INTRODUCTION

In the instant lawsuit the City of Long Beach, through its City Attorney, brings a civil enforcement action for violation of its Long Beach Campaign Reform Act. Before replying specifically to the points raised in Respondents' Brief, it is appropriate to emphasize the underlying bases for the initiative legislation enacted by the citizens of Long Beach, which are articulated, in part, as follows:

> "[These findings and declarations are adopted:
>
> A. Monetary contributions to political campaigns are a legitimate form of participation in the political process, but the financial strength of certain individuals or organizations should not permit the exercise of a disproportionate or controlling influence on the election of candidates . . .
>
> F. The integrity of the government process; the competitiveness of campaigns and public confidence in local officials are all diminishing . . .
>
> It is the purpose of this Chapter 2.01:
>
> A. To insure that individuals and interest groups in Long Beach have a fair and equal opportunity to participate in Municipal elective and governmental processes.
>
> B. To reduce the influence of large contributors with a specific financial stake in matters before the City Council, thus countering the perception that decisions are influenced more by the size of contributions than the best interests of the people of the City . . . ."

LBMC section 2.01.120-130 (C.T. 10, 11).

Consistent with and in furtherance of the above declarations, the pertinent statutory section limits the amount of any contribution[1] which may be accepted by a "person" who makes an independent expenditure in support of a candidate for city election (LBMC section 2.01.610). (C.T. 16).

The evidence as set forth in Appellant's Opening Brief indicates that CCNE, a person as defined in the statute (LBMC 2.01.210D) (C.T. 11), accepted contributions in excess of those limits, for the purpose of making independent expenditures in support of a Long Beach mayoral candidate. Thus, even prior to discovery, a prima facie case has been established.

In reply to the points raised in Respondents' Brief, the following is submitted.

I.

THE LONG BEACH CAMPAIGN REFORM ACT IS PROPERLY APPLIED TO THE ACTIONS OF THE CCNE.

As with all litigation, it is important initially to separate those issues on which there is no disagreement. Respondent CCNE is a state general purpose committee. It was formed long before the Long Beach 2002 elections. It was not initially formed to support candidate(s) in a single

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[1] The Act does not purport to limit expenditures (except in conjunction with the receipt of matching funds), and therefore does not run afoul of Buckley v. Valeo, 424 U.S. 1 (1976).

election. In the year 2001, it made certain expenditures for non-Long Beach elections (in Los Angeles and West Hollywood). All of the above the City concedes. However, from none of the above does it follow that those activities admittedly in support of a Long Beach mayoral candidate, do not subject CCNE to Long Beach's campaign law.

a. The definition of "person" clearly was intended to include a committee of this nature (LBMC 2.01.210D) (C.T. 11), and Respondent cites no authority for the proposition that a state general purpose committee is not subject to local campaign laws.

b. The fact that CCNE may have been formed without reference to the Long Beach elections is irrelevant.

c. Similarly, contributions received and expenditures made in 2001 for non-Long Beach elections are irrelevant.

The operative actions are not the formation of the committee, nor its activities in unrelated elections. The document filed by the CCNE with the Long Beach City Clerk (Recipient Committee Campaign Statement, Form 460; C.T. 243-249) establishes that CCNE, notwithstanding its status, interjected itself into the Long Beach election and in doing so subjected itself to its campaign laws.

II.

THE OPINIONS EXPRESSED BY THE FAIR POLITICAL PRACTICES COMMISSION AND THE LOS ANGELES ETHICS COMMISSION ARE NOT APPLICABLE TO THIS LAWSUIT AND IN ANY EVENT ARE NOT BINDING UPON THIS COURT.

Respondents reference opinions of the Fair Political Practices Commission (FPPC) and two opinions of the Los Angeles Ethics Commission (LACEC).

The FPPC opinion (C.T. 178-195) is not pertinent, since it analyzes Proposition 34 (Gov. Code, § 85312 et seq.), and therefore involves a critical element lacking here – "member communications." The CCNE does not and cannot claim that its expenditures constituted attempts to communicate with its members, since it claims no members. Similarly, the LACEC opinion to Mr. Olson (C.T. 214-222), also analyzes a factual scenario involving member communications.

In the other referenced LACEC opinion (the letter to Mr. Zackson; C.T. 196-198), it was expressly stipulated that no contributions were made specifically for the City election – again, not here the case.

In any event, these opinions do not bind this Court. (Federal Election Commission v. Democratic Senatorial Campaign Committee, et al., 454 U.S. 27, 32 (1981) (citing SEC v. Sloan, 436 U.S. 103, 118 (1978);

FMC v. Seatrain Lines, Inc., 411 U.S. 726, 745-746 (1973); Volkswagenwerk v. FMC, 390 U.S. 261, 272 (1968); NLRB v. Brown, 380 U.S. 278, 291 (1965).

Finally, although as stated the split FPPC opinion is not pertinent, the majority analysis vis-a-vis the constitutional authority of a local agency to enact local campaign laws is badly flawed, and constitutes a journey into municipal home rule analysis it is not authorized to make.

III.

GOVERNMENT CODE SECTION 81009.5 DOES NOT BAR THE CITY'S ACTION.

Respondents (at pp. 15-16) cite Government Code section 81009.5(b) as somehow limiting the City's authority to bring this action. Not true. By its terms it applies only to additional filing requirements. More to the point is the following:

> "Nothing in this title (including section 81009.5) prevents [a] local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title. If any act of the Legislature conflicts with the provisions of this title, this title shall prevail."

Gov. Code § 81013.

IV.

A PRIMA FACIE CASE HAS BEEN MADE THAT ONE OR MORE CONTRIBUTIONS WERE "EARMARKED" FOR A LONG BEACH ELECTION

Respondents seem to suggest (at page 17) that the crucial element lacking in the City's action is its failure to show that any contribution in violation of the Act was "earmarked" for a specific election. As authority, they cite the Zackson/LACEC opinion and the declaration of Respondent Durkee. As previously indicated, the Zackson/LACEC opinion is not pertinent, nor is it binding upon this Court.

The Durkee declaration is interesting. On its face it suggests that CCNE did believe it was subject to Long Beach's laws if contributions were "earmarked" (a position at odds with virtually every other assertion raised by CCNE). Further, she alleges that she told her CCNE solicitors:

> ". . . not to solicit contributions for the express purpose of supporting or opposing specific candidates for elective office in the City of Long Beach or to permit contributors to expressly "earmark" contributions to be used in support or oppose a specific candidate for elective office in the City of Long Beach . . ."

And she believes her solicitors followed her instructions.[2] (C.T. 148-149).

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[2] If ever a declaration invited further cross-examination by way of deposition of Durkee and her solicitors! One can only imagine how they would explain the circumstances surrounding the contribution of $15,000 by the Long Beach Police Officers' Association.

Appellant has explained the logical nexus which dictates the inference that the contributions were in fact earmarked (AOB pp. 3-4, 14-15). This declaration does nothing to dispel that inference and in fact its patently disingenuous and absurd assertions support the proposition that legal mischief was afoot.

V.

CONCLUSION

The court below invoked a statute intended to discourage frivolous lawsuits, to dismiss an enforcement action specifically authorized by a note of the citizens of Long Beach. In so doing it ignored a fundamental constitutional right of a municipality to regulate its elections.

The City has established that it is likely to prevail, but that is not the primary issue. Under no circumstances should the "SLAPP" statute have been invoked to summarily dismiss this action.

The judgment should be reversed.

Respectfully submitted,

Dated: April 28, 2003 ROBERT E. SHANNON, City Attorney

By 
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