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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) **COMPLAINANT'S ADMINISTRATIVE**
15) **HEARING BRIEF**
16) (Regulation § 18361.5, subd. (a).)
17) Hearing Date: September 19, 2013
18) Hearing Time: 10:00 a.m.
19) Hearing Place: 428 J Street, 8th Floor
20) Sacramento, CA 95814
21 Respondents.)

22 **I. INTRODUCTION**

23 Respondent Charles R. "Chuck" Reed ("Respondent Reed") is currently the Mayor of
24 San José, CA. Respondent Reed has been a member of the San José City Council since 2000. He was
25 first elected as Mayor of San José in 2006, and re-elected in 2010. Respondent San José Fiscal
26 Reforms, Mayor Reed, Chamber PAC and Issues Mobilization PAC Proponents ("Respondent
27 Committee") is a controlled committee of Respondent Reed. At all relevant times, Respondent
28 Benjamin J. Roth ("Respondent Roth") was the treasurer of Respondent Committee.

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1 The Political Reform Act (“Act”)¹ prohibits a candidate controlled committee from making a
2 contribution to another committee for the purpose of making independent expenditures to support or
3 oppose other candidates.

4 As will be shown, Respondents made a prohibited contribution of \$100,000 to San José Reform
5 Committee Supporting Rose Herrera for City Council 2012, a primarily formed committee supporting
6 Rose Herrera for San José City Council, for the purpose of making independent expenditures to support
7 Rose Herrera and to oppose Jimmy Nguyen for San José City Council in the November 2012 Election.

8 As stated in the Accusation served on Respondents, Respondents violated the Act as follows:

9 **COUNT 1:** On or about September 24, 2012, Respondent Charles R. “Chuck” Reed,
10 Respondent San José Fiscal Reforms, Mayor Reed, Chamber PAC and
11 Issues Mobilization PAC Proponents, and Respondent Benjamin J. Roth,
12 used funds of Respondent Committee – Respondent Reed’s candidate
13 controlled committee – to make a \$100,000 contribution to San José
14 Reform Committee Supporting Rose Herrera for City Council 2012, a
15 primarily formed committee supporting Rose Herrera for San José City
16 Council, for the purpose of making independent expenditures to support
17 Rose Herrera and to oppose Jimmy Nguyen for City Council in the
18 November 2012 election, in violation of Government Code Section 85501.

15 II. SUMMARY OF THE CASE

16 A. Procedural History

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

19 To expedite the Administrative Hearing in this matter, Respondents agreed to waive some
20 procedural rights regarding the Probable Cause Proceeding under the Political Reform Act, and the
21 Administrative Hearing under the Administrative Procedure Act (see Gov. Code § 11415.40), including
22 the 21-day notice requirement as stated in Section 83115.5 and Regulation 18361.4, subdivision (b), the
23 right to a Probable Cause Conference as stated in Section 83115.5 and Regulation 18361.4, subdivision
24 (d), the 15-day notice requirement in Section 11505, and the right to have an Administrative Law Judge
25 hear the case as stated in Section 11512. The signed waivers are attached hereto as “Exhibit A.”

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

1 The Enforcement Division initiated the administrative action in this matter by serving upon
2 Respondents a Report in Support of a Finding of Probable Cause (“the Report”) on August 16, 2013.
3 Thereafter, based upon the Report, Respondents’ Response to the Report, and the Enforcement
4 Division’s subsequent Reply, Jack Woodside, Commission Counsel Legal Division, the official
5 designee of General Counsel Zachery P. Morazzini in this regard, issued a Finding of Probable Cause
6 and Order to Prepare and Serve an Accusation on August 28, 2013.

7 On September 3, 2013, the Commission’s Chief of Enforcement, Gary S. Winuk, issued an
8 Accusation against Respondents in this matter. Respondents served their Notices of Defense on
9 September 5, 2013.

10 **B. Statement of Facts**

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

14 **C. Issues Presented**

15 The parties bring this matter before the Commission to hear and decide the following issues in
16 this enforcement case:

- 17 1) Was Respondent Charles R. “Chuck” Reed, the Mayor of San José, who was serving his second and
18 final term of office, had terminated his re-election campaign committee in January 2011, and was
19 not running for election to another office, a candidate under the Act in 2012?
20 2) Did Section 85501 prohibit Respondent San José Fiscal Reforms, Mayor Reed, Chamber PAC And
21 Issues Mobilization PAC Proponents, a controlled committee of Respondent Charles R. “Chuck”
22 Reed (the Mayor of San José, who was serving his second and final term of office, had terminated
his re-election 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?

