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7 CALIFORNIA, a Coalition of Business and Taxpayer  
8 Organizations, a California Public Benefit Corporation,  
9 and KEITH RICHMAN, M.D.

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SACRAMENTO

11 CITIZENS TO SAVE CALIFORNIA, a )  
12 Coalition of Business and Taxpayer )  
13 Organizations, a California Public Benefit )  
14 Corporation; Assembly Member KEITH )  
15 RICHMAN, M.D., )

15 Plaintiffs, )

16 vs. )

17 CALIFORNIA FAIR POLITICAL )  
18 PRACTICES COMMISSSION; DOES 1 - X, )  
19 inclusive, )

20 Defendants. )

Case No.

05AS00555

COMPLAINT FOR  
PERMANENT INJUNCTION  
AND DECLARATORY RELIEF

21  
22  
23 **I. INTRODUCTION**

24 1. This action is brought to challenge an illegal regulation adopted by Defendant  
25 Fair Political Practices Commission (FPPC) which, unless enjoined, will immediately chill  
26 the exercise of the constitutionally-protected rights of speech and association on issues of  
27 substantial public importance. By this lawsuit, Plaintiffs seek an order invalidating the  
28 regulation and/or prohibiting the FPPC from enforcing it. The regulation is illegal. It is

beyond the power of the FPPC to adopt. It conflicts with and is contrary to the terms of the Political Reform Act as well as the Act's legislative history. It purports to amend that Act without adhering to the requisite procedures. And, finally, it impermissibly restricts protected association and speech rights in the most sensitive of areas---political campaigns on issues of significant importance, and thus violates the First Amendment and Article I section 2 of the California Constitution.

## II. PARTIES

2. Plaintiff CITIZENS TO SAVE CALIFORNIA ("CITIZENS") is a public benefit corporation and general purpose ballot measure committee registered with the Secretary of State on January 7, 2005. Its board members currently include Allan Zaremberg, president of the California Chamber of Commerce; William Hauck, president of the California Business Roundtable; Joel Fox, president of the Small Business Action Committee; Jon Coupal, president of the Howard Jarvis Taxpayers Association; Larry McCarthy, president of the California Taxpayers Association; and Rex Hime of the California Business Property Association. CITIZENS believes in and intends to advocate for reform in certain areas of government likely including the budget process, education and government pensions. CITIZENS generally supports the need for reform expressed by the Governor in his 2005 State of the State speech on these subjects, which are now the subject of intense public debate throughout the state. CITIZENS intends to participate in that political debate including the political campaigning that is about to occur throughout the state by supporting and/or opposing one or more initiative measures that have been or will be submitted to the California Secretary of State for title and summary in 2005. To date, 68 such proposed initiatives have been submitted to the Secretary of State, and CITIZENS is studying these initiatives to determine which to support and/or oppose.

3. Plaintiff RICHMAN is a duly elected member of the California Assembly. Plaintiff RICHMAN has a strong interest in, among other things, pension reform. He would have been a proponent of a pension reform initiative measure, but refrained from doing so because of the FPPC regulation, as discussed herein.

4. CITIZENS would consider asking Plaintiff RICHMAN and/or one of his agents to be a member of its Board of Directors and/or to participate in the development and implementation of strategy. Plaintiff RICHMAN shares many of CITIZENS' political views and is willing to so assist and associate with CITIZENS. CITIZENS, however, is prevented from asking Plaintiff RICHMAN or his agents to serve on its Board of Directors or to develop or implement strategy, because of the FPPC regulation described below.

5. CITIZENS also would consider asking the Governor and/or one or more of his agents to be a member of its Board of Directors and/or to participate in the development and implementation of strategy. CITIZENS, however, is prevented from doing these things, because of the FPPC regulation described below.

6. Defendant FAIR POLITICAL PRACTICES COMMISSION ("FPPC") is the state agency charged with the responsibility of administering the Political Reform Act, Gov. Code section 81000 et seq. ("the Act"). The FPPC is authorized to adopt regulations, but only if they "carry out [the] purposes and provisions" of the Act and are "consistent with [the Act] and other applicable law." (Gov. Code section 83112.)

7. Defendant FPPC adopted Regulation 18530.9 (2 Cal. Code Regs section 18530.9) ("the Regulation") by a 4 to 1 vote on June 25, 2004. The Regulation went into effect on November 3, 2004. On February 7, 2005, a written complaint was filed with the FPPC alleging CITIZENS is violating the Regulation and asking for a formal investigation. Plaintiffs are informed and believe and thereon allege that the FPPC has or will initiate such an investigation, premised on the incorrect belief that the Regulation is legal and enforceable.

