
UNFINISHED BUSINESS

Bill No: SB 1358
Author: Portantino (D)
Amended: 8/22/22
Vote: 27 - Urgency

SENATE APPROPRIATIONS COMMITTEE: 6-0, 6/27/22
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Wieckowski
NO VOTE RECORDED: Laird

SENATE FLOOR: 33-0, 6/30/22
AYES: Allen, Archuleta, Atkins, Bates, Becker, Bradford, Caballero, Cortese,
Dahle, Dodd, Durazo, Eggman, Glazer, Hertzberg, Hueso, Jones, Kamlager,
Leyva, Limón, McGuire, Min, Newman, Nielsen, Pan, Portantino, Roth, Rubio,
Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NO VOTE RECORDED: Borgeas, Gonzalez, Grove, Hurtado, Laird, Melendez,
Ochoa Bogh

ASSEMBLY FLOOR: Not available

SUBJECT: State claims

SOURCE: Author

DIGEST: This bill appropriates \$2.88 million from the General Fund to the Department of Justice (DOJ) for the payment of a specified claim against the state. Any funds appropriated in excess of the amounts required for payment of the claims would revert to the state. This bill also appropriates \$247 from the Motor Vehicle Account to the Department of General Services (DGS) for the payment of a state claim for the reissuance of a stale dated warrant (expired check) under the Government Claims Program.

Assembly Amendments increase the General Fund appropriation to the DOJ by \$250,000, to \$3.13 million, for the payment of an additional claim against the state.

ANALYSIS: This bill is one of several annual bills carried by the chairs of the Appropriations Committees to provide appropriation authority for claims, settlements, and judgments approved by DOJ and the Department of Finance (DOF). They are binding state obligations.

This bill appropriates funding for the payment of the following claims:

- 1) *Thomas More Law Center v. Bonta (C.D.Cal. March 28, 2022, No. 2:15-cv-03048-CAS)*. \$2.88 million for court-ordered attorney's fees and costs, payable from the General Fund.

This claim involves a First Amendment challenge to a California statute that required charities operating in the state to submit a copy of IRS Form 990, including Schedule B, which includes the names and addresses of an organization's major donors who contribute \$5,000 or more. Charities must generally register with the Attorney General (AG) and renew registrations annually. Upon renewal, charities must file copies of their IRS Form 990, which must be made available to the public and includes information about an organization's mission, leadership, and finances, as well as Schedule B, which discloses the organization's major donors but is not public. The latter information is intended to further the State's interest in policing misconduct by charities.

Since 2001, Thomas More Law Center (TMLC), a tax-exempt charity that solicits contributions in California, has filed its Form 990 as part of its annual registration renewal, but without including its Schedule B in an attempt to preserve donor anonymity. On March 6, 2012, the AG indicated that TMLC's 2010 filing was insufficient due to its failure to include a Schedule B. When TMLC continued to resist disclosing contributors' identities, the AG threatened registration suspension and fines for noncompliance for not filing Schedule B forms each year from 2010 through 2013.

On April 23, 2014, TMLC (Plaintiff) filed a complaint in the federal District Court, alleging the California law requiring disclosure of its Schedule B to the AG was facially unconstitutional as a violation of its First Amendment rights, and those of its donors. The District Court granted preliminary injunctive relief prohibiting the AG from collecting Schedule Bs. The decision was appealed by the AG and the Ninth Circuit Court of Appeals vacated and remanded, reasoning that precedent required rejection of the Plaintiff's facial challenge. Applying an "exacting scrutiny" standard, the panel narrowed the District Court's injunction, and allowed the AG to collect the Plaintiff's Schedule Bs as

long as they were not publicly disclosed. On remand, the District Court entered judgment for the Plaintiff and permanently enjoined the AG from collecting Schedule Bs because collection of that information was not narrowly tailored to investigate charitable misconduct or to detect fraud, and disclosure burdened the associational rights of donors. The District Court also found that California was unable to ensure confidentiality of donors' information. The Ninth Circuit again vacated the District Court's injunction and reversed the judgments, and remanded for entry of judgment in favor of the AG, finding that collection of Schedule Bs promoted investigative efficiency and effectiveness, and would not meaningfully burden donors' associational rights. Ultimately, on July 1, 2021, the United States Supreme Court issued an opinion on the matter and concluded that California's disclosure requirement is facially invalid because it burdens donors' First Amendment rights and is not narrowly tailored to an important government interest. Following the Supreme Court opinion, the District Court entered an order granting the parties' stipulation to modify the judgment on December 28, 2021, permanently enjoining the AG from requiring any registrant to file a periodic report containing a copy of its Schedule B to IRS Form 990.