23 Complainant contends that both of the above questions should be answered affirmatively.
24 Should the Commission agree, and find that both of the above questions should be answered
25 affirmatively, then the Commission must issue a written decision finding that Respondents violated
26 Section 85501 of the Act as stated in Count 1 of the Accusation and order Respondents to pay an
27 administrative penalty in accordance with the requirements of the Act.

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1 **III. STATEMENT OF APPLICABLE LAW**

2 When the Political Reform Act was enacted, the people of the state of California found and
3 declared that previous laws regulating political practices suffered from inadequate enforcement by state
4 and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be
5 liberally construed to achieve its purposes, and Section 81002 requires adequate enforcement
6 mechanisms so that the Act will be “vigorously enforced.”

7 All applicable law referenced herein is the law as it existed during the relevant time for the
8 violations alleged in the Accusation.

9 **A. Jurisdiction**

10 Section 83116 provides the Fair Political Practices Commission (the “Commission”) with
11 administrative jurisdiction to enforce the provisions of the Act.

12 **B. Definitions**

13 The definitions set forth in Sections 82001 – 82055 govern the interpretation of the Act.
14 (Section 82000.) The definitions applicable to this matter are presented below.

15 **1. Candidate**

16 Section 82007 defines “candidate” as follows:

17 “Candidate” means an individual who is listed on the ballot or who has qualified
18 to have write-in votes on his or her behalf counted by election officials, for nomination
19 for or election to any elective office, or who receives a contribution or makes an
20 expenditure or gives his or her consent for any other person to receive a contribution or
21 make an expenditure with a view to bringing about his or her nomination or election to
22 any elective office, whether or not the specific elective office for which he or she will
23 seek nomination or election is known at the time the contribution is received or the
24 expenditure is made and whether or not he or she has announced his or her candidacy or
25 filed a declaration of candidacy at such time. “Candidate” also includes any officeholder
26 who is the subject of a recall election. *An individual who becomes a candidate shall
27 retain his or her status as a candidate until such time as that status is terminated
28 pursuant to Section 84214.* “Candidate” does not include any person within the meaning
of Section 301(b) of the Federal Election Campaign Act of 1971. (Emphasis added).

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

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

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

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

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

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

18 (A) the candidate lost, withdrew, or was not on the ballot in the election; or

19 (B) the individual left office during the calendar year; and

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

22 Additionally, in 1987, the Commission affirmatively held in a formal Commission Opinion that
23 an officeholder, even during a nonelection year, is a candidate under the Act:

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

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

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

² When the Lui Opinion was issued in 1987, Regulation 18404, subdivision (b) stated in relevant part: "A
candidate may terminate his or her status as a candidate ... only by filing a Statement of Termination" The Lui Opinion
does not refer to a statement of organization (Form 410) used as a statement of termination. The Statement of Termination
was a separate FPPC form (Form 416), and a candidate in 1987 was required to file that form (as well as other FPPC forms)
to terminate his or her status as a candidate. The amendment to Regulation 18404 adopted in 1999 eliminated the Form 416
Statement of Termination. Thus, a candidate in 2012 was not required to file a Form 416 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. Controlled Committee**

2 Section 82016 defines “controlled committee,” in relevant part, as follows:

3 “Controlled committee” means a committee that is controlled directly or indirectly by
4 a candidate ... or that acts jointly with a candidate ... in connection with the making of
5 expenditures. A candidate ... controls a committee if he or she, his or her agent, or any other
6 committee he or she controls has a significant influence on the actions or decisions of the
7 committee.

6 **3. Independent Expenditure**

7 Section 82031, in relevant part, defines an “independent expenditure” as follows:

8 “Independent expenditure” means an expenditure made by any person ... in
9 connection with a communication which expressly advocates the election or defeat of a
10 clearly identified candidate ... or taken as a whole and in context, unambiguously urges a
11 particular result in an election but which is not made to or at the behest of the affected
12 candidate

11 **C. Prohibition against Candidate Controlled Committee Contributing to Another Committee**
12 **for the Purpose of Making Independent Expenditures Supporting/Opposing other Candidates**

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

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

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

23 **D. Joint and Several Liability of Candidate and Treasurer**

24 Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, it is the duty of a
25 candidate and the treasurer of his or her controlled committee to ensure that the committee complies
26 with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting
27 of such funds. A candidate and the treasurer of his or her controlled committee may be held jointly and
28

1 severally liable, along with the committee, for any violations committed by the committee. (See
2 Sections 83116.5 and 91006.)