8. Plaintiffs are unaware of the true names and capacities of Defendants DOES I through X, and sues such Defendants by fictitious names. Plaintiffs are informed and believe, and based upon such information and belief allege, that each of the fictitiously named Defendants is in some manner responsible for the actions described in this Complaint. When the true identities and capacities of these Defendants have been determined, Plaintiffs will seek leave to amend this Complaint to insert such identities and

capacities.

### III. GENERAL ALLEGATIONS

9. Under binding United States Supreme Court authority, limits on the amount of contributions to ballot measure campaign committees violate the First Amendment. (*Citizens Against Rent Control v. City of Berkeley* (1981) 454 U.S. 290) ("*Citizens Against Rent Control*").

10. The Act contains no limits on the amount a person or entity can contribute to a ballot measure campaign committee. Until the passage of the Regulation, the FPPC has never construed or applied the Act to limit contributions to ballot measure campaign committees.

11. In the November 2000 statewide election, the voters passed Proposition 34 amending portions of the Act. This measure deleted provisions of pre-existing law (imposed by Proposition 208) which purported to limit contributions to candidate campaigns but which had been enjoined as illegal by the courts, and to impose modified limits on candidate campaign contributions. Proposition 34 thus limited contributions to candidates for Governor to \$20,000, candidates for other statewide offices to \$5000 and candidates for state offices (i.e., legislative races) to \$3000.<sup>1</sup> Proposition 34 contained no limit on contributions to ballot measure committees, nor did any of the ballot materials provided to the voters give any clue that its intention or effect was to limit contributions to ballot measure committees.

12. Between its passage in 2000 and June 2004, Proposition 34 was interpreted and applied by the FPPC so as not to limit contributions to ballot measure committees.

13. On June 25, 2004, however, the FPPC adopted the Regulation effective November 3, 2004. Although there was NOTHING in Proposition 34 or its legislative history that mentioned limits on contributions to ballot measure committees, the Regulation "interprets" Proposition 34 so as to limit contributions to such committees if they are

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<sup>1</sup> These limits are adjusted to keep pace with inflation over time

1 "controlled" by a candidate.<sup>2</sup> Under the Regulation, the amount which can be contributed  
2 depends on the identity of the "controlling candidate." If the controlling candidate is a  
3 candidate for Governor, the limit is \$23,300 per contribution; if it is the Lieutenant  
4 Governor, Attorney General or other statewide office holder or candidate, the limit is \$5600;  
5 and if it a state Senator or Assembly person such as Plaintiff RICHMAN, the limit is \$3300.  
6 These distinctions in the context of a statewide ballot measure campaign are arbitrary,  
7 capricious and discriminatory; there is no rationale for them or even mention of them in  
8 either Proposition 34 itself or in its legislative history.

9 14. CITIZENS has adopted policies and practices to avoid being a controlled  
10 committee, so as to be free to solicit and accept contributions not subject to the limits of the  
11 Regulation in the exercise of its First Amendment rights. However, the filing of the  
12 aforementioned complaint with the FPPC by political opponents of CITIZENS, and the  
13 investigation thereon, casts a serious chilling effect on the actions of CITIZENS in the  
14 exercise of its fundamental rights by seeking enforcement of the illegal Regulation against  
15 CITIZENS. Additionally, CITIZENS wishes to exercise its rights of political association  
16 and speech by inviting one or more elected public officials including possibly Plaintiff  
17 RICHMAN and the Governor, or one of their agents, to be members of CITIZENS' Board  
18 of Directors, or to assist CITIZENS in developing or implementing strategy, but fears that  
19 doing so would cause CITIZENS to be "deemed" to be a controlled committee. CITIZENS  
20 is informed and believes, and thereon alleges, that committees are being or will be  
21 established which will take positions in the public debate contrary to those of CITIZENS,  
22 that those committees will not be "controlled" committees and thus will be able to receive  
23 unlimited contributions to campaign against the beliefs held by CITIZENS.

24 15. Under the Regulation, if CITIZENS were deemed to be a controlled  
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27 <sup>2</sup> A committee is "controlled" when a candidate or his/her agents "have a significant influence on the actions  
28 or decisions of the committee." (Gov. Code section 82016.) The FPPC has over the years written more than a dozen  
informal advice letters attempting to illustrate when a committee is controlled and when it is not. Among other things,  
such informal advice has stated that a committee is controlled by a candidate when the candidate or his or her agents are  
voting members of the committee's steering committee or develop and/or implement strategy.

1 committee, it would have to forego its constitutional right to solicit and receive unlimited  
2 contributions, while any non-candidate-controlled campaign committees formed to oppose  
3 CITIZENS' position in the election campaign would be allowed to receive such  
4 contributions. The severe disadvantage in the exercise of CITIZENS' speech and association  
5 rights is apparent.

