



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

September 10, 2013

Personally delivered

Fair Political Practices Commission
Kelli Breton, Commission Assistant
428 J Street, Suite 620
Sacramento, CA 95814

Re: FPPC No. 12/761; In the Matter of Chuck Reed; San Jose Fiscal Reforms, Mayor Reed, Chamber PAC and Issues Mobilization PAC Proponents; and Benjamin Roth

Hearing Date: September 19, 2013

Hearing Time: 10:00 a.m.

Hearing Place: 428 J Street, 8th Floor Hearing Room, Sacramento, CA 95814

Dear Ms. Breton:

Enclosed please find the Accusation for the Administrative Hearing in this matter, which is on calendar for the Commission's September 19, 2013 Meeting. This Accusation was served on Respondents on September 3, 2013 (the proof of service is included).

Thank you very much.

Sincerely,

A handwritten signature in blue ink that reads "Angela J. Brereton".

Angela J. Brereton
Senior Commission Counsel
Enforcement Division

Enclosures

CC: (via email, without enclosures)

James R. Sutton, Esq.

Jesse A. Mainardi, Esq.

The Sutton Law Firm

o/b/o Charles R. "Chuck" Reed, San José Fiscal Reforms, Mayor Reed, Chamber PAC And Issues Mobilization PAC Proponents, and Benjamin J. Roth

jsutton@campaignlawyers.com

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On September 10, 2013, I served the following document(s):

1. **Cover Letter from Angela J. Brereton dated September 10, 2013;**
2. **ACCUSATION (Gov. Code §11503.) FPPC No. 12/761; 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, with Proof of Service dated September 3, 2013.**

By Personal Delivery. I personally delivered the document(s) listed above to the person(s) at the address(es) as shown on the service list below.

By email or electronic transmission. I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

I am a resident or employed in the county where the delivery occurred. The envelope was delivered in Sacramento County, California.

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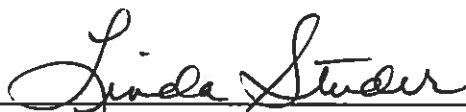
Personal Delivery

Fair Political Practices Commission
Kelli Breton, Commission Assistant
428 J Street, Suite 620
Sacramento, CA 95814

Email Transmission (cover letter only)

James R. Sutton, Esq.
Jesse A. Mainardi, Esq.
The Sutton Law Firm
o/b/o Charles R. "Chuck" Reed, San José Fiscal Reforms, Mayor Reed, Chamber PAC
And Issues Mobilization PAC Proponents, and Benjamin J. Roth
jsutton@campaignlawyers.com
jmainardi@campaignlawyers.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 10, 2013.



Linda Studer

1 GARY S. WINUK
Chief of Enforcement
2 ANGELA J. BRERETON
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
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4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of) FPPC No. 12/761
12)
13)
14 CHARLES R. "CHUCK" REED,) ACCUSATION
15 SAN JOSÉ FISCAL REFORMS, MAYOR)
16 REED, CHAMBER PAC AND ISSUES)
17 MOBILIZATION PAC PROPONENTS,)
and BENJAMIN J. ROTH,) (Gov. Code §11503)
18)
19)
20 Respondents.)

21
22 Complainant, the Fair Political Practices Commission, after a finding of probable cause made
23 pursuant to Government Code section 83115.5, hereby alleges the following:

24 **JURISDICTION**

25 1. Complainant is the Fair Political Practices Commission (the "Commission") and makes
26 this Accusation in its official capacity and in the public interest.

27 2. The authority to bring this action is derived from Title 2, California Code of
28 Regulations, Sections 18361 and 18361.4, subdivision (e), and the statutory law of the State of
California, specifically including, but not limited to, Government Code sections 83111, 83116, and
91000.5, which assign to the Commission the duty to administer, implement, and enforce the
provisions of the Political Reform Act, found at Government Code sections 81000 through 91014.

1 3. When enacting the Political Reform Act (the “Act”),¹ California voters specifically
2 found and declared, as stated in Sections 81001, subdivision (h), and 81002, subdivision (f), that
3 previous laws regulating political practices had suffered from inadequate enforcement, and it was their
4 purpose to ensure that the Act be vigorously enforced.

5 4. To that end, Section 81003 requires that the Act be liberally construed to achieve its
6 purposes, and Section 81002 requires adequate enforcement mechanisms so that the Act will be
7 “vigorously enforced.”

8 **RESPONDENTS**

9 5. Respondent Charles R. “Chuck” Reed (“Respondent Reed”) is currently the Mayor of
10 San José, CA.

11 6. Respondent San José Fiscal Reforms, Mayor Reed, Chamber PAC and Issues
12 Mobilization PAC Proponents (“Respondent Committee”) is a general purpose committee controlled
13 by Respondent Reed.

14 7. At all relevant times, Respondent Benjamin J. Roth (“Respondent Roth”) was the
15 treasurer of Respondent Committee.

16 8. The actions of Respondents – using funds of a candidate controlled committee to
17 contribute to another committee for the purpose of making independent expenditures supporting or
18 opposing other candidates, as hereinafter stated – were in violation of the law and public policies of the
19 State of California.

20 **APPLICABLE LAW**

21 9. All applicable law referenced herein is the law as it existed during the relevant time for
22 the violations alleged in this Accusation, namely 2005 through 2012.

23
24
25 ///

26
27 ¹The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are
28 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.

1 **A. Definitions**

2 **i. Candidate**

3 10. Section 82007 defines "candidate" as follows:

4 "Candidate" means an individual who is listed on the ballot or who has qualified
5 to have write-in votes on his or her behalf counted by election officials, for nomination
6 for or election to any elective office, or who receives a contribution or makes an
7 expenditure or gives his or her consent for any other person to receive a contribution or
8 make an expenditure with a view to bringing about his or her nomination or election to
9 any elective office, whether or not the specific elective office for which he or she will
10 seek nomination or election is known at the time the contribution is received or the
11 expenditure is made and whether or not he or she has announced his or her candidacy or
12 filed a declaration of candidacy at such time. "Candidate" also includes any officeholder
13 who is the subject of a recall election. *An individual who becomes a candidate shall
14 retain his or her status as a candidate until such time as that status is terminated
15 pursuant to Section 84214.* "Candidate" does not include any person within the meaning
16 of Section 301(b) of the Federal Election Campaign Act of 1971. (Emphasis added).

17 Thus, pursuant to Section 82007, an individual's status as a candidate does not change until that status
18 is terminated pursuant to Section 84214. Section 84214 (Termination) states, in part:

19 [C]andidates shall terminate their filing obligation pursuant to *regulations
20 adopted by the Commission* which insure that a ... candidate will have no activity which
21 must be disclosed pursuant to this chapter subsequent to the termination. (Emphasis
22 added).

