



(Unapproved and subject to change)
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF HEARING, Public Session
Thursday, April 15, 2021
10:00 a.m.

Present: Chair Miadich, Commissioner Baker, Commissioner Cardenas,
Commissioner Wilson, and Commissioner Wood

Staff Present: Galena West, Executive Director
Angela Brereton, Chief of Enforcement
Dave Bainbridge, General Counsel
Loressa Hon, Chief of Administration
Christopher Burton, Assistant Chief of Enforcement
Tara Stock, Intake Manager
Jeffrey Kamigaki, Supervising Special Investigator
Luz Bonetti, Supervising Management Auditor
Lindsey Nakano, Legislative Counsel
Jay Wierenga, Communications Director
Toren Lewis, Commission Counsel
Sasha Linker, Commission Assistant

Call to Order.

Chair Miadich called the meeting to order at 10:01 AM.

1. Public Comment for Items not on Agenda.

Steve Petzold, Santa Clarita, stated that the Enforcement Division sent him a letter advising him that they decided not to attribute the contribution to the Foundation from the Santa Clarita Community College District. Mr. Petzold stated that the 460's filed by the committee identified the Santa Clarita Community College District and the COC foundation as the source of the three contributions. Mr. Petzold stated that in stipulation 17-287 the Enforcement Division identifies the Santa Clarita Community College District as a major donor of \$50,000. Mr. Petzold asked who should get the credit for the contributions and that the funds should be attributed to the

Santa Clarita Community College District.

Hosam Haggag, City Clerk and Chief Election Officer for City of Santa Clara, stated that he previously wrote and presented a case regarding dark money in the matter of BluPAC and Douglas Chan. Mr. Haggag expressed his concern about the five-year statute expiring before the FPPC can investigate.

2. Approval of March 2021 Commission Hearing Minutes.

MOTION: To approve the March 2021 meeting minutes. Moved by Commissioner Baker, seconded by Commissioner Wood. Motion approved 5-0.

11. Legislative Update.

Chair Miadich stated the Legislative Update will be taken out of order because Ms. Nakano must testify at a hearing at 10:30 AM today.

SB 686, a Commission sponsored bill by Senator Glazer, was heard in the Senate Elections Committee this past Monday. The bill passed with 4-1 with Senator Nielson voting no. The bill has support from the League of Women Voters and the California Chamber of Commerce sent a letter in opposition. AB 236, by Assemblymember Berman, Commission sponsored and currently identical to SB 686, will be heard in the Assembly Elections Committee today.

AB 1367, by Assemblymember Low, a Commission sponsored bill will also be heard in Committee this morning and has been proposed for consent. Per the author's office, the bill will be amended to remove the one bank account provision and retain only the increased penalties for egregious personal use of campaign funds. Commissioner Baker asked if the author of SB 686 would be interested in discussing the threshold that triggers the reporting as it is at a low threshold of a thousand dollars. Ms. Nakano stated that the thousand-dollar threshold is quite common, but there is room for discussion. Chair Miadich stated that the Chamber of Commerce's letter identifies a few concerns with the threshold and said the Commission would

be willing to entertain potential amendments offered by stakeholders.

Ms. Nakano stated that the Law and Policy Committee voted to recommend that the Commission adopt a support position for both bills, AB 1590 and AB 319. Commissioner Wilson asked if the Secretary of State's office had a position on AB 1590 and Ms. Nakano stated that they were neutral. AB 319, by Assemblymember Valladares, prohibits contributions from foreign governments or principals.

Commissioner Cardenas asked if there are any prospects we might take from the area of lobbyist audits and reports within the Commission sponsored bills. Ms. Nakano stated that they are working with Senator Allen's office because he has a bill that has been introduced, on lobbying reports and they have some similar goals.

MOTION: To support AB 1590. Moved by Commissioner Wood, seconded by Commissioner Baker. Motion approved 5-0.

MOTION: To support AB 319. Moved by Commissioner Wilson, seconded by Commissioner Baker. Motion approved 5-0.

3-4. Approval of Enforcement Consent Calendar.

Commissioner Baker pulled item 3 from consent for discussion.

Steve Petzold, Santa Clarita, noted that there are no natural persons named in the stipulation for item 4 because it was determined that it was a major donor committee and not a recipient committee. Mr. Petzold stated that it should have been deemed a recipient committee because the funds came from donations from Barnes & Noble and Pepsi Bottling.

