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Elections

University of the Pacific; McGeorge School of Law

Elections

Elections; exemptions from disclosure requirements

Government Code §84400 (new).
AB 453 (Antonovich); STATS 1977, Ch 403
Support: California Attorney General; People's Lobby, Inc.
Opposition: The Fair Political Practices Commission

The Political Reform Act of 1974 [CAL. GOV'T CODE §§81000-91014], an initiative measure designated as Proposition 9 and approved in the June 4, 1974, primary election [CAL. STATS. 1974, at A-163 to A-204], regulates and controls many aspects of political practices in California [*See, e.g.,* CAL. GOV'T CODE §§84100-84305 (requirements of campaign disclosures), §§86100-86300 (control of lobbyists), §§87100-87312 (regulation of conflicts of interest), §§88000-88007 (preparation of ballot pamphlets)]. That part of the Political Reform Act of 1974 dealing with campaign disclosure requires each candidate and each committee supporting or opposing a candidate or measure to file campaign statements [CAL. GOV'T CODE §§84200-84203] disclosing receipts, expenditures, and other specified information relating to election campagins [*See* CAL. GOV'T CODE §84210].

Even though various important roles are given to state and local agencies [*See, e.g.* CAL. GOV'T CODE §§81005, 90000, 90006, 91001(a), 91001(b)] as well as the public [*See* CAL. GOV'T CODE §91005], Section 83111 of the Government Code vests primary responsibility for the administration of the Political Reform Act of 1974 in the Fair Political Practices Commission [hereinafter referred to as FPPC]. On May 4, 1976, the FPPC adopted a regulation establishing procedures and conditions under which exemptions from certain reporting and disclosure requirements would be granted to a candidate or committee [2 CAL. ADM. CODE §18429 (amended on January 21, 1977, on an emergency basis, to provide for the possibility of exemption from further requirements)]. Chapter 403 adds Section 84400 to the Government Code, expressly denying the FPPC power to exempt any person from the campaign disclosure requirements imposed by the Political Reform Act of 1974.

COMMENT

Balancing the threat to the exercise of first amendment rights against the state interest furthered by campaign finance disclosure, the United States Supreme Court in *Buckley v. Valeo* [424 U.S. 1 (1976)] recently concluded that a blanket exemption for minor parties from the federal reporting and disclosure requirements, which are comparable to the California reporting

and disclosure requirements [*Compare* 2 U.S.C. §§431-442 (1970) *with* CAL. GOV'T CODE §§84100-84305], was not required since such parties could demonstrate that the disclosure requirements would be unconstitutional as particularly applied to them if allowed sufficient flexibility in the proof of injury [*Id.* at 64-74]. In dicta, the Court laid down guidelines under which a showing of unconstitutional impingement upon protected associational activity could be made. The threat to the exercise of first amendment rights would be so serious, the Court noted, that the disclosure requirements could not be constitutionally applied to a particular party if there exists "a reasonable probability that the compelled disclosure of a [minor] party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties" [*Id.* at 74].

In response to *Buckley* and the United States District Court decision in *Doe v. Martin* [404 F. Supp. 753 (D.D.C. 1975) (District of Columbia Board of Elections and Ethics had authority to issue a ruling as to the constitutional applicability of the District disclosure requirements)], the FPPC adopted a regulation that established procedures for obtaining exemptions from certain reporting and disclosure requirements of the Political Reform Act of 1974 [2 CAL. ADM. CODE §18429, Comment; JOURNAL OF THE CALIFORNIA ASSEMBLY 1373-76 (1977-78 Reg. Sess.) (communication from Richard Carpenter, Member FPPC)].

On January 31, 1977, Michael C. Miller, a candidate for election to the San Francisco Board of Education who, in that nonpartisan local election, clearly identified himself as a member of the Communist Labor Party, was granted a limited exemption in a proceeding conducted under this new regulation [*In re* Miller, No. AE 76/01 (Fair Pol. Prac. Comm'n, decided Jan. 31, 1977)]. Chapter 403 was prompted by the FPPC decision granting an exemption to Miller [Assemblyman Mike Antonovich, Press Release, Fair Political Practices Commission Decision Prompts New Legislation, Feb. 10, 1977] and specifically prevents the FPPC, without exception, from exempting any person from reporting and disclosure requirements [*See* CAL. GOV'T CODE §84400].