23 11. In 1977, the Commission adopted Regulation 18404 to specify the methods by which
24 candidates and committees terminate their filing obligations under the Act. Amendments followed in
25 1978, 1982, and 1986 to further clarify those rules. The most recent and most comprehensive
26 amendment to Regulation 18404 occurred in 1999, during which the Commission added, in its
27 entirety, subdivision (d), which states as follows:

28 Candidates and Officeholders. Pursuant to Government Code Section 82007, a
candidate (which term includes an officeholder) is obligated to file campaign statements
under the Act until his or her status as a candidate is terminated. An officeholder must
file campaign statements required under the Act during the entire time the individual
holds office. The filing obligations of a candidate or officeholder terminate as follows:

(1) Candidates or Officeholders with Committees. The filing obligations of a
candidate or officeholder who has one or more controlled committees terminate when
the individual has terminated all his or her controlled committee(s) and has left office.

(2) Candidates or Officeholders without Committees. The filing obligations of a
candidate or officeholder who does not have a controlled committee, and who received
contributions and made expenditures of less than \$1,000 in the calendar year and filed a
Form 470, terminate at the end of the calendar year for which the Form 470 was filed if:

- (A) the candidate lost, withdrew, or was not on the ballot in the election; or
- (B) the individual left office during the calendar year; and

1 (C) the individual has ceased to receive contributions and make expenditures and
has filed all required campaign statements.

2 12. Additionally, in 1987, the Commission affirmatively held in a formal Commission
3 Opinion that an officeholder, even during a nonelection year, is a candidate under the Act:

4 Once a person becomes a candidate within the meaning of the Act, he or she
5 retains his or her status as a candidate until that status is terminated ... pursuant to
6 Section 84214. Accordingly, all elected officeholders are "candidates," even during a
7 nonelection year. (In re Lui (1987) 10 FPPC Ops. 10, 11-12.)²

8 13. Between 1985 and 2012, the Commission issued no fewer than 62 advice letters which
9 clearly state that an officeholder is a candidate under the Act. (See attached Exhibit B.)

10 14. In the section for the definition of "candidate," the Commission's campaign manual
11 available in 2012 for local candidates stated, "An elected officeholder also is considered to be a
12 candidate under the Act." (FPPC Campaign Manual 2, Appendix 1-1.)

13 **ii. Controlled Committee**

14 15. Section 82016 defines "controlled committee," in relevant part, as follows:

15 "Controlled committee" means a committee that is controlled directly or indirectly
16 by a candidate ... or that acts jointly with a candidate ... in connection with the making of
17 expenditures. A candidate ... controls a committee if he or she, his or her agent, or any
18 other committee he or she controls has a significant influence on the actions or decisions of
19 the committee.

20 **iii. Independent Expenditure**

21 16. Section 82031, in relevant part, defines an "independent expenditure" as follows:

22 "Independent expenditure" means an expenditure made by any person ... in
23 connection with a communication which expressly advocates the election or defeat of a
24 clearly identified candidate ... or taken as a whole and in context, unambiguously urges
25 a particular result in an election but which is not made to or at the behest of the affected
26 candidate

27 ² In 1987, Regulation 18404, subdivision (b) stated in relevant part: "A candidate may terminate his or her status
28 as a candidate ... only by filing a Statement of Termination" The Statement of Termination was a separate FPPC form
(Form 416), and a candidate in 1987 was affirmatively required to file the form to terminate his or her status as a candidate,
among other forms. The amendment to Regulation 18404 adopted in 1999 eliminated the Statement of Termination (Form
416). Thus, a candidate in 2012 was not required to file a Statement of Termination, but was required to follow the
specified requirements in Regulation 18404 to terminate his or her status as a candidate.

1 ///

2 **B. Prohibition against Candidate Controlled Committee to Contribute to Another**
3 **Committee for the Purpose of Making Independent Expenditures Supporting/Opposing**
4 **other Candidates**

5 17. Section 85501 was added to the Act in 2000 as part of Proposition 34, and last amended
6 in 2001. The Commission has not adopted any regulations to interpret Section 85501. Section 85501
7 states:

8 A controlled committee of a candidate may not make independent expenditures
9 and may not contribute funds to another committee for the purpose of making
independent expenditures to support or oppose other candidates.

10 18. Section 85501 functions to prevent a candidate-controlled committee from making
11 independent expenditures to support or oppose other candidates so as to support and enforce state and
12 local contribution limits. In 2012, pursuant to the San José Municipal Code, the total campaign
13 contribution made by any person to any San José city council candidate and any controlled committee
14 of that candidate, other than the candidate in aid of himself or herself, could not exceed \$500 per
15 election. (San José Municipal Code Section 12.06.210).

16 **C. Joint and Several Liability of Candidate and Treasurer**

17 19. Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, it is the
18 duty of a candidate and the treasurer of his or her controlled committee to ensure that the committee
19 complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and
20 the reporting of such funds. A candidate and the treasurer of his or her controlled committee may be
21 held jointly and severally liable, along with the committee, for any reporting violations committed by
22 the committee. (See Sections 83116.5 and 91006.)

23 **D. Factors to be Considered by the Commission**

24 20. In framing a proposed order following a finding of a violation pursuant to
25 Section 83116, the Commission and the administrative law judge shall consider all the surrounding
26 circumstances including but not limited to: (1) The seriousness of the violation; (2) The presence or
27 absence of any intention to conceal, deceive or mislead; (3) Whether the violation was deliberate,
28 negligent or inadvertent; (4) Whether the violator demonstrated good faith by consulting the

1 Commission staff or any other government agency in a manner not constituting a complete defense
2 under Section 83114(b); (5) Whether the violation was isolated or part of a pattern and whether the
3 violator has a prior record of violations of the Political Reform Act or similar laws; and (6) Whether
4 the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full
5 disclosure. (Regulation 18361.5, subd. (d).)

6 **STATEMENT OF STIPULATED FACTS**

7 21. Complainant incorporates paragraphs 1 – 20 of this Accusation, as though completely
8 set forth herein.

9 22. A Statement of Stipulated Facts, signed by the attorneys for all parties, is attached
10 hereto as “Exhibit A,” and incorporated by reference as though fully set forth herein. The attached
11 Statement of Stipulated Facts presents all of the facts applicable to this Accusation.

12 **VIOLATION**

13 23. Complainant incorporates paragraphs 1 – 22 of this Accusation, as though completely
14 set forth herein.

