



## FAIR POLITICAL PRACTICES COMMISSION

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**(Unapproved and subject to change)**  
**CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION**  
**MINUTES OF MEETING, Public Session**

**Thursday, December 13, 2012**

### CALL TO ORDER

Chair Ann Ravel called the meeting to order at 10:00 AM at San Diego County Administration Center, Board Chambers Room 310, 1600 Pacific Hwy, San Diego, CA. Chair Ravel and Commissioners Elizabeth Garrett, Lynn Montgomery, Ronald Rotunda were present and Commissioner Eskovitz was present by telephone.

### WELCOME AND CHAIR'S REPORT

Ann Ravel, FPPC Chair

Chair Ann Ravel thanked the County of San Diego, particularly County Counsel Tom Montgomery, who arranged for the Commission to hold its meeting there. Chair Ravel introduced Adam Silver, a new Capital Fellow at the FPPC.

She provided an update on accomplishments:

- The regulatory review project which included revisions to the Gift and Conflict of Interest Rules.
- The Commission introduced the Text Message Contribution Regulation. This regulation served as a template for the Federal Elections Commission to introduce similar legislation permitting text message contributions, which was used extensively in the November 2012 Presidential Election.
- Chair Ravel, Senior Commission Counsel Hyla Wagner and Jared DeMarinis, Director of Maryland State Board of Elections, authored an opinion editorial titled, [Text 4 Ur Candidate](#). It was published in the opinion page of *The New York Times* on Sunday, May 31, 2012.
- The Commission won at the Federal District Court level on the Proposition 8 case. The decision in *ProtectMarriage.com, et al. v. Bowen*, 830 F.Supp.2d 914 (2011), upheld California's campaign disclosure law, denying a challenge by proponents

of Proposition 8 who sought to make donors' identities secret.

- The Commission discovered and investigated the Kindee Durkee fraud matter which resulted in a prison sentence for Durkee as well as clarity on FPPC rules.
- The Commission sponsored Independent Expenditure legislation to increase disclosure and penalties, carried by Assemblyman Gordon and signed into law by Governor Brown. This legislation will be the precursor to forthcoming legislation.
- The Commission passed new multi-purpose legislation which lead to our ability to request the disclosure of the donors who give to political campaigns in California. This legislation directly relates to the Arizona nonprofit Americans for Responsible Leadership matter. Chair Ravel commended the incredible work done by FPPC staff, specifically Enforcement Chief Gary Winuk.

Enforcement Chief Gary Winuk provided an overview of the Division's pro-active enforcement efforts prior to the November 2012 election. This included reaching out to city clerks to identify non-filers, identifying major contributions that required additional disclosure, reviewing ballot measure campaign advertisements for proper disclosure, and reviewing slate mailers for disclosure compliance.

Chair Ravel continued, over the last year there has been a significant percentage increase in enforcement for more serious cases. Money laundering and conflicts cases have nearly tripled from 2010 to 2012. The Commission has had extensive discussion with the public and regulated community regarding Statements of Economic Interest of California judges. Commission staff worked with a company named Captricity. As a result, judges SEIs are available for viewing on the FPPC website.

She explained that one of FPPC's goals is to increase transparency. The FPPC participated in a hackathon with Code for America, whose mission is to bring coding to public entities through a fellowship program and to research ways of getting participants to assist the FPPC in providing applications and other information on our website in a way that it is more accessible and provides more disclosure.

Commissioner Garrett commended the Chair and FPPC staff for their work in the previous election. She expressed that she is proud that the Commission and State of California were leaders with regard to aggressive and meaningful disclosure, specifically in the Americans for Responsible Leadership matter. She explained, under current jurisprudence, the most effective regulation we have left is disclosure. She believes that

the ARL matter is among one of the most important cases in the country to date, and that it deserved nationwide coverage. It is her hope that the Federal government considers this matter and be as aggressive in rooting out dark money in our political system.

Chair Ravel opened the floor for public comment.

Patrick Riggs representing the California Teachers Association Chair addressed the Commission. He commended the FPPC for their work on the Americans for Responsible Leadership matter.

