

Memorandum
Fair Political Practices Commission

To: FPPC Vice Chair Escovitz and Commissioners Casher, Wasserman and Wynne

From: Zackery P. Morazzini, General Counsel
Heather M. Rowan, Senior Commission Counsel

Subject: Pending Litigation

Date: April 2, 2014

Charles R. “Chuck” Reed v. Fair Political Practices Commission

San Jose Mayor Reed filed a petition for a writ of administrative mandamus in Sacramento Superior Court seeking relief from the Commission’s Decision and Order in case 12/761. Following an administrative hearing that the parties agreed to present to the Commission in September 2013, the Commission found that Mr. Reed had violated Section 85501 of the Act by using campaign committee funds to fund independent expenditures in support or opposition of other candidates, and issued a \$1.00 fine. Mayor Reed challenged that decision, alleging that he was not a “candidate” under the Act, that Section 85501 is unconstitutional on its face, and that the Commission otherwise misapplied provisions of the Act. The court issued a ruling finding that although Mr. Reed was a “candidate” under the Act, Section 85501 is unconstitutional on its face in that it impermissibly restricts independent expenditures of candidates, who do not lose their First Amendment rights while holding office. The court ordered the Commission to vacate its decision regarding Mr. Reed. The ruling has not yet become final, and no judgment or writ have been issued by the court.

ProtectMarriage.Com et al. v. Bowen et al.

On January 9, 2009 in the United States District Court for the Eastern District of California, plaintiffs ProtectMarriage.com - Yes on 8, a Project of California Renewal and National Organization for Marriage California - Yes on 8, Sponsored by National Organization for Marriage filed this action. It is a “defendants class action” lawsuit against defendants responsible either for enforcement of the Act, or maintenance and publication of the campaign reports at issue in this case (including the Commission, Attorney General, Secretary of State and various district and city attorneys).

Plaintiffs challenge the Act’s campaign disclosure requirements on contributions to ballot measure committees as unconstitutional. They cite a variety of adverse actions against persons who supported Proposition 8, which was on the November 2008 ballot, alleging that some of these persons were identified through campaign contribution information made public as required by the Act’s campaign reporting and disclosure provisions. The Complaint seeks to permanently enjoin the future disclosure of all of plaintiffs’ contributors, expunge the records of all of plaintiffs’ past contributors, and to invalidate as unconstitutional the Act’s \$100 disclosure threshold for contributors to ballot measure committees, the Act’s requirement for post-election disclosure of contributors to ballot measure committees, and the Act’s failure to purge the records of contributors to ballot measure committees after the election. In all counts, plaintiffs

seek declaratory and injunctive relief, and an award of attorney's fees.

On October 11, 2013, the Ninth Circuit Court of Appeals heard oral arguments in the matter. The parties now await the Court's written decision.

Tony Dane v. Fair Political Practices Commission

Tony Dane, a respondent in an Enforcement Division case, filed, in a Las Vegas, Nevada Court, a motion to quash an Enforcement division subpoena that was issued to Wells Fargo Bank. The FPPC then filed a motion to compel production in Sacramento Superior Court and prevailed in both cases. Tony Dane then sued the FPPC in Nevada for malicious prosecution and abuse of process. On June 14, 2012 the Nevada judge dismissed the malicious prosecution claim, but declined to dismiss the abuse of process claim on the basis that Dane had alleged ill will (essentially that the FPPC was 'out to get him' based upon his political beliefs). The judge ruled that under the state's loose "notice pleading" standards this was sufficient to preserve that cause of action. Dane's attorney recently withdrew as counsel so Dane is currently not represented in this case. The FPPC filed a motion for summary judgment on December 19, 2013 in Nevada state court. The hearing on that motion was set for January 22, 2014. The judge continued the hearing, however, because Mr. Dane moved out of state and claimed to have not received notice of the hearing date. The court granted the FPPC's motion at a hearing on February 7, 2014.

Shong-Ching Tong v. Fair Political Practices Commission

On February 10, 2012, Shong-Ching Tong filed a writ of administrative mandamus against the Commission, seeking relief from the Commission's Decision and Order in *In the Matter of Shong-Ching Tong*, FPPC No. 10/449, where Shong-Ching Tong was fined by the Commission for campaign-related violations. On December 19, 2012, the Court dismissed the case due to Petitioner's status as a vexatious litigant. On January 4, 2013, the Court vacated its December 19, 2012, order that the case be dismissed, and ordered the Commission to produce the administrative record. The Los Angeles Superior Court heard the petition for administrative mandamus on November 27, 2013, and, on December 23, 2013, the Court denied Petitioner Tong's petition.

On March 10, 2014, the Commission received notice that Shong-Ching Tong is appealing to the 2nd District Court of Appeal the Los Angeles Superior Court's decision to deny his petition for writ of administrative mandate. The Commission has not received a briefing schedule as of yet.