15 24. In this matter, Respondents made a prohibited contribution of \$100,000 to San José
16 Reform Committee Supporting Rose Herrera for City Council 2012, a primarily formed committee
17 supporting Rose Herrera for San José City Council, for the purpose of making independent
18 expenditures to support Rose Herrera for City Council and to oppose Jimmy Nguyen for City Council
19 in the November 2012 Election.

20 25. Accordingly, Respondents committed one violation of the Act, as follows:

21 **COUNT 1**

22 **(Prohibition on Candidate Controlled Committee Contributing to another Committee
for the Purpose of Making Independent Expenditures Supporting or Opposing other Candidates)**

23 **A. Respondent Committee was a Candidate Controlled Committee**

24 26. Complainant incorporates paragraphs 1 – 25 of this Accusation, as though completely
25 set forth herein.

26 27. Respondent Reed was, at all relevant times, Mayor of San José, CA. As discussed
27 below, Respondent Reed, as Mayor of San José, was a candidate under the Act.

1 28. Pursuant to Section 82007, for purposes of this Accusation, Respondent Reed became a
2 candidate in 2005 when he began his election campaign for Mayor of San José. Also pursuant to
3 Section 82007, Respondent Reed will retain his status as a candidate until that status has been
4 terminated pursuant to Section 84214. Section 84214 states that a candidate shall terminate his filing
5 obligations pursuant to regulations adopted by the Commission. Thus, the Commission adopted
6 Regulation 18404 to achieve this purpose.

7 29. The plain language of Regulation 18404, since its latest amendment in 1999, has
8 unambiguously stated that the term “candidate” includes an officeholder, and a candidate must file
9 campaign statements until his status as candidate is terminated. It also clearly states that an
10 officeholder’s status as a candidate, whether he has a controlled committee or not, does not terminate
11 until he has left office.

12 30. Even before the 1999 amendment to Regulation 18404, Commission legal and reference
13 materials stated that an officeholder is a candidate under the Act. Between 1985 and 2012, a
14 Commission opinion, no fewer than 62 Commission advice letters (See attached Exhibit B),
15 Commission telephonic advice, and the Commission’s local candidates campaign manual all
16 unequivocally stated that an officeholder is a candidate under the Act.

17 31. Thus, pursuant to Sections 82007, 84214 and Regulation 18404, Respondent Reed’s
18 status as a candidate will not terminate until he has left office, regardless of the date he terminated his
19 controlled committee related to his reelection campaign. Accordingly, under the Act, Respondent
20 Reed will be a candidate until such time as he leaves the office of Mayor of San José.

21 32. Respondent Reed was, at all relevant times, Mayor of San José, CA, and therefore, as
22 discussed above, he was a candidate under the Act.

23 33. Respondent Committee has been a controlled committee of Respondent Reed since
24 2010.

25 34. Therefore, in 2012, Respondent Committee was a candidate controlled committee under
26 the Act.

27 **B. Respondent Committee made a Contribution to another Committee**

1 35. Complainant incorporates paragraphs 1 – 34 of this Accusation, as though completely
2 set forth herein.

3 ///

4 36. On or about September 24, 2012, Respondent Committee made a monetary contribution
5 of \$100,000 to Herrera IE Committee, a primarily formed committee supporting Rose Herrera and
6 opposing Jimmy Nguyen for San José City Council in the November 6, 2012 General Election.

7 **C. For the Purpose of Making Independent Expenditures Supporting or Opposing other**
8 **Candidates**

9 37. Complainant incorporates paragraphs 1 – 36 of this Accusation, as though completely
10 set forth herein.

11 38. Herrera IE Committee disclosed in its statement of organization that it intended to make
12 independent expenditures to support Rose Herrera for the office of San José City Council and to
13 oppose Jimmy Nguyen for San José City Council.

14 39. Herrera IE Committee used the \$100,000 contribution from Respondent Committee to
15 make independent expenditures to support Rose Herrera for the office of San José City Council and to
16 oppose Jimmy Nguyen for San José City Council.

17 40. Additionally, at the time Respondent Committee made the \$100,000 contribution to
18 Herrera IE Committee, Respondent Roth was treasurer of both Respondent Committee and Herrera IE
19 Committee. Thus, Respondents knew or should have known that Herrera IE Committee would use the
20 \$100,000 contribution to make independent expenditures to support Rose Herrera for the office of San
21 José City Council and to oppose Jimmy Nguyen for San José City Council.

22 **D. Respondents were prohibited from using Respondent Committee Funds to Make the**
23 **\$100,000 Contribution to Herrera IE Committee**

24 41. Complainant incorporates paragraphs 1 – 40 of this Accusation, as though completely
25 set forth herein.

26 42. Section 85501 prohibits a candidate controlled committee from contributing funds to
27 another committee for the purpose of making independent expenditures to support or oppose other
28 candidates.

1 43. Respondents gave the \$100,000 contribution to Herrera IE Committee,
2 Herrera IE Committee used those funds to make independent expenditures to support Rose Herrera and
3 oppose Jimmy Nguyen, and Respondents knew or should have known that the funds would be used for
4 the purpose of making independent expenditures to support Rose Herrera and oppose Jimmy Nguyen.

5 44. Therefore, Respondents made a prohibited contribution in violation of
6 Government Code section 85501.

7 **MITIGATING OR EXCULPATORY FACTORS**

8 45. Complainant incorporates paragraphs 1 – 44 of this Accusation, as though completely
9 set forth herein.

10 46. Respondents have no prior enforcement history with the Commission.

11 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

12 47. Complainant incorporates paragraphs 1 – 46 of this Accusation, as though completely
13 set forth herein.

14 48. Using funds of a candidate controlled committee to contribute to another committee for
15 the purpose of making independent expenditures supporting or opposing other candidates is a serious
16 violation of the Act because it undermines the contribution limits of the Act and those of local
17 jurisdictions, creating the appearance of corruption, and also providing violators an unfair electoral
18 advantage.

19 49. In this instance, Respondents, who are sophisticated and have longstanding knowledge
20 and experience with the Act, violated the provisions of the Act regarding a candidate controlled
21 committee contributing funds to another committee for the purpose of making independent
22 expenditures to support or oppose other candidates.

23 50. Respondents knowingly made the contribution to Herrera IE Committee to support
24 Rose Herrera's campaign for reelection to the San José City Council, and Respondents should have
25 been aware of Section 85501's prohibition before making the contribution.

26 51. Respondents knew that Respondent Committee was Respondent Reed's controlled
27 committee.