The California Supreme Court recently decided in *Southern Pacific Transportation Co. v. Public Utilities Commission* [18 Cal. 3d 308, 556 P.2d 289, 134 Cal. Rptr. 189 (1976)] that the Public Utilities Commission had sufficient authority to determine the constitutional validity of a statute relating to improvements to railroad crossings, and to closures of the crossings in the absence of express or implied dedication [*Id.* at 311-12 n.2, 556 P.2d at 290-91 n.2, 134 Cal. Rptr. at 190-91 n.2 (1976)]. It is unclear from this decision whether *all* administrative agencies have a similar power to determine certain statutes to be unconstitutional. In partial clarification, however, a subsequent appellate court opinion suggested that the only

reasonable manner in which *Southern Pacific* can be reconciled with other cases is to allow only those administrative agencies that are of *constitutional origin* to determine whether a statute is constitutional [Hand v. Board of Examiners, 66 Cal. App. 3d 605, 619, 136 Cal. Rptr. 187, 196 (1977)]. The court in *Hand* seems to suggest that an agency is of constitutional origin if it is established by and derives extensive powers from the California Constitution [*See id.*]. For example, the Public Utilities Commission, which was created by Article 12, Section 1 of the state constitution and which derives many of its powers from that same constitution [*See* CAL. CONST. art. 12, §§1-9], is clearly of constitutional origin. The FPPC, on the other hand, was created by and derives its powers from Title 9 of the Government Code, which was added by an initiative measure in 1974 [CAL. STATS. 1974, at A-163 to A-204], and thus would not seem to be of constitutional origin. It appears, therefore, that the FPPC is not constitutionally authorized to decide questions regarding the constitutional validity of the reporting and disclosure requirements.

The FPPC, when it granted an exemption to Miller, stated that it was making a determination as to whether a specific application of the requirements was constitutional; it was not declaring or recognizing the unconstitutionality of the statute [*In re* Miller, No. AE 76/01, slip op. at 2 n.1 (Fair Pol. Prac. Comm'n, decided Jan. 31, 1977)].

The Court in *Buckley* did not reach the issue of who, on a case-by-case basis, should make the determination regarding unconstitutional impingement, but did state their assumption "that *courts* will [not] be insensitive to . . . showings [of the requisite chill and harassment] when made in future cases" [424 U.S. at 74 (emphasis added)]. Under California's administrative procedure, issues that involve the constitutional *application* of legislation to a particular fact situation must be raised at the administrative level [Griswold v. Mt. Diablo Unified School Dist., 63 Cal. App. 3d 648, 652-53, 134 Cal. Rptr. 3, 6 (1976)] and the agency must, of course, adhere to the state constitution in its application of legislation to the facts presented [*See* Southern Pac. Transp. Co. v. Public Utils. Comm'n, 18 Cal. 3d 308, 311-12 n.2, 556 P.2d 289, 290-91 n.2, 134 Cal. Rptr. 189, 190-91 n.2 (1976)]. Nevertheless, this doctrine of exhaustion of administrative remedies has no application if the available *administrative* remedy is not adequate [Roth v. City of Los Angeles, 53 Cal. App. 3d 679, 688, 126 Cal. Rptr. 163, 169 (1976)] and Chapter 403, by denying the FPPC power to grant an exemption, appears to prohibit the establishment of the requisite "clearly defined machinery for the submission, evaluation, and *resolution* of complaints by aggrieved parties" that is central to an adequate remedy [*Compare* CAL. GOV'T CODE §84400 *with* Rosenfield v. Malcolm, 65 Cal. 2d 559, 566, 421 P.2d 697, 701, 55 Cal. Rptr. 505, 509 (1967) (emphasis

added)]. Thus, it appears that since "[t]he law neither does nor requires idle acts" [CAL. CIV. CODE §3532], there is no requirement under the doctrine of exhaustion of remedies that questions regarding exemption from the reporting and disclosure requirements be heard before the FPPC.

Thus, the FPPC does not appear to have the authority to declare state laws unconstitutional, nor, with the enactment of Chapter 403, need it consider whether the campaign finance reporting and disclosure laws are being constitutionally applied. It appears, therefore, that the courts are the proper forum to decide cases like *Miller*. Chapter 403, by prohibiting the FPPC from granting any exemptions, appears to have established that minor parties or candidates who wish to challenge the applicability of any of the requirements of the Political Reform Act of 1974 must seek judicial and not administrative relief.

See Generally:
1) Diamond, di Donanto, Marley & Tubert, *California's Political Reform Act: Greater Access to the Initiative Process*, 7 SW. U.L. REV. 453 (1975).
2) Comment, *Disclosure and Individual Rights: Influencing the Legislative Process Under the Political Reform Act of 1974*, 8 PAC. L.J. 939 (1977).
3) Comment, *Proposition 9 And Conflicts of Interest: Scrambling To Close The Barn Door*, 7 PAC. L.J. 847 (1976).