3 **E. Standard of Proof**

4 Regulation 18361.5, subdivision (c) states:

5 When an administrative hearing is conducted under Government Code section
6 83116, findings shall be made on a preponderance of the evidence and it shall require the
7 concurrence of at least three members of the Commission to find a violation or impose
any order.

8 **F. Factors to be Considered by the Commission**

9 In framing an order following a finding of a violation pursuant to Section 83116, the
10 Commission shall consider all the surrounding circumstances including but not limited to:
11 (1) The seriousness of the violation; (2) The presence or absence of any intention to conceal, deceive or
12 mislead; (3) Whether the violation was deliberate, negligent or inadvertent; (4) Whether the violator
13 demonstrated good faith by consulting the Commission staff or any other government agency in a
14 manner not constituting a complete defense under Section 83114(b); (5) Whether the violation was
15 isolated or part of a pattern and whether the violator has a prior record of violations of the Political
16 Reform Act or similar laws; and (6) Whether the violator, upon learning of a reporting violation,
17 voluntarily filed amendments to provide full disclosure. (Regulation 18361.5, subd. (d).)

18 **IV. SUMMARY OF LEGAL ARGUMENT**

19 Sections 82007, 84214 and Regulation 18404 unambiguously state that officeholders are
20 candidates under the Act. Additionally, the Commission has consistently stated that officeholders are
21 candidates under the Act in its opinions, advice letters and campaign manuals over the past 28 years.
22 Respondent Reed was, at all relevant times, Mayor of San José, CA, and even though he had closed his
23 re-election committee and could not seek re-election, Respondent Reed was a candidate under the Act.

24 Because Respondent Reed was a candidate under the Act, Respondent Committee was a
25 candidate controlled committee under the Act. Consequently, Respondent Committee was prohibited,
26 pursuant to Section 85501, from contributing to another committee for the purpose of making
27 independent expenditures supporting or opposing other candidates.
28

1 Respondents, using Respondent Committee funds, gave a \$100,000 contribution to
2 Herrera IE Committee for the purpose of making independent expenditures to support Rose Herrera and
3 oppose Jimmy Nguyen. Therefore, Respondents violated Government Code section 85501.

4 V. ARGUMENT

5 The Commission has "primary responsibility for the impartial, effective administration and
6 implementation" of the Act. (Section 83111.)

7 In interpreting the Act, the Commission must first look to the plain meaning of the statutes and
8 regulations. If the language is unclear, the Commission may then look to the legislative history. If the
9 first two steps fail to reveal clear meaning, then the Commission may apply reason, practicality and
10 common sense to interpret the statutes and regulations in a manner that most fully effectuates the Act's
11 purpose. (See, e.g., *Halbert's Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal.App.4th 1233, 1238-1239
12 (1992).)

13 A. Respondent Reed was a Candidate Under the Act

14 Respondent Reed was, at all relevant times, Mayor of San José, CA. As shown below,
15 Respondent Reed, as Mayor of San José, was a candidate under the Act.

16 Pursuant to Section 82007, Respondent Reed became a candidate at the latest in 2005 when he
17 began his election campaign for Mayor of San José. Also pursuant to Section 82007, Respondent Reed
18 will retain his status as a candidate until that status has been terminated pursuant to Section 84214.
19 Section 84214 states that a candidate shall terminate his filing obligations pursuant to regulations
20 adopted by the Commission. Thus, pursuant to the mandate in Section 84214, the Commission adopted
21 Regulation 18404 to achieve this purpose.

22 The plain language of Regulation 18404, since its latest amendment in 1999, has unambiguously
23 stated that the term "candidate" includes an officeholder, and a candidate must file campaign statements
24 until his status as a candidate is terminated. It also clearly states that an officeholder's status as a
25 candidate, whether he has a controlled committee or not, does not terminate until he has left office.
26 Thus, even when an officeholder is ineligible to run for re-election due to term limits, and the
27 officeholder has filed statements of termination for all of his election campaign committees, the
28 officeholder's status as a candidate remains intact until he actually leaves office.