28

1 52. Respondent Reed, a licensed attorney, researched the issue of whether he was a
2 candidate. Despite being the Mayor of one of the largest cities in the country, and being a longtime
3 officeholder and candidate, he chose not to seek experienced counsel on this issue. However, the fact
4 that he had Respondent Roth contact the Commission and that he personally researched the issue
5 demonstrates that he had some level of knowledge that his conduct may violate the Act. In his mind,
6 again without seeking experienced counsel and based on his own research, he concluded that he was
7 not a candidate under the Act. Even a cursory review of the issue by a competent attorney would
8 unambiguously show that the Commission has long held that officeholders are candidates under the
9 Act, through the statutes, regulations, a Commission opinion and at least 62 advice letters published
10 over the past 28 years.

11 53. Additionally, Respondent Roth, when contacting the Commission's Technical
12 Assistance Division to confirm Respondent Committee could make the contribution to
13 Herrera IE Committee, failed to mention that Respondent Committee was controlled by
14 Respondent Reed.

15 54. The \$100,000 contribution at issue in this case was a significant amount of money in a
16 local election, which was used to support Rose Herrera's successful bid for reelection. Much of the
17 contribution money was already spent by the time the Commission intervened and had
18 Herrera IE Committee immediately cease spending the remaining funds and return the remaining funds
19 to Respondents.

20 **PRAYER**

21 WHEREFORE, Complainant prays as follows:

22 55. That the Fair Political Practices Commission hold a hearing pursuant to Government
23 Code section 83116 and Title 2, California Code of Regulations, Section 18361.5, and at such hearing
24 find that Respondents Charles R. "Chuck" Reed, San José Fiscal Reforms, Mayor Reed, Chamber
25 PAC And Issues Mobilization PAC Proponents, and Benjamin J. Roth violated the Political Reform
26 Act as alleged herein;

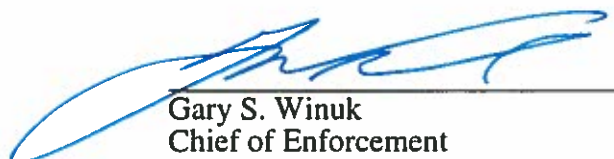
27 56. That the Commission, pursuant to Government Code section 83116, subdivision (c),
28 order Respondent to pay a monetary penalty of at least Three Thousand Five Hundred Dollars (\$3,500)

1 and not more than Five Thousand Dollars (\$5,000) for the violation of the Political Reform Act alleged
2 herein in **Count 1**;

3 57. That the Commission, pursuant to Title 2, California Code of Regulations,
4 Section 18361.5, subdivision (d), consider the following factors in framing a proposed order following
5 a finding of a violation pursuant to Government Code section 83116: (1) the seriousness of the
6 violation; (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the
7 violation was deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by
8 consulting the Commission staff or any other government agency in a manner not constituting a
9 complete defense under Government Code section 83114(b); (5) whether the violation was isolated or
10 part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or
11 similar laws; and (6) whether the violator, upon learning of a reporting violation, voluntarily filed
12 amendments to provide full disclosure.

13 58. That the Commission grant such other and further relief as it deems just and proper.

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15 Dated: 9/3/13



16 Gary S. Winuk
17 Chief of Enforcement
18 Fair Political Practices Commission
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EXHIBIT A

ACCUSATION
FPPC Case No. 12/761

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Chief of Enforcement
2 ANGELA J. BRERETON, SBN 209972
Senior Commission Counsel
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11 Attorneys for Respondents

12
13 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
14 **STATE OF CALIFORNIA**
15

16 In the Matter of) FPPC No. 12/761
17)
18)
19)
20 CHARLES R. "CHUCK" REED,) **STATEMENT OF STIPULATED FACTS**
SAN JOSÉ FISCAL REFORMS, MAYOR)
21 REED, CHAMBER PAC AND ISSUES)
MOBILIZATION PAC PROPONENTS,)
and BENJAMIN J. ROTH,) Hearing Date: TBD
22) Hearing Time: TBD
Respondents.) Hearing Place: TBD
)

23 **FOR PURPOSES OF A PROBABLE CAUSE DETERMINATION AND AN**
24 **ADMINISTRATIVE HEARING IN THE ABOVE NAMED CASE, THE PARTIES HEREBY**
25 **AGREE AND STIPULATE TO THE FOLLOWING FACTS:**

26 1. Respondent Charles R. "Chuck" Reed ("Respondent Reed") is currently the Mayor of
27 San José, CA. Respondent Reed has been a member of the San José City Council since 2000. He was
28

1 first elected as Mayor of San José in 2006, and re-elected in 2010. Respondent Reed is termed out of
2 office as Mayor of San José in December 2014, and he was not up for election at any time in 2012.

3 2. On September 24, 2009, Respondent Reed established Reelect Chuck Reed Mayor 2010, a
4 candidate controlled recipient committee supporting his re-election campaign. On January 19, 2011,
5 Reelect Chuck Reed Mayor 2010 filed its final semi-annual campaign statement, as well as a
6 terminating statement of organization with the San José City Clerk, identifying the date of termination
7 for the Reelect Chuck Reed Mayor 2010 as December 31, 2010. (Reelect Chuck Reed Mayor 2010
8 filed the terminating statement of organization with the Secretary of State on March 6, 2013,
9 identifying the date of termination as December 31, 2010. Thus, for purposes of this Statement, the
10 date of termination for Reelect Chuck Reed Mayor 2010 was December 31, 2010.) Reelect Chuck
11 Reed Mayor 2010 filed required pre-election and semi-annual campaign statements, and it reported
12 receiving \$295,036 in total contributions and making \$296,004 in total expenditures.

13 3. Respondent San José Fiscal Reforms, Mayor Reed, Chamber PAC and Issues Mobilization
14 PAC Proponents (“Respondent Committee”) is a general purpose committee controlled by
15 Respondent Reed. Respondent Committee originally qualified as a primarily formed ballot measure
16 committee controlled by Respondent Reed on August 12, 2010, and it remained as such until July 2012.

17 4. On July 16, 2012, Respondent Committee filed an amended statement of organization
18 reflecting that it had become a “General Purpose City Committee,” controlled by Respondent Reed, and
19 describing its activity as “Support fiscal reform initiatives and fiscally responsible candidates in
20 San José.”

21 5. At all relevant times, Respondent Benjamin J. Roth (“Respondent Roth”) was the treasurer
22 of Respondent Committee.

23 6. San José Reform Committee Supporting Rose Herrera for City Council 2012 (“Herrera IE
24 Committee”) was a primarily formed committee supporting Rose Herrera for San José City Council in
25 the November 6, 2012 general election.

26 7. At all relevant times, Respondent Roth was also the treasurer of Herrera IE Committee.