An unknown public commenter stated, in March 2016, the board of the foundation held a meeting where they publicly announced its support for Measure E, but they were silent on their contribution amount and over the next several months three contributions of over \$50,000 were accepted by the committee. The requests for each of the checks were made by the district chancellor, the requests were authorized by the chancellor and the district financial officer. The

warrants to issue checks were authorized by the district board. The committee untimely reported donations that were from the foundation.

Lacey Keyes, Counsel for Respondent, stated that the public record of this meeting and multiple prior meetings contain numerous inaccurate statements of facts and of legal analysis. Ms. Keyes states that there have been several claims made regarding the source of the funds based on an incomplete understanding. Ms. Keyes stated that the Enforcement issued subpoenas and the foundation provided all documentation to disprove the funds were district funds.

Angela Brereton, Chief of Enforcement, stated Statute 84222, governs when a nonprofit organization can become a recipient committee. There are multiples ways that can happen, most of which concerns receiving money for the purpose of making political contributions. The foundation did not receive money for the purpose of making political contributions.

Chair Miadich asked if the Enforcement team found it appropriate not to include an individual after concluding the investigation. Ms. Brereton stated that they did not find any individuals who had liability under the act.

Commissioner Cardenas asked a point of order on whether item four needed to be formally removed from consent. General Counsel Bainbridge stated that no formal action was necessary to remove Item 4 from Consent, and that it could be discussed and voted on as the only item on Consent. Commissioner Wilson stated that he agreed with Commissioner Cardenas that it may make sense to formally remove Item 4 from Consent.

MOTION: To remove item 4 from the Enforcement Consent Calendar. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

MOTION: To approve Item 4. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

Commissioner Baker stated she believes the fine is too low for item three. Commissioner Baker

asked Mr. Bainbridge if there is any fraud or criminal liability if someone pays someone else to be principal officer but is in fact one of the deciding people. Mr. Bainbridge stated that he was unsure and would look into the question. Commissioner Baker stated that the fine should be increased and the Commission should give the Enforcement Division guidance to seek a higher penalty.

Chair Miadich and Commissioner Cardenas agreed with Commissioner Baker's assessment about Item 3.

MOTION: To reject the stipulation presented in Item 3 with direction to staff to negotiate a higher penalty, Moved by Chair Miadich, seconded by Commissioner Cardenas. Motion approved 5-0.

5. In the Matter of Friends of Joe Aguirre for Delano City Council 2014 and Joe Aguirre; FPPC No. 17/193.

Chair Miadich asked Ms. Brereton if she had any further contact from Mr. Aguirre. Ms. Brereton stated that they have not responded to any further contact.

6. Assignment of Hearing to Administrative Law Judge (ALJ): In the Matter of Long Beach Families Against Measure A; FPPC No. 16/773.

Commissioner Baker asked about the practice of the Commission. Ms. Brereton stated that the Commission has only had one recent case that went to hearing to determine the matter of law. Chair Miadich asked for further clarification about the process for matters that were unable to reach successful negotiations. Ms. Brereton stated that the matter would go through the same regular process if negotiations were unsuccessful. The matter will move forward to an ALJ.

7. Annual Enforcement Division Review: Staff, Procedures, Practices and Statistics.

Angela Brereton, Chief of Enforcement, gave an overview of her presentation and introduced the Enforcement Division managers who would be presenting.

Chair Miadich asked Tara Stock, Intake Manager, about the differences between the anonymous and sworn complaints, and if there were any trends such as merit between the complaints. Ms. Stock stated

that the anonymous complaints lack concrete evidence and they are unable to follow up with their complaints due to the anonymity. Chair Miadich asked about their process should a complaint reference the wrong regulation or source. Ms. Stock stated that they do their best to decode the complaint but will reach out for further clarification if needed. Commissioner Baker asked about the rejection process. Ms. Stock stated that if they know the proper department, then they will direct the complaint to the right department. Commissioner Baker asked if their program is inclusive of the AdWatch program. Ms. Stock stated that it is somewhat inclusive, and that Jeffrey Kamigaki will discuss that more in his presentation, however, the AdWatch submittals undergo an investigation before they arrive at intake, but it is still up to intake to make a recommendation to create a case. Commissioner Cardenas asked if there was anything Ms. Stock would like the commissioners to know. Ms. Stock stated that complaints and referrals have dramatically increased in the past five years, and more staff would be appreciated. Chair Miadich asked if there were ways to improve communication with the public, by utilizing educational material on the website, for example. Ms. Stock stated that they encounter most complaints with the filing officer referral program and that adding information would be a good idea to consider.