Simon Mayeski representing California Common Cause addressed the Commission. He explained that Policy Advocate Phillip Ung provided testimony to the Commission during the December 2011 meeting, asking the Commission to prioritize the permanent search for an Executive Director of the FPPC. Mr. Mayeski referenced agenda item # 85, where the FPPC has developed a Sub-Committee to Develop Structure and Process for National Search for Executive Director. He asked, how long the staff and Commission believe the subcommittee process will take before standards are finalized, and how long after the subcommittee finishes its work should the public expect to wait for the appointment of Executive Director. He also urged the Commission to find a quick resolution to this issue and to make the appointment of an Executive Director.

Mr. Mayeski continued, California Common Cause would like to applaud the Commission and the California Attorney General for their work on the Americans for Responsible Leadership matter.

Chair Ravel addressed Mr. Mayeski and explained that the process of the sub-committee would be described later in the agenda.

Chair Ravel opened the floor to the Commissioners to remove or speak on an item from the Consent calendar. The minutes were removed from the Consent calendar. Commissioner Montgomery made a motion to approve the minutes from the September 2012, meeting. The motion was seconded by Commissioner Garrett.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.  
The motion passed 4 to 0.

Chief Gary Winuk requested for Agenda Item #57 to be removed from the Consent calendar.

Commissioner Eskovitz requested to remove agenda items 10, 17, 21, 45 and recused himself from these matters.

Commissioner Montgomery requested to remove agenda items 35, 36, 37, 39, and 77, for discussion.

Chair Ravel asked if the Commission or public had any further comment, regarding the remaining items on the Consent calendar with the exception of agenda items 10, 17, 21, 35, 36, 37, 39, 45, 57 and 77. There were no members of the commission or the public wishing to remove or speak on the remaining items on the Consent calendar. Commissioner Garrett made a motion to approve the Consent calendar. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 5 to 0.

Chair Ravel asked if the Commission or public had any further comment, regarding agenda items 10, 17, 21, and 45, for which Commission Eskovitz has been recused. There were no members of the Commission or the public wishing to remove or speak. Commissioner Garrett made a motion to approve items 10, 17, 21, and 45, for which Commission Eskovitz has been recused. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

Chair Ravel opened the floor to the Commission or public to discuss agenda items 35, 36, 37, 39, and 77, removed from the Consent calendar by Commissioner Montgomery.

Commissioner Montgomery explained that agenda items 35, 36, 37, and 39 all have similar violations where the respondent received gifts exceeding the reporting threshold of \$50. However, she continued, the fine is particularly higher than normal for a single violation. She asked Chief Winuk, why was the fine so high for a single violation, from

the range of \$200 to \$500, which had been used for a single violation, in other matters.

Gary Winuk, Chief of Enforcement addressed the Commission and explained that the difference with these particular matters is that the respondent assessed a higher fine, has had business with the FPPC in the past.

Commissioner Montgomery explained that agenda item 77 is similar to the violations that occurred in agenda items 24 and 25, where a California lobbying firm, failed to timely file quarterly lobbyist and lobbying firm reports from July 1, 2010 through September 30, 2012 involving over \$500,000 in payments received for lobbying services (total proposed penalty \$22,500); and the respondent failed to timely file ten Lobbyist Employer Reports (Form 635) between October 1, 2009 and September 30, 2012 (total proposed penalty \$10,000), respectively. She asked Chief Winuk to explain the difference, as the respondent in agenda item 77 employed a lobbying firm to lobby on its behalf but failed to timely file Reports of Lobbyist Employer (Form 635) for quarters 1 through 6 of the 2011-2012 legislative session.

Gary Winuk, Chief of Enforcement addressed the Commission. He explained that the difference is that the level of activity during a reporting period, for agenda item #77 was significantly less than that of agenda items 24 and 25.

Chair Ravel opened the floor for a motion or further discussion. Commissioner Garrett made a motion to approve items 35, 36, 37, 39 and 77. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 5 to 0.

