



Fair Campaign Practices Commission

INFORMATION CALENDAR
April 30, 2013

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Patrick O'Donnell, Chair, Fair Campaign Practices Commission
Subject: Summary of Activities for 2012 and Work Plan for 2013

INTRODUCTION

In order to keep the City Council informed of its activities, the Fair Campaign Practices Commission ("FCPC") annually submits a report to the Council summarizing its actions in the previous year and work plan for the upcoming year.

CURRENT SITUATION AND ITS EFFECTS

The FCPC was created in 1974 with the passage of the Berkeley Election Reform Act ("BERA"), codified at Berkeley Municipal Code Chapter 2.12. The primary function of the FCPC is the impartial, effective administration of the BERA. The City Attorney's office acts as staff to the FCPC.

At its January 2013 meeting, the Commission discussed its various objectives for the year, and directed staff to return with a draft report to include the Commission's work plan objectives. On February 21, 2013, the Commission reviewed and discussed the draft report, made one addition, and by a unanimous vote of the members present, approved the report as follows:

Approve staff report as amended. (M/S/C: Smith/Lombardi. Ayes: Costa, Lombardi, O'Donnell, Pritchard, Smith, and Wollmer; Noes: None; Abstain: None; Absent: Ritchie [Murray on approved leave of absence].)

BACKGROUND

The FCPC's most significant activities in the past year were creation of substantive amendments to the BERA, and compliance and enforcement efforts related to the 2012 election.

BERA Amendments: Since 2009, the FCPC had been working on revisions to the BERA to add additional reporting and disclosure requirements, with a particular focus on campaign communications by independent expenditure, ballot measure and general purpose committees. In early 2010, the Supreme Court decided the case of *Citizens United*, which expanded corporate campaign spending power by holding that it is unconstitutional for the government to suppress corporate political speech. The case nevertheless confirmed that "[t]he government can regulate corporate political speech

through disclaimer and disclosure requirements." (*Citizens United v. FEC* (2010) 130 S. Ct. 876, 886.)

After over two years of Commission discussions, two workshops, and multiple draft reviews, the Commission and Council both approved, by at least a two-thirds vote, BERA amendments to augment campaign disclosure and encourage compliance as follows:

- (1) Section 2.12.065 provides for electronic posting and publication in public locations of campaign contributions in lieu of newspaper publication, in an effort to increase access to information and modernize the BERA;
- (2) Section 2.12.231 contains additional remedies for violations of the BERA to include issuance of monetary penalties;
- (3) Section 2.12.271 created an additional filing requirement for committees making expenditures in support of or opposition to a measure to promote earlier public access to information;
- (4) Section 2.12.297 creates additional filing of independent expenditure reports in 40 days preceding election with late filing penalties if the reports are not timely filed; and
- (5) Section 2.12.335 requires disclosures on campaign communications such as mailers and emails of certain contributions (top four contributors with total contributions over \$250), effective January 1, 2013.

Further information on these amendments is available at the following:

[http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - City Council/2012/04Apr/2012-04-03 Item 31 Amendments to Berkeley Election Reform Act.pdf](http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/04Apr/2012-04-03_Item_31_Amendments_to_Berkeley_Election_Reform_Act.pdf)

[http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3 - City Council/2012/06Jun/2012-06-26 Item 32a Amendment to Berkeley Election Reform Act.pdf](http://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-_City_Council/2012/06Jun/2012-06-26_Item_32a_Amendment_to_Berkeley_Election_Reform_Act.pdf)

Campaign Education and Compliance: FCPC staff reviewed all of the campaign filings submitted during 2012, followed up with committees and candidates regarding compliance issues on behalf of the commission and apprised the FCPC of possible violations. Where errors or omissions were discovered, candidates and committees worked with the FCPC and the City Clerk's Office to file amendments. The City Clerk's Office and FCPC staff also conducted a training for local treasurers in August of 2012 regarding BERA, including an update on recent amendments going into effect in 2012 and 2013.

Enforcement Activities: The FCPC received four separate complaints regarding potential campaign violations. All of the complaints were reviewed by the Commission. Two of the complaints were determined to be beyond the Commission's purview. One complaint addressed late filing of campaign mass mailing certifications. The Commission found that there was a need to focus further education and compliance efforts on the timeliness of mass mailing certifications, and possibly amending BERA or its interpretive regulations to clarify this issue. The fourth complaint, against a Slate Mailer Organization, is still being reviewed by the Commission. The Commission has reached a probable cause determination with continued investigation into the matter.

POSSIBLE FUTURE ACTION

The FCPC will continue to move forward on the ongoing enforcement matters, and monitor compliance with BERA in the context of the wrap up of the 2012 election. The FCPC, through staff, will review campaign statements and will follow up with candidates and committees to obtain amended filings whenever appropriate. When necessary, however, the FCPC will be ready to utilize its enforcement authority with respect to non-compliant campaign committees.

Additionally, the FCPC has decided to focus on the following issues during 2013:

- Slate Mailer Organizations – examine, possibly through formation of an *ad hoc* committee, whether there are steps the City can take to ensure that future campaigns do not attempt to use the state SMO process to circumvent compliance with BERA;
- Review of Commission Procedures: The Commission procedures were last reviewed in 1998. The Commission will review the current procedures to streamline processes for review of complaints, and confirm that procedures reflect current due process standards;
- Electronic filing – Commission plans to put forward proposed amendments to BERA to implement mandatory electronic filing in line with newly enacted state law;
- Update BERA – State law changes to the Political Reform Act have increased late reporting requirements beyond those stated in BERA. The Commission will review the recent changes and propose clean up amendments to BERA, if necessary, to ensure BERA is consistent with state law.
- Campaign signs – The Commission has proposed creating an *ad hoc* committee to discuss the subject of campaign signs (including the locations and timely removal of signs).
- Regulation regarding Section 2.12.335 – The Commission will consider creation of a new regulation regarding BERA Section 2.12.335, which took effect January 1, 2013, to clarify disclosure of major contributors in electronic advertisements.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

No fiscal impacts are anticipated for the FCPC's 2013 work plan.

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