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1 8. Herrera IE Committee qualified as a committee on September 20, 2012, and reported
2 receiving \$164,000 in total contributions between September 20 and 30, 2012. Herrera IE Committee
3 received no contributions since that time. Herrera IE Committee's statement of organization stated that
4 it expected to make independent expenditures to support candidate Rose Herrera for the office of San
5 José City Council in the November 2012 election.

6 9. On or about September 24, 2012, Respondent Committee made a monetary contribution of
7 \$100,000 to Herrera IE Committee, which represented approximately 61% of the total contributions
8 Herrera IE Committee had received.

9 10. Re-elect Rose Herrera for City Council 2012, Rose Herrera's candidate controlled campaign
10 committee, reported receiving \$500 from Respondent Reed on June 30, 2012, toward the
11 November 6, 2012 general election.

12 11. Between September 20 and October 20, 2012, Herrera IE Committee made independent
13 expenditures to support Rose Herrera and to oppose her opponent, Jimmy Nguyen, totaling \$66,754.28.
14 Herrera IE Committee used Respondent Committee's contribution to help pay for these independent
15 expenditures.

16 12. Before Respondent Committee made the \$100,000 contribution to Herrera IE Committee,
17 Respondent Reed, a licensed attorney, independently researched the issue of whether
18 Respondent Committee could make such a contribution under the Act. Respondent Reed identified that
19 the Act prohibits "candidates" and their controlled committees from making contributions to
20 independent expenditure committees, but concluded that he was not a "candidate" under the Act
21 because he was termed out of office as Mayor of San José, was not running for election to another
22 office, and no longer maintained a re-election committee. Consequently, he independently concluded
23 that Respondent Committee was not a candidate controlled committee and could make the \$100,000
24 contribution despite Section 85501's prohibition. Respondent Reed did not contact the Commission for
25 confirmation of his conclusion.

26 13. Respondent Roth telephoned the Commission's Technical Assistance Division for informal
27 telephone advice on whether Respondent Committee could make the \$100,000 contribution. The
28 Commission's Technical Assistance Division informed Respondent Roth that the proposed contribution

1 was permissible, but Respondent Roth evidently did not mention that Respondent Committee was
2 controlled by Respondent Reed.

3 14. On October 11, 2012, the Commission received a formal complaint providing evidence that
4 Respondent Committee was controlled by Respondent Reed, and Respondent Committee had made a
5 \$100,000 contribution to Herrera IE Committee. Upon review of the complaint, the Commission's
6 Enforcement Chief concluded that the evidence demonstrated a violation of the Act. He therefore sent
7 a letter to Respondent Committee on October 15, 2012, stating that it must immediately demand that
8 Herrera IE Committee return the \$100,000 contribution to Respondent Committee.

9 15. At the time of the demand letter, Herrera IE Committee did not have enough money in its
10 bank account to return the \$100,000 contribution. However, Herrera IE Committee immediately
11 stopped spending any of the funds remaining in its account.

12 16. On October 19, 2012, Respondent Committee sent a response letter to the Commission,
13 questioning whether Section 85501 applies to termed-out elected officials who do not have active
14 committees, and whether the Citizens United decision makes 85501 unenforceable. Respondent
15 Committee's counsel also discussed these possible legal defenses to the complaint's allegations in a
16 telephone conversation with the Enforcement Chief a day or two before sending the letter.

17 17. On October 11, 2012, the Commission received another formal complaint providing
18 evidence that Respondent Committee had distributed mass mailings in violation of Section 84506
19 (failure to disclose Respondent Committee as a major contributor of \$50,000 or more in mass
20 mailings). Upon review of the complaint, the Enforcement Division concluded that the evidence
21 demonstrated a violation of the Act, and therefore sent a letter on October 15, 2012, to
22 Herrera IE Committee demanding that it refrain from distributing any further mass mailings without the
23 proper disclaimer information. Herrera IE Committee admitted this violation of the Section 84506, and
24 agreed to pay an administrative penalty of \$2,500, which the Commission approved at the
25 February 28, 2013 Commission Meeting.

26 18. The Commission follows a policy of publicly releasing correspondence with a potential
27 respondent if it is able to fully resolve an alleged violation with the respondent without having to open
28 a formal investigation, or if a discretionary audit results in compliance by a potential respondent. The

1 Enforcement Division had resolved the disclaimer information matter with Herrera IE Committee, and
2 publicly released the October 15, 2012 correspondence to Herrera IE Committee.

3 19. The Enforcement Division believed, and continues to believe, that there is no legal defense
4 to Respondent's actions. Respondents disagree with this assessment and did so at the time of the
5 Enforcement Division's initial correspondence. Because the matter had not been fully resolved,
6 Commission policy did not allow public release of the correspondence regarding the Section 85501
7 matter. Having released the October 15, 2012 correspondence to Herrera IE Committee, the
8 Enforcement Division mistakenly publicly released the October 15, 2012 correspondence to
9 Respondent Committee.

10 20. Partially because of this mistake, several local news media published articles regarding the
11 \$100,000 contribution, and opponents of Rose Herrera's candidacy used the Commission letters in
12 mailers sent to San José voters before the November 6, 2012 election. Respondent Reed therefore
13 believes that he suffered politically due to the correspondence mistakenly being made public.

14 21. Rose Herrera won the election and currently represents District 8 on the San José City
15 Council.

