



MEMORANDUM

To: Chair Ravel, Commissioners Casher, Eskovitz, Wasserman and Wynne

From: Gary S. Winuk, Chief of Enforcement
Angela J. Brereton, Senior Commission Counsel

Date: August 8, 2013

RE: Request for Administrative Hearing by Commission

Case Name: In the Matter of Charles R. “Chuck” Reed, San José Fiscal Reforms, Mayor Reed, Chamber PAC And Issues Mobilization PAC Proponents, and Benjamin J. Roth (FPPC Case No. 12/761)

I. INTRODUCTION

Commission staff and the named Respondents above jointly anticipate that this matter will require an administrative hearing for resolution. Commission staff and the named Respondents request that the Commission hear this matter itself pursuant to Section 83116 of the Political Reform Act (the “Act”)¹ and the Administrative Procedure Act (the “APA”).²

II. PROCEDURAL HISTORY

This case arose from a formal complaint received by the Commission on October 11, 2012. On or about October 23, 2012, the Enforcement Division opened this case.

Probable Cause proceedings which the parties intend to be based upon stipulated facts are currently in progress. Should a Finding of Probable Cause be made in this case, the Enforcement Division will issue and serve an Accusation upon the named Respondents.

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¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

III. SUMMARY OF THE DISPUTE

Commission staff and the named Respondents intend that the facts in this case will be stipulated, and therefore will not be in dispute at the time of the Administrative Hearing. The dispute primarily involves two legal issues:

- 1) Was Respondent Charles R. “Chuck” Reed, the Mayor of San José, who was serving his second and final term of office, had terminated his candidate campaign committee in January 2011, and was not running for election to another office, a candidate under the Act in 2012?
- 2) Did Section 85501 prohibit Respondent San José Fiscal Reforms, Mayor Reed, Chamber PAC And Issues Mobilization PAC Proponents, a controlled committee of Respondent Charles R. “Chuck” Reed (the Mayor of San José, who was serving his second and final term of office, had terminated his candidate campaign committee in January 2011, and was not running for election to another office), from making a contribution in September 2012 to another committee for the purpose of making independent expenditures supporting and opposing local candidates?

Because the Commission is the agency charged with interpreting and enforcing the Act, Commission staff and the named Respondents believe that the Commission itself should hear and decide the disputed issues in this enforcement case. Additionally, Commission staff and the named Respondents are cooperating in reaching agreement on the stipulated facts so that the Probable Cause proceedings and service of the Accusation (should a Finding of Probable Cause be made) will be expedited.

Additionally, to further expedite the Hearing in this matter, Respondents have agreed to waive some procedural rights regarding the Probable Cause Proceeding under the Political Reform Act, and the Administrative Hearing under the Administrative Procedure Act, including the 21-day notice requirement as stated in Section 83115.5 and Regulation 18361.4, subdivision (b), the right to a Probable Cause Conference as stated in Section 83115.5 and Regulation 18361.4, subdivision (d), the 15-day notice requirement in Section 11505, and the right to have an Administrative Law Judge hear the case as stated in Section 11512.

Because the parties intend to stipulate to the facts in advance of the Hearing, the parties do not anticipate calling any witnesses to present evidence in this case. Thus, the Commission will consider the stipulated facts, or, in the absence of such stipulation, those facts presented by the parties, and the arguments presented by the parties when deciding the matter. The issues presented at the Hearing will be limited to the legal arguments regarding the disputed issues and the penalty amount should the Commission determine there are violations of the Act. The parties estimate that the Hearing will last approximately one (1) hour.

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Each of the parties will submit written arguments for the Commission's consideration, and the parties request the following briefing schedule:

- 1) Each party will submit an opening brief no later than ten (10) days prior to the Hearing;
- 2) Each party will submit a reply brief, if they so choose, no later than five (5) days prior to the Hearing.

The parties request that the Commission issue a written Decision and Order after the Hearing.

IV. CONCLUSION

Commission staff and the named Respondents request that the matter be scheduled for Hearing at the September 19, 2013 Commission Meeting, or the first available date thereafter upon which the Commission is available.

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