1 Even before the 1999 amendment to Regulation 18404, Commission legal and reference
2 materials stated that an officeholder is a candidate under the Act. Between 1985 and 2012, a
3 Commission opinion, no fewer than 62 Commission advice letters (See attached Exhibit C),
4 Commission telephonic advice, and the Commission's local candidates campaign manual all
5 unequivocally stated that an officeholder is a candidate under the Act.

6 The law on this issue is clear and unambiguous: pursuant to Sections 82007, 84214 and
7 Regulation 18404, Respondent Reed's status as a candidate will not terminate until he has left office,
8 regardless of the date he terminated his controlled committee related to his re-election campaign, and
9 whether he is prohibited, due to term limits, from seeking re-election. Accordingly, under the Act,
10 Respondent Reed will be a candidate until such time as he leaves the office of Mayor of San José.

11 Respondent Reed was, at all relevant times, Mayor of San José, CA, and as such, Respondent
12 Reed was a candidate under Sections 82007, 84214 and Regulation 18404 of the Act.

13 **B. Section 85501 Prohibited Respondent Committee from Making a Contribution in**
14 **September 2012 to Another Committee for the Purpose of Making Independent Expenditures**
15 **Supporting and Opposing Local Candidates**

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

18 **1. Respondent Committee was a Candidate Controlled Committee**

19 Respondent Committee has been a controlled committee of Respondent Reed since 2010.
20 Because Respondent Reed, at all relevant times, was a candidate under the Act, Respondent Committee
21 was a candidate controlled committee under the Act in 2012.

22 **2. Respondent Committee made a Contribution to another Committee**

23 On or about September 24, 2012, Respondent Committee made a monetary contribution of
24 \$100,000 to Herrera IE Committee, a primarily formed committee supporting Rose Herrera and
25 opposing Jimmy Nguyen for San José City Council in the November 6, 2012 General Election.
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1 **3. For the Purpose of Making Independent Expenditures Supporting or Opposing other**
2 **Candidates**

3 Herrera IE Committee disclosed in its statement of organization that it intended to make
4 independent expenditures to support Rose Herrera for the office of San José City Council and to oppose
5 Jimmy Nguyen for San José City Council. After receiving the funds, Herrera IE Committee used the
6 \$100,000 contribution from Respondent Committee to make independent expenditures to support Rose
7 Herrera for the office of San José City Council and to oppose Jimmy Nguyen for San José City Council.
8 Additionally, at the time Respondent Committee made the \$100,000 contribution to Herrera IE
9 Committee, Respondent Roth was treasurer of both Respondent Committee and Herrera IE Committee.
10 Thus, Respondents knew or should have known that Herrera IE Committee would use the \$100,000
11 contribution to make independent expenditures to support Rose Herrera for the office of San José City
12 Council and to oppose Jimmy Nguyen for San José City Council. Ultimately, Herrera IE Committee
13 actually used the \$100,000 contribution for this purpose.

14 **4. Respondents Violated Section 85501**

15 Section 85501 prohibits a candidate controlled committee from contributing funds to another
16 committee for the purpose of making independent expenditures to support or oppose other candidates.
17 Respondent was a candidate controlled committee of Respondent Reed. Respondents, using Respondent
18 Committee funds, gave a \$100,000 contribution to Herrera IE Committee. Respondents knew or should
19 have known that the funds would be used for the purpose of making independent expenditures to support
20 Rose Herrera and oppose Jimmy Nguyen. Ultimately, Herrera IE Committee actually used those funds
21 to make independent expenditures to support Rose Herrera and oppose Jimmy Nguyen, candidates for
22 San José City Council. Therefore, Respondents violated Government Code section 85501.

23 **VI. ADMINISTRATIVE PENALTY**

24 **A. Administrative Penalties Under the Act**

25 Each violation of the Act carries a maximum administrative penalty of \$5,000. (Section 83116.)
26 Thus, the maximum penalty for Respondents' violation of Section 85501, as stated in Count 1 of the
27 Accusation served upon Respondents, is \$5,000.