16 Dated: 8.16.2013

Respectfully Submitted,

17 **FAIR POLITICAL PRACTICES COMMISSION**

18 By: Gary S. Winuk
19 Chief of Enforcement

20 

21 Angela J. Bereton
22 Senior Commission Counsel

23 Dated: 8/16/13

24 **THE SUTTON LAW FIRM**


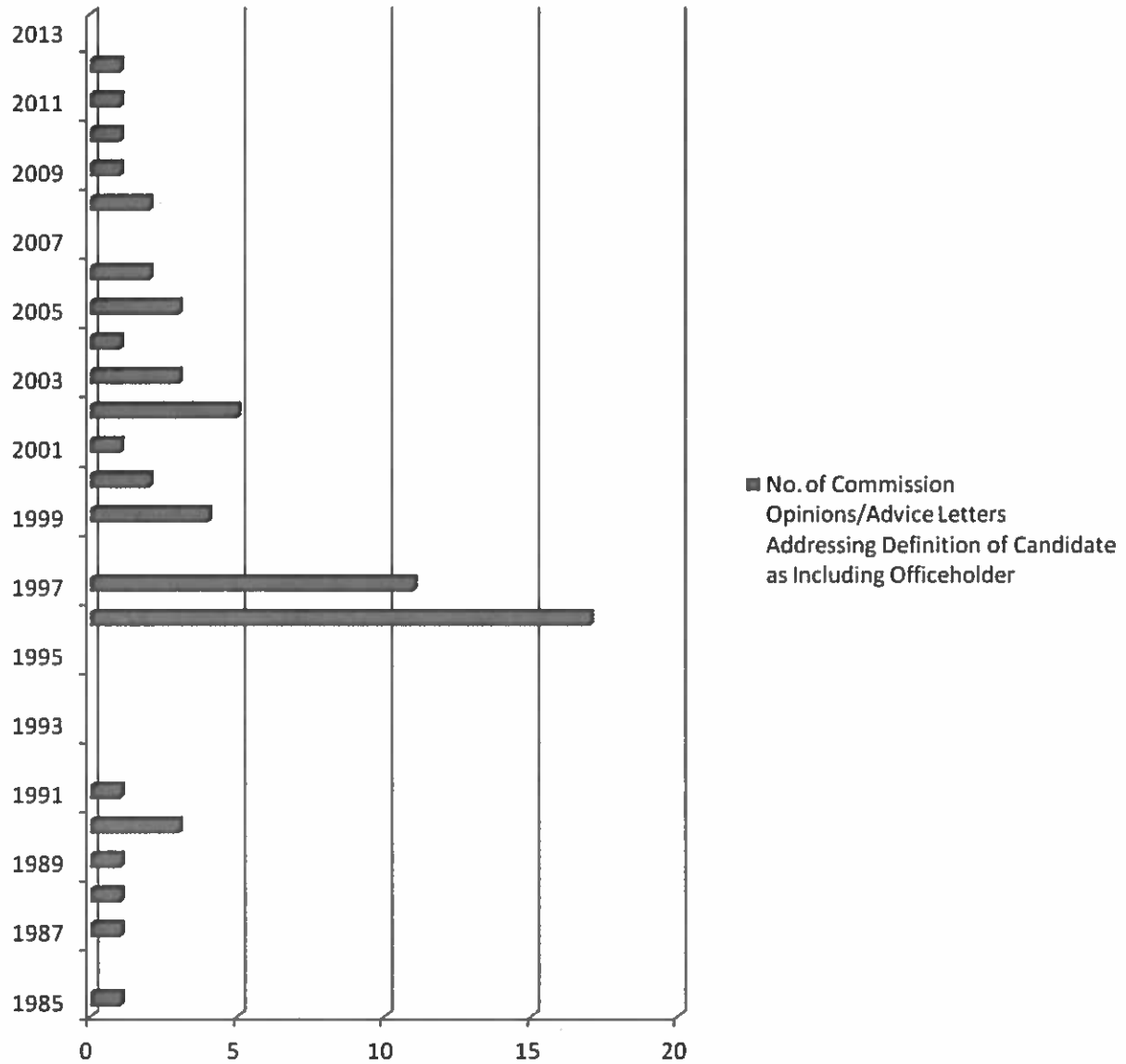
25 
26 James R. Sutton
27
28

EXHIBIT B

ACCUSATION
FPPC Case No. 12/761

No. of Commission Opinions/Advice Letters Addressing Definition of Candidate as Including Officeholder



Opinions: 1

Advice Letters: 62

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-85-057	Honorable Mike Roos, Majority Floor Leader, California State Assembly	03/15/1985	"The payment by Nissan was made "... in cooperation, consultation, coordination, or concert with ..." you as co-sponsor, and, as an incumbent you are considered to be a "candidate." See Government Code Section 82007."	2
87-001	In re Lui (1987) 10 FPPC Ops. 10	07/28/1987	"Once a person becomes a candidate within the meaning of the Act, he or she retains his or her status as a candidate until that status is terminated ... pursuant to Section 84214. Accordingly, all elected officeholders are "candidates," even during a nonelection year."	16
			"As a general rule, in 1983 through 1986, the term "candidate" included an elected officeholder, whether or not the officeholder was actively involved in an election campaign. (Section 82007.)"	23
I-88-188	Honorable Patrick Nolan, Member of the Assembly	06/17/1988	"You are an elected state officer and, therefore, a candidate within the meaning of the Act. (See Section 82007.) "	2
A-89-304	Lance H. Olson	06/19/1989	Footnote: "An elected official is a candidate for purposes of the Act. An individual who becomes a candidate retains his status as a candidate until that status is officially terminated. (Government Code section 82007.)"	3
I-90-077	Honorable Calvin Schmidt, Judge	04/02/1990	"The Act defines "candidate" as, among other things, an "individual who is listed on the ballot," and an individual who becomes a candidate retains such status until the status is terminated pursuant to other provisions of the Act. (Section 82007.) A judge elected to the municipal court is therefore a candidate under the Act and retains his or her status as a candidate while in office."	2
A-90-163	Honorable Leo McCarthy, Lieutenant Governor	03/27/1990	"For purposes of the Act, an incumbent elected officer is considered a "candidate." (Section 82007.)"	3
A-90-428	Ann M. Peifer	07/18/1990	"Mr. Carpenter, as an elected member of the Board of Equalization, is a "candidate" for purposes of the Act. (Sections 82007, 82023.)"	1
I-91-457	John D. Stiles, Jr.	10/18/1991	"... the Act does not treat the terms "candidate" and "elected officer" as mutually exclusive. (See Sections 82007, 82015; Regulations 18215, 18225.)"	2

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-96-039	Arthur Danner III, Santa Cruz County District Attorney	02/07/1996	"Section 82007 defines "candidate," in a pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, you are considered a candidate under Section 82007."	2
I-96-050	Cynthia P. Lavagetto, Deputy Executive Officer	02/23/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, Senator Peace is considered a candidate under Section 82007."	2
A-96-055	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	02/23/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, Senator Solis is considered a candidate under Section 82007."	2
A-96-056	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	02/23/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, Senator Killea is considered a candidate under Section 82007."	2
A-96-072	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/07/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, the State Senators are considered candidates under Section 82007."	3

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-96-074	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/21/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, Senator Alquist is considered a candidate under Section 82007."	2
A-96-075	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/06/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, Senator Polanco is considered a candidate under Section 82007."	2
A-96-091	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/14/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, Senator Solis is considered a candidate under Section 82007."	2
A-96-096	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/20/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, each Legislator is considered a candidate under Section 82007."	3
A-96-098	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/26/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as elected officials, Senators are considered candidates under Section 82007."	2