Commissioner Cardenas asked Jeffrey Kamigaki, Supervising Special Investigator, about possible future legislation that would raise the penalties for elected officials and any updates on those. Ms. Brereton stated that this would be handled by Lindsey Nakano, Legislative Counsel. Commissioner Baker asked about the potential destruction of documents. Mr. Kamigaki stated that they still aim to seek voluntary compliance, however, with suspected noncompliance, they look at subpoenas to obtain the required documents. Commissioner Baker asked about how the public learns about the AdWatch program and how to better inform them. Mr. Kamigaki stated that initially, they reached out to all the filing officers and sought compliance from the ads. More recently, staff has tried to reach out to the public through media outlets. Commissioner Wood asked about more data on AdWatch and potentially spreading AdWatch to a greater platform.

The Commission adjourned for a break at 12:15 PM and reconvened at 12:31 PM.

Commissioner Baker asked Luz Bonetti, Supervising Management Auditor, about the time it takes for

audits of statewide candidates and what tools Ms. Bonetti would like to request from the Commission. Ms. Bonetti stated that the audits have become more complex, but she has not seen the staff or resources increase accordingly. She also stated the audit time ranges due to a variety of situations. Commissioner Wood asked if there has been a positive trend in compliance. Ms. Bonetti stated that the knowledge of audits occurring is a good deterrent for compliance, and that audits are considered an education for the public. Commissioner Wilson asked if Ms. Bonetti has seen any patterns with audits being tied to a specific treasurer. Ms. Bonetti stated that when they do find patterns with specific professional treasurers they do look deeper and further, which can lead to more audits.

Chair Miadich noted an example where Christopher Burton, Assistant Chief of Enforcement, was successful in obtaining an injunction in relation to Mr. Burton's presentation.

Chair Miadich asked Angela Brereton, Chief of Enforcement, what percent of the referrals were internal versus external filing officers. Ms. Brereton stated that she will have to obtain the information through their databases. Chair Miadich asked about the causes for the length of the campaign bank account case pendency. Ms. Brereton stated that those cases require a thorough investigation of records that require more cross checking between the data and accounts, leading to greater delays. Commissioner Wood asked if they have enforcement priorities posted, and if they alternate priorities. Ms. Brereton stated that they are not posted other than discussions at meetings where they discuss the prioritization, and they prioritize cases based on timing or other impending factors. Commissioner Baker asked about possible predictions for when they would be able to see the results from the two tiers of streamlining. Ms. Brereton stated that they would most likely see significant increase by the August or September. Commissioner Baker asked if there was a possibility for a Commission update on a quarterly basis. Ms. Brereton stated that they already provide an annual update with the data, but they will look into providing data more frequently. Commissioner Cardenas asked how the staff are looking at external sources to ensure the quality of the team. Ms. Brereton stated that they do work collaboratively with other agencies to ensure uniformity. Commissioner Cardenas asked if they have complaint cases broken down geographically. Ms. Brereton stated that they do have the data and will work with the staff to compile that information.

8. Prenotice discussion of regulatory changes for disclosure of online content.

Commissioner Baker asked about the differences in tagging a profile versus a landing page.

Sukhi Brar, Assistant General Counsel, confirmed that they mean the same thing. Chair Miadich asked Ms. Brar to pick one term if they move forward to prevent further confusion.

Commissioner Wilson stated that a clear definition would be beneficial as well to prevent confusion. Commissioner Wood asked if there is a separate obligation to link the official website on the social media platform. Ms. Brar stated that the general rule is that the disclosure should be on the profile landing page, but if it does not fit, then they can link it to affiliated website.

Commissioner Wood asked how they will navigate proposing the blog disclosure when it is expressly forbidden in the 84504.3 provision. Ms. Brar stated that a blog can be done in various ways and that the disclosure location issue would apply to non-social media blogs.

Commissioner Wood asked about the issue with the interpretation of the Act as it currently stands. Mr. Bainbridge state that regulation suggestion for the social media post is to include the tag to link back to the committee that paid for the post where the committee would have the disclosure. Mr. Bainbridge stated that they recommend statutory changes that require disclosure on the post themselves.