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1 **B. Regulation 18361.5, subdivision (d) Factors**

2 In framing an order following a finding of a violation pursuant to Section 83116, the
3 Commission shall consider all the surrounding circumstances including but not limited to:
4 (1) The seriousness of the violation; (2) The presence or absence of any intention to conceal, deceive or
5 mislead; (3) Whether the violation was deliberate, negligent or inadvertent; (4) Whether the violator
6 demonstrated good faith by consulting the Commission staff or any other government agency in a
7 manner not constituting a complete defense under Section 83114(b); (5) Whether the violation was
8 isolated or part of a pattern and whether the violator has a prior record of violations of the Political
9 Reform Act or similar laws; and (6) Whether the violator, upon learning of a reporting violation,
10 voluntarily filed amendments to provide full disclosure. (Regulation 18361.5, subd. (d).)

11 **1. The seriousness of the violation**

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

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

22 **2. The presence or absence of any intention to conceal, deceive or mislead**

23 Section 85501 functions to prevent a candidate controlled committee from making independent
24 expenditures to support or oppose other candidates. At the state level and in many local jurisdictions,
25 there is a limit on the amount that persons may contribute to a candidate and a limit on the amount that a
26 candidate or officeholder may contribute or transfer to another candidate's campaign. (Sections 85303
27 and 85305.) Absent Section 85501, limits on the amount that a person may give a candidate or that an
28 officeholder may contribute or transfer to another candidate would be rendered ineffective if a candidate

1 controlled committee could make an unlimited amount of independent expenditures to support or oppose
2 another candidate.

3 In this instance, the City of San José imposes limits of \$500 upon individuals who make
4 contributions to candidates for local office. Respondent Reed made a \$500 contribution from his
5 personal funds to Re-elect Rose Herrera for City Council 2012, Rose Herrera's candidate controlled
6 campaign committee, on June 30, 2012. Less than 3 months later, his candidate controlled committee,
7 Respondent Committee, gave \$100,000 for the purpose of making independent expenditures to support
8 Ms. Herrera's re-election. This creates the appearance that Respondents are intentionally evading the
9 local contribution limits, and deceiving the voters of San José.

10 **3. Whether the violation was deliberate, negligent or inadvertent**

11 Respondents, who are sophisticated and have longstanding knowledge and experience with the
12 Act, violated the provisions of the Act regarding a candidate controlled committee contributing funds to
13 another committee for the purpose of making independent expenditures to support or oppose other
14 candidates. Respondents deliberately made the contribution to Herrera IE Committee to support Rose
15 Herrera's campaign for re-election to the San José City Council, and Respondents should have been
16 aware of Section 85501's prohibition before making the contribution. Indeed, as discussed below,
17 Respondent appeared to have some level of knowledge that the contribution might violate the Act.

18 **4. Whether the violator demonstrated good faith by consulting the Commission staff or any**
19 **other government agency in a manner not constituting a complete defense under Section 83114(b)**

20 Respondents knew that Respondent Committee was Respondent Reed's controlled committee.
21 Respondent Reed, a licensed attorney, researched the issue of whether he was a candidate. Despite
22 being the Mayor of one of the largest cities in the country, and being a longtime officeholder and
23 candidate, he chose not to seek experienced counsel on this issue. However, the fact that he had
24 Respondent Roth contact the Commission and that he personally researched the issue demonstrates that
25 he had some level of knowledge that his conduct may violate the Act. In his mind, again without
26 seeking experienced counsel and based on his own research, he concluded that he was not a candidate
27 under the Act. Even a cursory review of the issue by a competent attorney would unambiguously show
28

1 that the Commission has long held that officeholders are candidates under the Act, through the statutes,
2 regulations, a Commission opinion and at least 62 advice letters published over the past 28 years.

3 Additionally, Respondent Roth, when contacting the Commission's Technical Assistance
4 Division to confirm Respondent Committee could make the contribution to Herrera IE Committee,
5 failed to mention that Respondent Committee was controlled by Respondent Reed.

6 **5. Whether the violation was isolated or part of a pattern and whether the violator has a**
7 **prior record of violations of the Political Reform Act or similar laws**

8 Respondents have no prior enforcement history with the Commission.

9 **6. Whether the violator, upon learning of a reporting violation, voluntarily filed amendments**
10 **to provide full disclosure**

11 This case does not involve any reporting violations.

12 **C. Comparable Enforcement Actions for Violations of Section 85501**

13 Previous Enforcement Actions in which stipulated settlements for violations of Section 85501
14 were recently approved by the Commission include:

- 15 • *In the Matter of Respondent Cindy Finerty, The Committee to Elect Cindy Finerty and*
16 *Debbi Hall*, FPPC No. 10/947. This case involved one count of violating Section 85501.
17 Respondents, a member of the Palm Desert City Council, her controlled committee, and the
18 committee treasurer, made an independent expenditure using the controlled committee's funds to
19 support two candidates for Palm Desert City Council. In this case, the Enforcement Division
20 found no evidence that this violation of the Act was intentional or that Respondent intended to
21 deceive the voting public. For this count, the Commission approved a \$2,500 penalty on
22 September 22, 2011.
- 23 • *In the Matter of Ben Hueso, Ben Hueso for State Assembly 2010, and Nancy Haley*,
24 FPPC No. 10/1041. This case involved one count of violating Section 85501. Respondents, a
25 member of the San Diego City Council and a candidate for state assembly, his controlled
26 committee, and the committee treasurer, made a contribution using the controlled committee's
27 funds to another committee for the purpose of making an independent expenditure to support a
28 candidate for San Diego City Council. In this case, the Respondents self-reported the violation

1 and requested that the contribution be returned before the election. For this count, the
2 Commission approved a \$2,000 penalty on September 22, 2011.

3 **D. Requested Penalty**

4 After consideration of all of the surrounding circumstances of this case, and the factors of
5 Regulation 18361.5, as well as consideration of penalties in prior enforcement settlements, the
6 imposition of a penalty of at least Three Thousand Five Hundred Dollars (\$3,500) and not more than
7 Five Thousand Dollars (\$5,000) is requested for Count 1.

8 **VII. CONCLUSION**

9 For the foregoing reasons, Complainant respectfully requests a proposed decision imposing an
10 administrative penalty of at least Three Thousand Five Hundred Dollars (\$3,500) and not more than Five
11 Thousand Dollars (\$5,000) for one violation of Government Code section 85501.

12
13 Dated: 9-9-2013

Respectfully Submitted,

14 **FAIR POLITICAL PRACTICES COMMISSION**

15 By: Gary S. Winuk
Chief of Enforcement

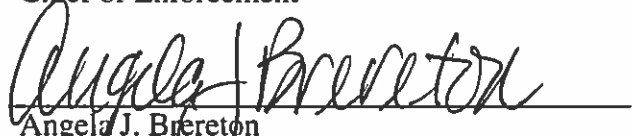
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18 Angela J. Brereton
Senior Commission Counsel

EXHIBIT A



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WAIVER OF RIGHTS TO CERTAIN PROBABLE CAUSE PROCEDURES, PROBABLE CAUSE
CONFERENCE AND CERTAIN ADMINISTRATIVE HEARING PROCEDURES**

1. I, the undersigned, am a Respondent in FPPC Case No. 12/761.

2. I acknowledge that I understand my rights to a Probable Cause Hearing and Administrative Hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws. I have been provided and understand advice by legal counsel as to my rights to a Probable Cause Hearing and Administrative Hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws.

3. I hereby waive my procedural rights regarding Probable Cause Proceedings under the Political Reform Act, and Administrative Hearings under the Administrative Procedure Act, as follows:
 - a) I hereby waive my right to the 21-day notice requirement as stated in Section 83115.5 and Regulation 18361.4, subdivision (b), and I understand and agree that I will serve my response to the Probable Cause Report within five (5) business days after service of the Probable Cause Report;
 - b) I hereby waive my right to a Probable Cause Conference, and I understand and agree that the General Counsel of the Fair Political Practices Division (or his designee) will deliberate whether probable cause exists based upon the Probable Cause Report, my response to the Probable Cause Report, and the Enforcement Division's subsequent reply;

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- c) I understand and agree that should I fail to timely serve my response to the Probable Cause Report, or should I affirmatively waive my right to respond to the Probable Cause Report, my case will proceed to an ex parte recommendation by the Enforcement Division to the General Counsel for a Finding of Probable Cause based solely upon the Probable Cause Report;
- d) I hereby waive my right to the 15-day notice requirement in Section 11505, and I understand and agree that I will serve my Notice of Defense within three (3) business days after service of the Accusation, should the Commission's General Counsel issue a Finding of Probable Cause;
- e) I hereby waive my right to have an Administrative Law Judge hear the case as stated in Section 11512, agree that a quorum of the Fair Political Practices Commission will hear this case in its entirety, and understand and agree that the decision and order made by the Commission after the Hearing, which shall be in writing, will be the final decision in this matter;
- f) I hereby waive my right to bring any and all civil claims for any procedural defects regarding the Probable Cause Proceedings and/or the Administrative Hearing Proceedings in this matter;
- g) The waiver above with respect to the Administrative Hearing Proceedings is contingent upon the following: (1) the Commission provides a reasonable period of time to submit a written brief on the merits, as well as equal opportunity to make oral argument at the Hearing; (2) the Commission's Enforcement Division staff does not engage in any ex parte contacts with any member of the Commission regarding the merits of the matter; (3) the Commission members only consider those facts stipulated to by the parties, or, in the absence of such stipulation, those facts presented by the parties, as well as arguments presented by the parties, when deciding the merits of this matter; (4) Commission members and staff do not publicly discuss the merits of this matter prior to the Commission rendering a decision, other than at the Hearing; and (5) the Commission members and staff do not engage in any unanticipated misconduct that compromises my due process rights;