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-96-106	Suzanne Wierbinski, Chief of Staff for Honorable Martha M. Escutia	03/28/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. As an elected official, the Assemblymember is considered a candidate under Section 82007."	2
A-96-112	The Honorable Grace E. Napolitano, Assembly Member, Fifty-Eight District	04/01/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, you are considered a candidate under Section 82007."	3
A-96-152	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	05/17/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or the candidate's committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. As an elected official, the Senator is considered a candidate under Section 82007."	2
A-96-159	Mr. Jim Richardson, Chief Administrative Officer	06/13/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his or her committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, each legislator is considered a candidate under Section 82007."	2

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-96-171	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	06/11/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. As an elected official, the Senator is considered a candidate under Section 82007."	2
A-96-255	The Honorable Larry Bowler, Assembly Member, Tenth District	09/23/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, you are considered a candidate under Section 82007."	2
A-96-267	The Honorable Martin Gallegos, Assembly Member, 57th District	10/09/1996	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate retains his or her status as a candidate until the candidate or his or her committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. Thus, as an elected official, each legislator is considered a candidate under Section 82007."	2
A-97-018	Clair W. Harmony	02/14/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, you are considered a candidate under Section 82007."	2
I-97-048	Robert P. Marshall, PharmD	03/05/1997	"Elected officials are considered "candidates" under the Act by virtue of Sections 82007 and 84214, which provide that a candidate for elected office remains a "candidate" after assuming office, for however long he or she has filing obligations under Chapter 4 of the Act. (Schmidt Advice Letter, No. A-96-072.)"	3

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-97-052	The Honorable Martin Gallegos, Assembly Member, 57th District	02/27/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to section 84214. Thus, as an elected official, you are considered a candidate under Section 82007."	2
A-97-126	Mr. Robert E. Leidigh	03/14/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to section 84214. Thus, legislators and members of the Administration who are elected officials, such as the Governor, are considered candidates under section 82007"	3
A-97-145	Greg Schmidt, Executive Officer, Senate Rules Committee, California Legislature	03/31/1997	"Section 82007 defines "candidate," in pertinent party (sic), as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, a Senator is considered to be a candidate under Section 82007."	3
I-97-236	The Honorable Richard G. Polanco, Senator	05/30/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. Until his or her status as a candidate has terminated pursuant to Section 84214, a state elected official is considered a candidate under Section 82007... ."	3
A-97-329	Robert Leidigh	08/12/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to section 84214. Thus, legislators who are elected officials, such as the Speaker, are considered candidates under section 82007... ."	4

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-97-366	Greg Schmidt, Secretary of the Senate, California Legislature, Senate Rules Committee	09/02/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, legislators who are elected officials are considered candidates under Section 82007... ."	3
A-97-372	Greg Schmidt, Secretary of the Senate, California Legislature, Senate Rules Committee	09/11/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until that status is terminated pursuant to section 84214. Thus, legislators who are elected officials, such as members of the California State Senate, are considered candidates under section 82007"	3
A-97-448	Timothy Knudsen, President	09/23/1997	"Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, elected officials are considered candidates under Section 82007... ."	3
A-97-542	The Honorable Robert K. Puglia, Administrative Presiding Justice, Court of Appeal, Third District, State of California	12/05/1997	"As persons elected to, or elected to retain, their positions, judges in this state are candidates and are, thus, subject to and governed by the Act."	5
A-99-241	David L. Gould	09/24/1999	Footnote: "A "candidate" includes an elected officer. (Section 82007.)"	2
A-99-249	Sheila R. Mohan, Deputy Legal Affairs Secretary, Office of the Governor	09/27/1999	Footnote: "The term candidate includes elected officeholders. (Section 82007.)"	2
A-99-250	Erin Garvey, Press Secretary	09/21/1999	Footnote: "The term candidate includes elected officeholders. (Section 82007.)"	3

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-99-294	Laura Winslow, Office of Registrar of Voters, County of Solano	12/31/1999	"Section 87201, which requires candidates to file statements of economic interests, does not provide an exception for incumbents who are running for re-election but who, because they are unopposed, will not be on the ballot in the election. Adding to the problem is the fact that, pursuant to Elections Code section 8203, incumbent judges running for re-election do not know if they are unopposed and therefore off the ballot until after the deadline for filing a candidate SEI has passed. In addition, the Commission has interpreted the Act's definition of "candidate" broadly. In the Lui opinion, the Commission stated "all elected officeholders are "candidates," even during a non-election year." (In re Lui, 10 FPPC Ops. 10; No. 87-001.) Therefore, incumbent judges must file a candidate SEI no later than the final deadline for filing the declaration of candidacy when they are filing for re-election to their current office."	3
A-00-067	Catherine Trimbur	04/14/2000	Footnote: "The term "candidate" includes those who hold an elected office. (Sections 82007, 84214; Regulation 18404(d).)"	3
I-00-138	Mark G. Sellers, City Attorney	08/07/2000	"As "candidate" is defined in the Act and the Commission's regulations, Mr. Del Campo remains a "candidate" even after he is elected. (Sections 82007, 84214...)"	2
I-01-242	Allen Erenbaum	11/28/2001	"An elected official in a city or other local jurisdiction is a "candidate" under the Act (§ 82007)... ."	2
I-02-006	Diane Smith	02/08/2002	"Since you are an elected public official, you are a "candidate" within the meaning of the Act" Footnote: "A candidate for public office remains a "candidate," for purposes of the Act, until such time as his or her activities are no longer of the type requiring disclosure under the campaign reporting requirements of the Act (section 82007; section 84214 and regulation 18404). Thus, an elected officeholder may still be considered a "candidate" for campaign disclosure purposes, until the termination requirements of section 84214 and regulation 18404 are met."	7

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-02-060	Shirley J. Hoch	03/26/2002	Footnote: "A candidate for public office remains a "candidate," for purposes of the Act, until such time as his or her activities are no longer of the type requiring disclosure under the campaign reporting requirements of the Act (section 82007; section 84214 and regulation 18404). Thus, an elected officeholder may still be considered a "candidate" for campaign disclosure purposes, until the termination requirements of section 84214 and regulation 18404 are met."	7
A-02-116	Dan Lee, Treasurer for Councilmember Rob Schroder		"The term "candidate" is defined in section 82007, as follows: ""Candidate" means an individual who is listed on the ballot ..., or who receives a contribution or makes an expenditure ... with a view to bringing about his or her nomination or election to any elective office... . An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214" Whether in his status as a current council member or as a candidate for mayor, Councilmember Schroder is considered to be a candidate under this definition"	3-4

