

SENATE THIRD READING
SB 1355 (Portantino)
As Amended May 10, 2022
2/3 vote. Urgency

SUMMARY

This bill appropriates \$8.8 million from the General Fund to the Department of Justice (DOJ) for the payment of two specified claims against the state. Any funds appropriated in excess of the amounts required for payment of the claims would revert to the General Fund.

Specifically, this bill appropriates:

- 1) \$8 million for the payment of claims, settlements or judgements against the state arising from *Americans for Prosperity Foundation v. Kamala Harris* (C.D. Cal. Dec. 9, 2021, No. 2:14-cv-09448).
- 2) \$800,000 for the payment of claims, settlements or judgements against the state arising from *Cedar Point Nursery v. Hassid, et al.* (E.D. Cal. Sept. 1, 2021, No. 1:16-cv-00185).

Major Provisions

None.

COMMENTS

- 1) *Purpose.* This bill is one of several annual bills, authored by chair of either the Senate Appropriations Committee or the Assembly Appropriations Committee, to provide appropriation authority for legal settlements approved by DOJ and the Department of Finance (DOF). These settlements were entered into lawfully by the state upon advice of counsel (DOJ). They are binding state obligations.
- 2) *Background.*
 - a) *Americans for Prosperity v. Kamala Harris* (C.D. Cal. Feb. 23, 2015, No. 2:14-cv09448). \$8 million settlement, payable from the General Fund. This claim involves a First Amendment challenge to a California statute that required any charity operating in the state to submit a copy of IRS Form 990, including Schedule B, which includes the names and addresses of the organization's major donors. A charity must generally register with the Attorney General (AG) and renew registrations annually. Upon renewal, a charity must file copies of its 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, Americans for Prosperity, 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 7, 2013, the AG declared the entity's 2011 filing incomplete because it did not include Schedule B and threatened registration suspension and fines for noncompliance.

On December 9, 2014, Americans for Prosperity (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 remanded by the Ninth Circuit Court of Appeals, 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 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 U.S. 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 and a Ninth Circuit Court of Appeals order issued on August 27, 2021, the District Court entered an order granting the parties' stipulation to modify the judgment on December 9, 2021.

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 \$8 million for attorney fees and costs, and further agreed that no interest will accrue on the payment. The agreement stipulates that if the payment is not made by June 30, 2022, the Plaintiff retains the right to ask the District Court to put its motion for attorney fees and costs back on the calendar for hearing.

On April 7, 2022, DOF approved the settlement payment of \$8 million from the General Fund.

- b) *Cedar Point Nursery v. Hassid, et al. (9th Cir. Aug. 4, 2021, No. 1:15-cv-00185). \$800,000 settlement, payable from the General Fund.* This claim involves a Fourth Amendment and Fifth Amendment challenge to a state regulation of the Agricultural Labor Relations Board (ALRB) that gives union organizers the right to access private property for the purpose of soliciting support, subject to specified time, place and manner restrictions, including a requirement that a union must file a written Notice of Intent to Take Access as well as service on the agricultural employer.

On February 10, 2016, Cedar Point Nursery and Fowler Packing Company (Plaintiffs) filed a complaint in federal District Court alleging the access regulation imposes an easement across the Plaintiffs' private property for the benefits of union organizers, and deprives the Plaintiffs of the right to exclude trespassers from private property and seizes a possessory interest in that property, in violation of the Fourth and Fifth Amendments to the United States Constitution. Defendants were specified members of the ALRB in their

official capacities as board members, and were charged in the complaint with enforcing the access regulation. The District Court dismissed the Plaintiffs' Fifth Amendment claim, and the decision was appealed. The U.S. Supreme Court issued a January 23, 2021, opinion, and the Ninth Circuit Court of Appeals issued an order on August 4, 2021, reversing the District Court's judgement of dismissal of the Plaintiffs' claim and remanded the case for further proceedings. The District Court entered a judgement in the Plaintiffs' favor on September 1, 2021, and the Plaintiffs made a demand for attorney fees and costs incurred in the actions. To avoid further litigation, the parties entered a settlement agreement in the amount of \$800,000 for attorney fees and costs, and further agreed that no interest will accrue on the payment.

On February 23, 2022, DOF approved the settlement payment of \$800,000 from the General Fund.

Arguments in Support

None on file.

Arguments in Opposition

None on file.

FISCAL COMMENTS

- 1) One-time General Fund appropriation of \$8 million in fiscal year (FY) 2022-23 to DOJ to pay the settlement arising from Americans for Prosperity v. Kamala Harris.
- 2) One-time General Fund appropriation of \$800,000 in FY 2022-23 to DOJ to pay the settlement arising from Cedar Point Nursery v. Hassid, et al.

VOTES

SENATE FLOOR: 32-0-8

YES: Allen, Archuleta, Atkins, Bates, Dahle, Dodd, Durazo, Eggman, Glazer, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Stern, Wieckowski, Wiener, Wilk
ABS, ABST OR NV: Becker, Borgeas, Bradford, Caballero, Cortese, Gonzalez, Newman, Umberg

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Bigelow, Bryan, Calderon, Carrillo, Megan Dahle, Davies, Mike Fong, Fong, Gabriel, Levine, Quirk, Robert Rivas, Akilah Weber, Wilson
ABS, ABST OR NV: Eduardo Garcia

UPDATED

VERSION: May 10, 2022

CONSULTANT: Jay Dickenson / APPR. / (916) 319-2081

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