The Plaintiff made a demand for attorney fees and costs incurred in the actions, including the appeals and Supreme Court proceedings. On March 28, 2022, the District Court granted the plaintiff's motion for attorneys' fees, expenses, and costs in the amount of \$2,840,603.13 (\$2,763,830 in attorneys' fees and \$76,773.13 in costs). Pursuant to federal law, interest accrues on any money judgment entered by federal district courts in civil cases, which DOJ anticipates to be \$40,000. On May 24, 2022, the Department of Finance approved the payment for attorneys' fees, costs, and interest in the amount of \$2,880,603.13 from the General Fund.

- 2) *Institute for Free Speech (fka Center for Competitive Politics) v. Bonta (E.D. Cal., March 31, 2022, No. 2:14-cv-00636-MCE)*. \$250,000 settlement, payable from the General Fund.

This claim is substantially similar to the TMLC claim noted above, and a previous claim involving a challenge brought by Americans for Prosperity that was included in SB 1355 (Portantino), Chap. 74/2022. These claims involved a First Amendment challenge to a California statute that required charities operating in the state to submit a copy of IRS Form 990, including Schedule B, which includes the names and addresses of an organization's major donors who contribute \$5,000 or more, as part of annual registration with the AG.

Since 2008, the Center for Competitive Politics (CCP), a tax-exempt charity that solicits contributions in California, has filed its Form 990 as part of its annual registration renewal, but redacted the names and addresses of its contributors from its Schedule B in an attempt to preserve donor anonymity. On February 6, 2014, the AG sent a letter to CCP indicating that its annual filing was incomplete because the copy of Schedule B did not include the names and addresses of contributors. The AG sent a subsequent warning letter, threatening registration suspension and fines for noncompliance.

On March 7, 2014, CCP (later known as Institute for Free Speech) filed a complaint in the federal District Court, alleging the California law requiring disclosure of its Schedule B to the AG was facially unconstitutional as a violation of its First Amendment rights, and those of its donors. Multiple appellate proceedings ensued, including several suits filed in the Ninth Circuit, as well as Supreme Court proceedings (*Center for Competitive Politics v. Kamala Harris*, No. 15-152 [S.Ct.] and *Institute for Free Speech v. Bonta*, No. 19-793 [S.Ct.]). On July 1, 2021, the Supreme Court held in a different matter that “California’s blanket demand for Schedule Bs is facially unconstitutional,” (*Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2385 [2021]). Following the Supreme Court opinion and a Ninth Circuit Court of Appeals order issued on December 28, 2021, the District Court entered an order granting the parties’ stipulation to modify the judgment on March 31, 2022, permanently enjoining the AG from requiring any registrant to file a periodic written report containing a copy of its Schedule B to IRS Form 990.

The Plaintiff made a demand for attorney fees and costs incurred in the actions, including the appeals and Supreme Court proceedings. To avoid further litigation, the parties agreed to a settlement agreement in the amount of \$250,000 for attorney fees and costs, and further agreed that no interest will accrue on the payment. On August 12, 2022, the Department of Finance approved the settlement payment of \$250,000 from the General Fund.

- 3) *Stale dated warrant*. \$247 for reissuance of a stale dated warrant related to a Vehicle License Fee reimbursement, payable from the Motor Vehicle Account.

Background

Under existing law, if there is no sufficient appropriation for the payment of claims, settlements, or judgments against the state arising from an action in which the state is represented by the Attorney General, DOJ must report that amount to the chairperson of either the Senate or Assembly Appropriations Committees. The

chairperson must introduce a bill appropriating funds for the payment of those claims, settlements, or judgments.

Similarly, under the Government Claims Program, if DOF certifies that insufficient funding is available to discharge all of a state liability resulting from a claim, DGS reports the amount necessary to pay the claim to the Legislature. The re-issuance of stale-dated warrants (expired checks) is the most prevalent claim accepted by DGS's Government Claims Program. For stale-dated warrants, the State Controller must confirm the check was not cashed and that more than three years has passed since the check was issued and the monies have reverted to the General Fund or to the relevant special fund. For these warrants an appropriation is needed to reissue the payment

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- One-time appropriation of \$2,880,603.13 from the General Fund to DOJ in 2022-23 to pay court-ordered attorneys' fees and costs arising from *Thomas More Law Center v. Bonta (C.D.Cal. March 28, 2022, No. 2:15-cv-03048-CAS)*.
- One-time appropriation of \$250,000 from the General Fund to DOJ in 2022-23 to pay court-ordered attorneys' fees and costs arising from *Institute for Free Speech (fka Center for Competitive Politics) v. Bonta (E.D. Cal., March 31, 2022, No. 2:14-cv-00636-MCE)*.
- One-time appropriation of \$247 from the Motor Vehicle Account to DGS in 2022-23 for the re-issuance of an expired check for a vehicle license fee reimbursement.

SUPPORT: (Verified 8/29/22)

None received

OPPOSITION: (Verified 8/29/22)

None received

Prepared by: Mark McKenzie / APPR. / (916) 651-4101
8/31/22 13:52:37

**** END ****