

Memorandum
Fair Political Practices Commission

To: FPPC Chair Remke and Commissioners Casher, Eskovitz, Wasserman and Wynne

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

Subject: Pending Litigation

Date: June 5, 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. On April 7, the Court’s order issuing a peremptory writ of mandate became final.

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 May 20, 2014, the Ninth Circuit issued its ruling, affirming the District Court's decision in part, and remanding with instructions to vacate the facial challenge portion of the decision. The Court upheld the Act's \$100 threshold for disclosure of contributions and found California's interest in post-election reporting is important and not unduly burdensome. The Court also found the challenge to already-disclosed contributor information non-justiciable as moot.

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 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 the Superior Court's decision to deny his petition for writ of administrative mandate. The Commission has not received a briefing schedule.

Fair Political Practices Commission v. James L. McGhee

James L. McGhee was a member of the California Board of Psychology until June 1, 2011, and was therefore required to file a leaving office statement of economic interests ("Leaving Office SEI") by July 1, 2011. On May 9, 2012, the Enforcement Division received a referral for Mr. McGhee's failure to timely file a Leaving Office SEI. Despite numerous requests by the Enforcement Division that he file the delinquent statement, Mr. McGhee refused to file a Leaving Office SEI.

On April 17, 2014, the Commission, in a default decision, imposed a \$4,000 fine on Mr. McGhee for his failure to file a Leaving Office SEI, and ordered that he immediately file a Leaving Office SEI with the Commission. (In the Matter of James McGhee, FPPC No. 12/321.)

On June 2, 2014, the Enforcement Division, due to his failure to comply with the Commission's order that he file a Leaving Office SEI, filed a complaint against Mr. McGhee with the Sacramento County Superior Court. The complaint seeks an order from the court that requires Mr. McGhee to comply with the Commission's order by immediately filing a Leaving Office SEI with the Commission.