Chair Ravel opened the floor to discuss agenda item 78.

Commission Counsel Hyla Wagner addressed the Commission to discuss the Adoption of Amendments - Campaign Regulations 18410, 18425, 18550, 18435 and 18465.1; Repeal of Regulation 18539. She explained that Commission sponsored legislation AB481 lead to the proposed amendments in this regulation package, which includes (1) early identification of a committee that is paying to qualify a ballot measure, (2) 24-hour reporting of contributions, (3) 24-hour reporting of independent expenditures, (4)

extending sender identification requirements to mass mailings sent by email, and (5) verification of independent expenditures.

Commissioner Rotunda expressed though he is in favor of disclosure, particularly disclosure relating to contributions, he is concerned about independent expenditures. He explained that there are a series of Supreme Court cases (McIntyre v. Ohio Elections Commission and Buckley v. American Constitutional Law Foundation) that invalidate statutes that prohibits distribution of anonymous campaign literature, and that the court said that people should be able to evaluate speech without regard to its authorship. He continued, the court said, with respect particularly to ballot propositions, the argument for disclosure is substantially less and there is a presumption of anonymity, however you can require disclosure to prevent fraud. He explained that he didn't see any text in the staff report to address these concerns for the FPPC to avoid a foul.

Commissioner Garrett clarified, in the cases of McIntyre v. Ohio Elections Commission and Buckley v. American Constitutional Law Foundation, the Court had done some protection of anonymous speech, but there is language in the both majority and other opinions that limit them to the notion. In the case of McIntyre v. Ohio Elections Commission, leaflets were placed around a neighborhood during a small local referendum and the question arose on whether Ms. McIntyre's name should be placed on the leaflets. In Justice Ginsburg's opinion, there is an acknowledgement that with respect to the kind of regulation where there is reporting to an entity such as the FPPC and reporting that is done in a way that is not immediate, are different and could be supported not just by fraud, but by the need to inform voters. Commissioner Garrett expressed that voter informational interest has been held by the court in many cases, including ballot measure cases. She clarified, with respect to Buckley v. ACFL, people were circulating petitions and the question arose on if they should be required to put their names on the front of the petitions; however it is different to reveal the name to a regulator versus on circulating petitions. There was an affirmation that you can have to reveal some information to the regulator in both of those cases. She explained that she doesn't believe that these run afoul of the case law in its entirety; and those cases should be read as particularly contextually limited cases. She does believe that the FPPC should consider raising disclosure thresholds.

Commissioner Rotunda expressed that it would be helpful to include constitutional context in the staff report, to alert the Commission that staff has considered concerns

raised by the court.

General Counsel Zackery Morazzini expressed agreement with the concerns raised by both Commissioner Garrett and Rotunda. He also explained that staff approached this as an implementation regulation; however he would include more information related to constitutional context.

Chair Ravel explained that the FPPC has met with the legislature and plans to amend disclosure thresholds, and then opened the floor for members of the public.

Charlie Hertzfeld addressed the Commission and discussed his concerns with disclosure thresholds.

The Commission agreed that the disclosure thresholds are in need of adjustment and will also adjust for inflation.

Commissioner Garrett made a motion to approve agenda item #38. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.  
The motion passed 5 to 0.

Chair Ravel opened the floor to discuss agenda item 79.

Commission Counsel Hyla Wagner addressed the Commission to discuss the Adoption of Regulation 18756 - Statements of Economic Interests: Certification of Electronic Filing Systems. She explained that this regulation sets forth the requirements for a city or county to obtain approval of an online statement of economic interests (SEI) filing system from the Commission. It implements legislation (AB 2062 - Davis) effective September 24, 2012, authorizing local agencies to permit electronic filing of SEIs under programs certified by the FPPC.

Chair Ravel asked if the Commission or public had any questions or comments.

John McKibben from the California Association of Clerks and Elected Officials urged the Commission to adopt the regulation, but asked if the FPPC could provide clarification on

(Sub-Section G), in the publication of finalized guidelines.