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-02-175	Mark Anthony Dierolf	07/17/2002	<p>"The Commission has determined that a candidate [Footnote: The term "candidate" includes those who hold an elected office. (Sections 82007, 84214; Regulation 18404(d).)] may control a ballot measure committee (Karpel Advice Letter, No. A-93-356 and Olson Advice Letter, No. A-89-363), as long as the committee does not make contributions to support or oppose candidates, including the candidate controlling the ballot measure committee. (Weems Advice Letter, No. A-91-448.) As long as you remain a candidate, as defined by section 82007, the proposed ballot measure committee will be considered controlled by you. Section 82007 states, in pertinent part, that "[a]n individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214." Thus, when you terminate your status as a candidate by leaving office and terminating your campaign committee, then the proposed ballot measure committee would no longer be considered a committee controlled by a candidate, namely, yourself. (Bagatelos Advice Letter, No. A-93-104.)</p>	2-3
I-02-292	The Honorable K. Maurice Johannessen, California State Senate	11/28/2001	Footnote: "A "candidate" includes an elected officer. (Section 82007.)"	5
I-03-076	James V. Lacy	06/06/2003	"As an elected city official, you are a "candidate" under the Act. (§ 82007.)"	2
A-03-130	Gregory D. Totten, Ventura County District Attorney; Bob Brooks, Ventura County Sheriff	08/01/2003	<p>"A "candidate" is defined as: "...an individual who is listed on the ballot ... or who receives a contribution or makes an expenditure ... with a view to bringing about his or her nomination or election to any elective office ... An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214..."(Section 82007.)Additionally, in the Lui opinion, the Commission stated "all elected officeholders are "candidates," even during a non-election year." (In re Lui (1987) 10 FPPC Ops. 10.) Therefore, you each must report any contributions received. (Sections 84200 and 84211.)"Superseded on other grounds by Stoen Advice Letter A-03-185</p>	2-3

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-03-185	Timothy O. Stoen, County of Humboldt, Office of the District Attorney		"A "candidate" is defined as: "...an individual who is listed on the ballot ... or who receives a contribution or makes an expenditure ... with a view to bringing about his or her nomination or election to any elective office ... An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214..."(Section 82007.) Additionally, in the Lui opinion, the Commission stated "all elected officeholders are "candidates," even during a non-election year." (In re Lui (1987) 10 FPPC Ops. 10.) As District Attorney, Paul Gallegos is a candidate for purposes of the Act."	3
A-04-254	Paul F. Walker, Councilmember	01/13/2005	"The Commission considers all elected officeholders as "candidates," even during a non-election year. (See section 82007 and In re Lui (1987) 10 FPPC Ops. 10.)"	2
I-05-030	Mark Peterson, Concord City Council Member	03/23/2005	"As a city council member, you are a "candidate" for purposes of the Act. (Section 82007.)"	2
A-05-087	Irene Sundberg	05/27/2005	"Because you are an elected official and continue to have status as a candidate under section 82007, [Section 82015] is applicable to you."	3
A-05-191	David Reid	09/27/2005	The Commission has determined that a candidate [Footnote: The term "candidate" includes those who hold an elected office. (Sections 82007, 84214; Regulation 18404(d).)] may control a ballot measure committee (Karpel Advice Letter, No. A-93-356 and Olson Advice Letter, No. A-89-363), as long as the committee does not make contributions to support or oppose candidates, including the candidate controlling the ballot measure committee. (Weems Advice Letter, No. A-91-448.) As long as Mr. Kee remains a candidate, as defined by section 82007, if his activity meets the standards of a controlling candidate, the proposed ballot measure committee will be considered controlled by him.	2

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
A-06-091	Craig A. Steele	06/09/2006	"Because Councilmember Lutz is an elected official and continues to have status as a candidate under section 82007, section 82015(b)(2) is applicable to any payments made at the "behest" of Councilmember Lutz."	4
A-06-127	Lori Stone	07/25/2006	Footnote: "Section 82007 defines a "candidate" in pertinent part, as an individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to section 84214. As an elected official, Supervisor Stone has current status as a candidate for purposes of the Act and payments received may still be considered contributions." "Because Supervisor Stone is an elected official and continues to have status as a candidate under section 82007, section 82015(b)(2) is applicable to any payments made at the "behest" of Supervisor Stone."	3 3
A-08-032	Jimmie E. Johnson	03/25/2008	"Section 82007 defines the term "candidate" as an individual who is listed on a ballot (or who has qualified to have write-in votes counted by election officials) for any elective office, which includes any "elective state office." Section 82007 also provides that: "An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated." The word "candidate" thus includes an incumbent in any "elective state office." Senator Denham, as an incumbent elective state officer, is therefore also a "candidate for elective state office" within the meaning of the Act."	2
A-08-118	Liane M. Randolph	08/06/2008	Footnote: "For purposes of the Act, an elected offer retains his or her status as a candidate until he or she terminates that status as provided in Section 84214 and applicable Commission regulations. (Section 82007.)"	2
A-09-273	Todd Gloria, Marti Emerald	01/07/2010	Footnote: "Under the Act, an incumbent elected offer (sic) retains his or her status as a "candidate" during his or her tenure in office. (Sections 82007, 84214.)"	2

FPPC No.	Name	Date Issued	Language Regarding Definition of Candidate as Including Officeholder	Page
I-10-159	Mr. Ash Pirayou	12/13/2010	"The term "candidate" as defined by the Act, includes elected officials at the state and local level. (Section 82007.)"	6
A-11-138	Dennis P. McBride, CPA	08/22/2011	"The term "candidate" as defined by the Act, includes elected officials at the state and local level. (Section 82007.)"	2
A-12-122	Ms. Kathleen Shaffer, Councilmember	08/24/2012	"The term "candidate" as defined by the Act, includes elected officials at the state and local level. (Section 82007.)"	2

PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. My business address is Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814. On September 3, 2013, I served the following document(s):

1. Statement to Respondents;
2. Accusation, FPPC Case No. 12/761, 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;
3. Notice of Defense, Respondent Charles R. "Chuck" Reed (Two Copies);
4. Notice of Defense, Respondents San José Fiscal Reforms, Mayor Reed, Chamber PAC And Issues Mobilization PAC Proponents, and Benjamin J. Roth (Two Copies)
5. Selected Sections of the California Government Code, Administrative Procedure Act

By email or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the person(s) at the e-mail address(es) listed below. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

James R. Sutton, Esq.

Jesse A. Mainardi, Esq.

The Sutton Law Firm

o/b/o Charles R. "Chuck" Reed, San José Fiscal Reforms, Mayor Reed, Chamber PAC
And Issues Mobilization PAC Proponents, and Benjamin J. Roth

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jmainardi@campaignlawyers.com

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 3, 2013.



Ali Noonan