Elections; crimes

Elections Code §§29305, 29610, 29621, 29622, 29624, 29630, 29631, 29642, 29750 (amended).
AB 1020 (Fazio); STATS 1977, Ch 1112

In 1976, the legislature enacted major reorganizational and some substantive changes in the penalty provisions of the Elections Code [CAL. STATS. 1976, c. 1192, §15, at —]. Chapter 1112 has been enacted as a "clean-up" measure, apparently to clarify the intent of the 1976 law. Prior to the enactment of Chapter 1112, Section 29610 of the Elections Code made it unlawful to attempt to aid or abet fraud in connection with voting [CAL. STATS. 1976, c. 1192, §15 at —]. Chapter 1112 has amended this section to include those who commit fraud or who aid or abet fraud [CAL. ELEC. CODE §29610]. Further, it is a misdemeanor to threaten to commit an assault or battery on a relative of a person circulating a referendum, initiative, or recall petition with the intent to disuade its circulation [CAL. ELEC. CODE §29750]. This section of the Elections Code has been amended by Chapter 1112 to include within its provisions such threats against the person circulating the petition [CAL. ELEC. CODE §29750]. Numerous sections of the Elections Code make it a crime to influence a voter to vote or refrain from voting for any particular person, by any of several means, such as threats, coercion, use of money, or gifts [*See* CAL. ELEC. CODE §§29621, 29622, 29624,

29630]. Chapter 1112 has amended these sections to extend such criminal sanctions to voter influencing in constitutional amendments and ballot propositions [CAL. ELEC. CODE §§38, 29621, 29622, 29624, 29630]. Finally, Section 29642 of the Elections Code, which makes it a felony to vote or to attempt to vote by fraudulently signing the name of regularly qualified voter on an absentee ballot, has been amended to include within this prohibition the fraudulent signing of the name of a person who is *not* qualified to vote in such an election [CAL. ELEC. CODE §20642].

Elections; campaign literature

Elections Code §§29410, 29411, 29412 (repealed); §29410 (new).
AB 1375 (Cordova); STATS 1977, Ch 976

Under prior law, all election campaign literature was required to contain the name and address of the printer and publisher [CAL. STATS. 1976, c. 1192, §15, at —]. If the literature was designed to injure or defeat any candidate for public office, or to promote either the passage or defeat of a ballot measure, it was also required to contain the name and address of the person, or the officers of the organization, responsible for its being published [CAL. STATS. 1976, c. 1192, §15, at —]. Chapter 976 has repealed these Elections Code provisions relating to campaign literature and in recognition, *inter alia*, of the need for adequate identification of the source of the campaign appeals [CAL. STATS. 1977, c. 976, §1, at —], the legislature has enacted new provisions that make it a misdemeanor offense to fail to include on any campaign literature the name and address of the person responsible for the publication [CAL. ELEC. CODE §29410(a)]. If, however, the responsible person is acting on behalf of a campaign committee that has filed a statement of organization under the requirements of the Political Reform Act of 1974 [CAL. GOV'T CODE §§81000-91014], the name and address included on the literature may be that of the campaign committee [CAL. ELEC. CODE §29410(a)].

Chapter 976 does not apply to public officers in the performance of their official duties and the new law exempts from the identification requirements any literature referring only to candidates for federal office [CAL. ELEC. CODE §29410(c)] and any literature that contains no more than certain enumerated items of information already appearing on the ballot such as the name of the candidate and the title of the office plus the exhortative words "yes on," "no on," "vote for," "elect," "re-elect," "retain," "return," "recall," "remove," or "support" [CAL. ELEC. CODE §29410(a), (b)]. Even though exempted from the identification requirements established by Chapter 976 [CAL. ELEC. CODE §29410(c)], a mass mailing of campaign literature must still comply with requirements set by the Political Reform Act of

1974; accordingly, much of the matter exempted from the requirements of Chapter 976 must nonetheless contain adequate identification [*See* CAL. GOV'T CODE §§82041.5, 84305].

Section 29410(d) of the Elections Code now requires that each candidate and proponent of an initiative or referendum measure be provided at the time of filing the declaration of candidacy or petition, with a copy of this section and a copy of Section 84305 of the Government Code, which lists the identification requirements of the Political Reform Act of 1974.

Chapter 976 was enacted in response to the legislature's concern that limiting identification requirements to pejorative campaign material was inadequate, since "subtle attacks on candidates or measures can be framed which appear to be supportive but, in fact, are pejorative" [CAL. STATS. 1977, c. 976, §1, at —]. It is the legislature's finding that these new identification requirements embodied in Chapter 976 will discourage anonymous attacks, which cannot adequately be responded to during a campaign [CAL. STATS. 1977, c. 976, §1, at —], and will encourage candidates who believe they have been libeled to seek redress more readily in a civil action for damages [CAL. STATS. 1977, c. 976, §1, at —]. The new requirements should enable the public to better evaluate various campagin messages and to become more adequately informed, thus assisting the voter to make more rational decisions at the polls.