Commissioner Montgomery made a motion to approve agenda item #79. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.  
The motion passed 4 to 0.

Chair Ravel opened the floor to discuss agenda item 80.

General Counsel Zackery Morazzini addressed the Commission to discuss the Adoption of Amendment to Regulations 18723 and 18730 and explained that staff proposes to provide an extension of the annual Statement of Economic Interest filing deadlines for persons who are on active military duty and thus unable to comply.

Chair Ravel asked if the Commission or public had any questions or comments.

Commissioner Garrett made a motion to approve agenda item 80. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.  
The motion passed 5 to 0.

Chair Ravel opened the floor to discuss agenda item 81.

General Counsel Zackery Morazzini addressed the Commission to discuss the Adoption of Amendments to Regulations 18545, 18703.4, 18730 and 18940.2 - Biennial Adjustments of Gift Limit, Contribution Limits and Voluntary Expenditure Ceilings. He explained that Government Code Sections 83124, 85316(b), 87103(c) and 89503(f) require biennial adjustments of the Act's gift limit, contribution limits and voluntary expenditure ceilings to reflect changes in the consumer price index. These amendments implement these adjustments for the period January 1, 2013 through December 31, 2014.

Chair Ravel asked if the Commission or public had any questions or comments.



Commissioner Garrett made a motion to approve agenda item 81. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.  
The motion passed 5 to 0.

Chair Ravel opened the floor to discuss agenda item 82.

General Counsel Zackery Morazzini addressed the Commission to discuss the Amendment to Regulation 18705.5: Materiality Standard: Economic Interest in Personal Finances. He explained that the proposal to amend Regulation 18705.5, submitted by Adam D. Link of Somach Simmons & Dunn, would expand upon an amendment from earlier this year and allow public officials to vote on their appointments to ad hoc and internal standing committees of their agencies when they receive additional compensation for those duties and would eliminate the requirement that such appointments be required by law.

Chair Ravel asked if the Commission or public had any questions or comments.

Adam Link, from the California Association of Sanitation Agencies addressed the Commission. He explained that CASA understands that the Commission has determined that the March 2012 amendments to Regulation 18705.5(c) created a distinction between a public official's participation in the decision on his or her appointment to an outside agency as required by law, and the official's participation in a decision on his or her appointment to an internal ad hoc or standing committee of the official's own agency. He explained that Regulation 18705.5(c) allows the former and protects the public from potential abuses with the inclusion of online reporting requirements, therefore amending Regulation 18705.5(c) to explicitly permit the participation of public officials in appointments to internal ad hoc and standing committees will allow CASA's member agencies to staff their standing and ad hoc committees without the need to pass an ordinance every time an appointment is necessary. The online reporting requirements in subdivision (c)(3) will similarly protect the public from any potential abuses in addition to many of the member agencies' own statutory limits on compensation for participation in committee meetings. He believes that the language in the proposed amendment accomplishes this objective.

Commissioner Rotunda expressed that he didn't support the original amendments to Regulation 18705.5(c). He asked, how he can explain that it is not a conflict of economic interest when you appoint yourself to a committee who pays money.

Mr. Link and Commissioner Rotunda discussed this matter. Mr. Link explained that some of the committees are very small and in some cases, not all seats are filled. If the committee members have to recuse themselves, they won't be able to quorum. He also explained, at most the committees have six advisory/board meetings with a payment cap of \$250.00.

Chair Ravel asked if the Commission or public had any questions or comments. She then expressed that a state commission, such as the FPPC, provides per diem for attendance and preparation for its meetings. She explained that this amendment is consistent with the Commission's previous regulatory change.

Commissioner Garrett made a motion to approve agenda item 82. The motion was seconded by Commissioner Eskovitz.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, and Chair Ravel.

Nos: Commissioner Rotunda.

The motion passed 4 to 1.

Chair Ravel opened the floor to discuss agenda item 83.

Lynda Cassady, FPPC Chief of the Technical Division addressed the Commission to discuss the Adoption of the 2012/13 Statement of Economic Interests, Form 700 and related documents. She explained that the forms are available on the interested persons section of the FPPC website.