Commissioner Wood asked how, if at all, the Commission's regulations addressed the use of artificial "bots" to amplify social media political advertising and encouraged staff to consider covering that conduct when writing the new regulations on the disclosure of expenditure associated with digital campaign advertising. Commissioner Wood stated that bots would be used to amplify ads and the expenditure may appear invisible to the public eye. Chair Miadich requested staff to prepare language on the bot issue.

9. In re Sanders Opinion.

Chair Miadich asked about the procedure; if they take comment first from the requester then

consider the opinion. Mr. Bainbridge stated that either way works. Chair Miadich requested public comment before they begin deliberation.

Nick Sanders, Sutton Law Firm, stated that they respectfully disagree with Mr. Bainbridge's interpretation on whether the first amendment may be violated under alternate draft one. Mr. Sanders stated that they believe they have laid out the first amendment issue in the comment letter. Mr. Sanders stated that there is certainty that there were contributors that already contributed more than 4900 before January 1, 2020 and thus be prohibited from contributing with the 2022 elections.

Chair Miadich stated that they do not need to reach the constitutional issue and that they can resolve the issue based on statutory construction. The legislature stated that the new limits went into effect January 1, 2021 and did not explicitly state that prior contributions would be aggregated for the purpose of the new limits. Chair Miadich stated that based on the plain language that alternative two is the better interpretation for the Commission to apply.

Commissioner Baker stated that she agrees with Chair Miadich. Commissioner Wilson stated that the legislature had ample opportunity to clarify the issue. Commissioner Wood stated support for alternative two but stated that the statutory interpretation could go either way.

Commissioner Wilson asked about the \$4900 limit and if any local jurisdictions have established a higher cap pursuant to AB 571. Mr. Bainbridge stated that they submitted a survey about who had adopted ordinances and stated that 2/3 of the jurisdiction that replied did not have their own limits.

MOTION: To adopt draft two of the Opinion. Moved by Chair Miadich, seconded by Commissioner Wilson. Motion approved 5-0.

10. Committee Updates.

Chair Miadich gave an update on the March Law and Policy Committee and Public Outreach and

Technology Committee meetings.

11. Legislative Update (Cont.)

Commissioner Baker stated that she had reached out to the staff for AB 319 to inquire about a part of the bill that was removed.

Ms. Nakano stated that AB 319 and AB 1376 passed on consent and AB 236 passed out of the committee 5-1 with Assemblymember Seyarto and Assemblymember Mayes abstaining.

Commissioner Cardenas asked Ms. Nakano where the LLC bill will now go and if it has been referred elsewhere. Ms. Nakano stated that it has been referred to the Assembly Appropriations Committee.

12. Executive Staff Reports.

Angela Brereton, Chief of Enforcement, stated that the Commission can begin to see which cases are put into tier one and tier two on the Enforcement Division report.

Chair Miadich stated they received a digital comment relevant to Ms. Brereton's report who wanted to clarify on page 12, probable cause was found as provided in the report but there was another charge that probable cause was not found. Mr. Bainbridge stated that on page 12 of the executive staff report it should be labeled as count 2 instead of count 1, and Mr. Bainbridge stated an amendment would be made.

Commissioner Cardenas asked Mr. Bainbridge about the appeal of the CSAC case. Mr.

Bainbridge stated the notice of appeal was filed last month and they are waiting for them to lodge the record with the court. Commissioner Cardenas asked about a Wahlstrom case update.

Mr. Bainbridge stated that the case is currently waiting for a courtroom.

Loressa Hon, Chief of Administration, stated that they aim to keep employee's eligible for a telework schedule, and the current emergency telework continues to be in effect extending it to end on September 15th, 2021.

Galena West, Executive Director, stated that they received an opinion request from the California State Association of Counties and the California School Board and that Ms. West has approved the request. Ms. West stated that a memo and opinion will be presented at the upcoming meetings.

Jay Wierenga, Director of Communications, stated they have been getting internal and stakeholder feedback on the website. Mr. Wierenga stated that they had a meeting with ILG to find numerous ways to increase cooperation and outreach.

13. Commissioner Comments and Proposed Future Agenda Items.

Chair Miadich stated that he would like Mr. Bainbridge to set a closed session next month to update on litigation.

MOTION: To adjourn the meeting. Moved by Commissioner Baker, seconded by Chair Miadich. Motion approved 5-0.

The meeting concluded at 2:54 PM.

Respectfully Submitted,
Sasha Linker
Commission Assistant
Approved May 10, 2021

Richard C. Miadich, Chair
Fair Political Practices Commission