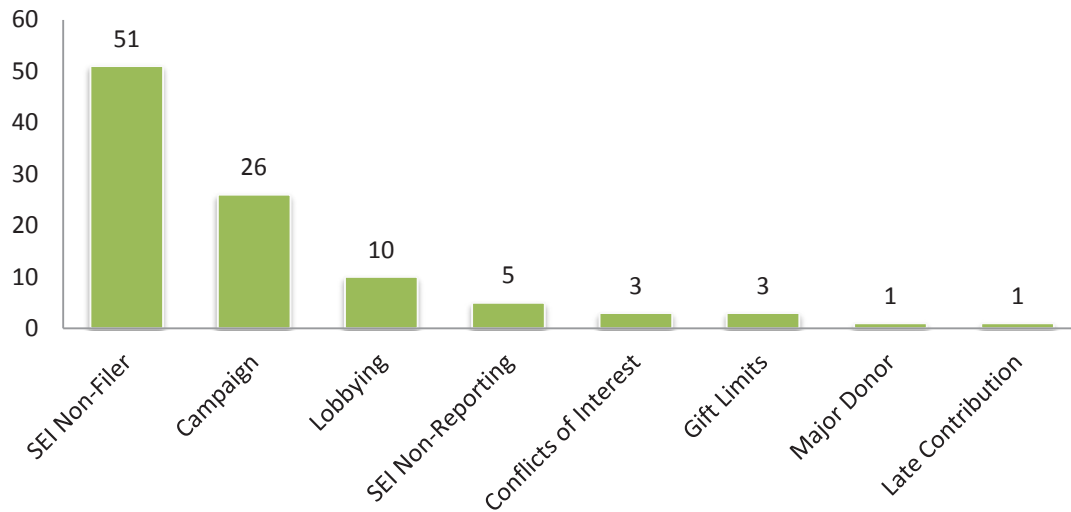
HISTORICAL PROSECUTION TREND, BY TYPE





PROSECUTING SERIOUS CASES

2012 WARNING LETTERS ISSUED, BY TYPE





MAJOR CASES

TRENDS IN PROSECUTIONS

In 2012, the Enforcement Division continued to focus on the most serious violations under the Act including money laundering and conflicts of interest. These types of cases require more advanced investigative techniques and are more legally complex to prosecute.

A few examples of the cases which involve serious violations that were prosecuted this year include:

- **Americans for Responsible Leadership - Money Laundering**

In the weeks before the 2012 Election, the Arizona based non-profit organization Americans for Responsible Leadership (ARL) made an unprecedented \$11,000,000 payment to the California Small Business Action Committee PAC in an effort to support Proposition 32 and defeat Proposition 30. Due to the nature of the contribution and ARL's lack of prior contributions in California, the FPPC commenced an audit of ARL's records.

After the FPPC prevailed in California Supreme Court, ARL admitted that it acted as an intermediary for the true source of the money and had committed campaign money laundering.

“The FPPC will ensure that the people of California know who is funding political activity in this State.”

Ann Ravel, Chair of the FPPC on the anonymous Americans for Responsible Leadership contribution

- **Sacramento Mayor Kevin Johnson - Behested Payment Reporting**

In 2009, 2010, 2011, and 2012, various donors made payments of \$5,000 or more, for a total of over \$3.5 million in payments, to certain charities at the behest of Mayor Johnson. Subsequently, Mayor Johnson failed to file the required behested payment reports within 30 days of the dates that the payments were made and only disclosed them after his successful re-election bid. For failure to report behested payments, Mayor Johnson was fined \$37,500.



MAJOR CASES

- Former Governor Arnold Schwarzenegger - Misuse of Campaign Funds**
 The California Dream Team, a ballot measure committee created and controlled by former Governor Schwarzenegger, used its committee funds to pay for impermissible television and internet advertisements referring to state budget negotiations that were in progress. Under the Act, ballot measure committees which are controlled by candidates for elective state office may only use committee funds to make expenditures that are related to a state or local measure or a potential measure anticipated by the committee. By using committee funds to make six expenditures totaling over \$1.1 million, which were unrelated to a state or local measure or an anticipated potential measure, the former Governor and the California Dream Team violated the Act and were fined \$30,000.
- Kinde Durkee - Embezzlement**
 After an eighteen month investigation conducted first by the FPPC Program Specialists (auditors) and then by the FBI, Kinde Durkee, one of the leading professional campaign treasurers in California, was arrested and convicted of embezzling millions of dollars from numerous campaign committees. Ms. Durkee served as the campaign treasurer for over 400 committees, ranging from Senator Dianne Feinstein and Assembly Member Jose Solario to local advocacy committees. She was sentenced to eight years in prison and ordered to pay more than \$10.5 million to the victims of her fraud.

“The Kinde Durkee case was the most extensive campaign treasurer fraud in the history of California.”