Chair Ravel asked if the Commission or public had any questions or comments.

Commissioner Garrett made a motion to approve agenda item 83. The motion was seconded by Commissioner Montgomery.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 5 to 0.

Chair Ravel opened the floor to discuss agenda item 84.

Lynda Cassady, FPPC Chief of the Technical Division addressed the Commission to discuss the adoption of revisions to campaign form instructions and the adoption of a new form requiring principal officers to sign a verification related to the independent nature of campaign communications reported as independent expenditures. She explained that the forms are available on the interested persons section of the FPPC website.

Chair Ravel asked if the Commission or public had any questions or comments.

Commissioner Garrett made a motion to approve agenda item 84. The motion was seconded by Commissioner Rotunda.

Ayes: Commissioners Eskovitz, Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 5 to 0.

Chair Ravel opened the floor to discuss agenda item 84.

Commissioner Montgomery discussed the Sub-Committee to Develop Structure and Process for National Search for Executive Director. She explained that the Commission will embark on a national search for an Executive Director and it is proposed that the Commission establish and approve a sub-committee to develop the structure and process to guide the search. It is also proposed that Commissioners Eskovitz and Montgomery are appointed to the sub-committee. She explained that the sub-committee had researched national sites for job postings and other entities such as the Roll Call, similar to the Capital Morning Report. She explained that the sub-committee has determined that the Executive Director should have high-level administrative and policy experience, and the ability to put forth innovative ideas and programs that can help the Commission fulfill its duties to inform the public of political activity in California. She explained that the sub-committee should be able to move forward fairly quickly in its efforts.

Chair Ravel asked if the Commission or public had any questions or comments.

A member of the audience asked for clarification on the meaning of “fairly quickly.”

Commissioner Montgomery explained that the sub-committee would post the job announcement within thirty days.

Chair Ravel explained that in the absence of an Executive Director, the responsibilities have been delegated to the General Counsel and others within the agency; however this matter would be further discussed in closed session.

Chair Ravel opened the floor to discuss agenda item 86.

Gary Winuk, Chief of Enforcement addressed the Commission to discuss the Assignment of Hearing to Administrative Law Judge ("ALJ") - Berryhill: In the Matter of Bill Berryhill, Tom Berryhill, Bill Berryhill for Assembly - 2008, Berryhill for Assembly 2008, Stanislaus Republican Central Committee (State Acct.), and San Joaquin County Republican Central Committee/Calif. Republican Victory Fund (FPPC Case No. 10/828). He explained, pursuant to Regulation 18361.5, subdivision (b), which provides: If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Chair Ravel asked if the Commission or public had any questions or comments.

Chair Ravel explained that she received an email from Mr. David Danciu, a Commissioner in the City of Chula Vista. She said that he has general comment related to campaign contributions. The letter will be placed online and in the record of the Commission.

Chair Ravel opened the floor to discuss agenda item 87.

General Counsel Zackery Morazzini addressed the Commission and declared the

Executive Staff Reports “as submitted.”

Chair Ravel asked if the Commission or public had any questions or comments and heard none.

Chair Ravel adjourned into closed session at 11:10 a.m.

The Commission returned from closed session at 11:30 a.m. Chair Ravel announced that by consensus the Commission appointed Tina Bass, Chief of Administration, to the position of Interim Executive Director; and the Commission will continue its search for a permanent Executive Director.

Chair Ravel also announced tentative meeting dates for 2013, January 24, February 28, March 28, and April 25. She explained that three members of the Commission will complete their term on January 31, 2013, pending appointments of new Commissioners.

Commissioner Rotunda made a motion to adjourn. The motion was seconded by Commissioner Garrett.

Ayes: Commissioners Garrett, Montgomery, Rotunda, and Chair Ravel.

The motion passed 4 to 0.

Respectfully submitted,

Dated:

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Dominique Word  
Commission Assistant

Approved:

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Ann Ravel, Chair  
Fair Political Practices Commission