6 16. Additionally, the Regulation works a severe chilling effect on the exercise of  
7 Plaintiffs' speech and association rights. For example, the aforementioned complaint to the  
8 FPPC alleging violations of the Regulation will interfere with and casts a shadow over  
9 CITIZENS' campaign activities, including critical and time-sensitive fundraising efforts.  
10 Further, the Regulation denies CITIZENS the right to solicit and accept unlimited  
11 contributions if it associates in particular ways with Plaintiff RICHMAN, the Governor, or  
12 other elected office holders in connection with the upcoming ballot measure campaigns.  
13 Similarly, it has a serious chilling effect on the rights of those who wish to make  
14 contributions to CITIZENS. Finally, it chills Plaintiff RICHMAN's speech and association  
15 right by discouraging CITIZENS and other ballot measure committees from associating with  
16 him in particular ways, out of fear that they will then be subject to a \$3300 contribution  
17 limit. The pendency of the aforementioned complaint filed with the FPPC exacerbates these  
18 damaging effects of the Regulation.

19 17. The Act imposes severe civil and criminal penalties both on committees which  
20 receive over-limits contributions (i.e., over the limits imposed by the Regulation). (Gov.  
21 Code sections 91000, 91005.5).

## 22 **FIRST CAUSE OF ACTION**

### 23 **(For Injunctive Relief including CCP § 526a.)**

24 18. Plaintiffs reallege and incorporate herein by reference each and every  
25 allegation contained in paragraphs 1 through 17, above.

26 19. The Regulation is illegal and of no force and effect for the following reasons:  
27 it is beyond the power of the FPPC to adopt; it is unauthorized attempt to "interpret"  
28 Proposition 34 in a way not consistent with voter intent; it is an illegal amendment of the Act

in violation of Gov. Code section 83112; it conflicts with Gov. Code section 85303(c); it irrationally and illegally creates distinctions in the exercise of the rights of association and speech by allowing statewide ballot measure committees who associate with and are "controlled" by state legislators to solicit and receive maximum contributions of only \$3000 while identical committees "controlled" by statewide office holders can receive up to \$5000 and committees controlled by the Governor can receive up to \$20,000, almost seven time more; and, finally, it violates the First Amendment as determined in *Citizens*, which voided all limits on contributions to ballot measure committees, and the analogous provision in the California Constitution, art. I, section 2.

20. Plaintiffs have no plain, speedy, and adequate remedy at law, in that in the absence of this Court's injunction, Plaintiffs' First Amendment rights of speech and association will be violated and their right to participate in important public debate will be restricted and chilled. Further, absent an injunction, Defendant FPPC will seek to enforce the illegal Regulation and/or investigate complaints alleging violations of said Regulation. Such actions will violate Plaintiffs' rights as stated above and will also constitute a waste of taxpayer funds in violation of Code of Civil Procedure section 526a.

## SECOND CAUSE OF ACTION

**(For Declaratory Relief, CCP § 1060)**

21. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in paragraphs 1 through 20, above.

22. A dispute has arisen between Plaintiffs, on the one hand, and Defendant FPPC, on the other. Plaintiffs believe and contend, as set forth above, that the Regulation is unlawful and that Defendant's enforcement and administration of the Regulation is likewise unlawful. Plaintiffs are informed and believe, and on that basis allege, that Defendant disagrees and intends to enforce the Regulation. A judicial declaration is therefore necessary and appropriate regarding the validity of the Regulation.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

1           1.       On the First Cause of Action, that this Court issue preliminary and permanent  
2 injunctions restraining Defendant and all persons acting pursuant to its direction and control  
3 from taking any further steps to administer and/or enforce the Regulation including without  
4 limit investigating alleged violations and complaints; and to declare the Regulation illegal.

5           2.       On the Second Cause of Action, that this Court issue its judgment declaring  
6 that the Regulation is illegal and unenforceable.

7           3.       On each and every cause of action, that this Court grant such other, different or  
8 further relief as the Court may deem just and proper.

9 Dated: February 8, 2005

NIELSEN, MERKSAMER, PARRINELLO,  
MUELLER & NAYLOR, LLP

11  
12 By: James R. Parrinello  
13 JAMES R. PARRINELLO  
14 Attorneys for Plaintiffs  
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VERIFICATION

I am the Treasurer of Citizens to Save California, a Plaintiff in the above-titled matter. I have read the foregoing COMPLAINT FOR PERMANENT INJUNCTION AND DECLARATORY RELIEF. I know the contents thereof, and the same is true of my own knowledge, except as to matters therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 8, 2005, at Mill Valley, California.

Vigo G. Nielsen, Jr.  
Vigo G. Nielsen, Jr.