Ann Ravel, Chair of the FPPC



MAJOR CASES

- **Oxnard Ethics Prosecutions**

The FPPC Enforcement Division received information from the Ventura County District Attorney's Office that they had executed search warrants throughout Oxnard City Hall and uncovered evidence of unreported gifts. Proactively, the FPPC scoured through city records to determine if these officials had engaged in conflicts of interest in their official duties. This resulted in fines against the Mayor, four members of the City Council, the City Manager, Assistant City Manager, and the Directors of Public Works, Community Development and Development Services. Their violations included three conflict of interest counts, 11 over the limit gift counts, and 22 failure to report gift counts.

- **State Employee Conflicts of Interest**

The Enforcement Division has continued its focus on investigating and prosecuting conflicts of interest entered into by State employees. In 2012 the Division successfully prosecuted acting Department of General Services Deputy Director Theodore Parks and Department of Conservation Associate Oil and Gas Engineer Floyd Leeson. The FPPC fined Parks and Leeson \$3,500 and \$24,500, respectively.



COLLECTIONS AND AUDITS

COLLECTIONS PROGRAM ACTIVITY

The Enforcement Division actively pursues all cases that go into collections. Currently, there are over 68 cases being actively pursued through state tax intercepts, civil judgments, demand letters, and property tax liens.

AUDITS

In 2012, the Enforcement Division issued the final seven audit reports related to the 2010 General Election. This was the earliest that any general election workload had been completed, despite heavy audit staff participation in other major cases. Additionally, the Division issued two audit reports for CalPERS Board elections through 2011. The Division also reviewed 75 FTB audit referrals of which 30 received warning letters and 13 were prosecuted.



ENFORCEMENT DIVISION BACKGROUND

BACKGROUND

The Enforcement Division of the Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (“Act”)¹. The Act governs disclosure of political campaign contributions and spending by candidates and ballot measure committees. It also sets ethics rules for state and local government officials that impose strict limits on decisions or votes that affect the official’s financial interests. The Act also regulates lobbying financial disclosure and practices related to the legislature and state agencies.

The Enforcement Division is charged with the enforcement of the provisions of the Act through administrative or civil prosecution of violations of its provisions. The Division has 27 staff members. The staff consists of eight attorneys, seven investigators, one chief investigator, four auditors, three political reform consultants, two full-time and two part-time support staff, and a Division Chief.

MISSION

The mission of the Enforcement Division is to resolve all complaints ***fairly, effectively, and efficiently***. In its implementation of this mission, the Division established three key goals: prosecute more serious cases, resolve complaints more timely, and ensure all cases are resolved appropriately and fairly.

COMPLAINT SOURCES

The Division receives complaints from the public and referrals from other governmental agencies. Complaints can be sworn, which means the complainant makes the complaint under penalty of perjury. They can also be pro-active, which means the complaint is initiated by the Enforcement Division. Pro-active cases can be based upon information received from media reports, audit findings, FPPC streamlined enforcement programs, or when violations are otherwise identified by staff. The Enforcement Division then initiates investigations when there is sufficient information to believe a violation of the Act has occurred based on the complaints received.

¹ The Political Reform 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.



ENFORCEMENT DIVISION BACKGROUND

VIOLATIONS

The following are examples of common types of violations under the Act:

- Conflicts of interest
- Campaign money laundering
- Mass mailings (failure to properly identify or report)
- Nonfilers and disclosure violations on Statements of Economic Interests
- Nonfilers and disclosure violations on campaign statements and reports
- Improper receipt of campaign funds and violations of contribution limits
- Improper expenditures of campaign funds, including using campaign funds for personal use
- Gift limit violations
- Lobbying disclosure violations

CASE PROCESSING

The processing of a case begins in intake where a complaint is initially analyzed by a political reform consultant (PRC). If there is sufficient information to believe a violation of the Act occurred, it will be further processed at intake by a PRC or it will be referred to an attorney to develop an investigative plan based upon the legal elements of the alleged violation(s). If needed, an investigation of the allegations will occur. This is followed by a legal review by the assigned staff attorney, who recommends proper case resolution.

Campaign audits are performed either by the Franchise Tax Board, or by the FPPC audit staff. Audit reports are analyzed by the FPPC audit staff and referred to an attorney if administrative prosecution is warranted.



ENFORCEMENT DIVISION BACKGROUND

CASE RESOLUTION

There are several different types of resolutions for cases, as follows:

- **Closure Without Further Action** - This is for cases where either no violation of the Act was found, there was insufficient evidence to establish a violation of the Act, procedural deficiencies in the case existed, or other circumstances exist that preclude further prosecution of the case. These closures result in a letter being sent to the respondent or complainant informing them of the case closure.
- **Advisory Letters** - These are sent when there is insufficient evidence to establish a violation of the Act, the violations are de minimus, or where the conduct leads to the conclusion that respondent requires further information to ensure future compliance.
- **Warning Letters** - These are sent in cases where the evidence establishes that the conduct violated the Act, but the circumstances surrounding the violation do not warrant the imposition of a fine.
- **Imposition of Fine** - This is for cases where the conduct establishes a violation of the Act. Imposition of the fine can be accomplished through a stipulated agreement, default judgment, or decision and order from an Administrative Law Judge. All fines must be approved by the Commission.
- **Civil Judgment** - In some cases, the circumstances may warrant the filing of a civil action to seek the appropriate penalty for the violation.