h) I understand and agree that should I fail to timely serve my Notice of Defense, my case will proceed to a default recommendation by the Enforcement Division to the Fair Political Practices Commission at the Commission's next regularly scheduled hearing date.

4. No waiver in this Waiver of Rights constitutes an admission as to any allegations that either I or any other Respondent in FPPC Case No. 12/761 have violated the Political Reform Act, the regulations enacted thereunder, or any other law.

Dated: 8/8/13

Charles R. Reed
Charles R. "Chuck" Reed, Respondent



**FAIR POLITICAL PRACTICES COMMISSION
ENFORCEMENT DIVISION**

**WAIVER OF RIGHTS TO CERTAIN PROBABLE CAUSE PROCEDURES, PROBABLE CAUSE
CONFERENCE AND CERTAIN ADMINISTRATIVE HEARING PROCEDURES**


1. I, the undersigned, am a Respondent in FPPC Case No. 12/761. I am Treasurer of San José Fiscal Reforms, Mayor Reed, Chamber PAC And Issues Mobilization PAC Proponents (Respondent Committee), and I am representing both myself, individually, and Respondent Committee in this matter.
2. I acknowledge that I understand my and Respondent Committee's rights to a Probable Cause Hearing and Administrative Hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws. I have been provided and understand advice by legal counsel as to our rights to a Probable Cause Hearing and Administrative Hearing under the Political Reform Act, Administrative Procedure Act, and all other relevant laws.
3. I hereby waive my and Respondent Committee's procedural rights regarding Probable Cause Proceedings under the Political Reform Act, and Administrative Hearings under the Administrative Procedure Act, as follows:
 - a) I hereby waive my and Respondent Committee's right to the 21-day notice requirement as stated in Section 83115.5 and Regulation 18361.4, subdivision (b), and I understand and agree that we will serve our responses to the Probable Cause Report within five (5) business days after service of the Probable Cause Report;
 - b) I hereby waive my and Respondent Committee's right to a Probable Cause Conference, and I understand and agree that the General Counsel of the Fair Political Practices Division (or his designee) will deliberate whether probable cause exists based upon the Probable Cause Report, my and Respondent Committee's responses to the Probable Cause Report, and the Enforcement Division's subsequent reply;

- c) I understand and agree that should I or Respondent Committee fail to timely serve our responses to the Probable Cause Report, or should we affirmatively waive our right to respond to the Probable Cause Report, our case will proceed to an ex parte recommendation by the Enforcement Division to the General Counsel for a Finding of Probable Cause based solely upon the Probable Cause Report;
- d) I hereby waive my and Respondent Committee's right to the 15-day notice requirement in Section 11505, and I understand and agree that we will serve our Notices of Defense within three (3) business days after service of the Accusation, should the Commission's General Counsel issue a Finding of Probable Cause;
- e) I hereby waive my and Respondent Committee's right to have an Administrative Law Judge hear the case as stated in Section 11512, agree that a quorum of the Fair Political Practices Commission will hear this case in its entirety, and understand and agree that the decision and order made by the Commission after the Hearing, which will be in writing, will be the final decision in this matter;
- f) I hereby waive my and Respondent Committee's right to bring any and all civil claims for any procedural defects regarding the Probable Cause Proceedings and/or the Administrative Hearing Proceedings in this matter;
- g) The waiver above with respect to the Administrative Hearing Proceedings is contingent upon the following: (1) the Commission provides a reasonable period of time to submit a written brief on the merits, as well as equal opportunity to make oral argument at the Hearing; (2) the Commission's Enforcement Division staff does not engage in any ex parte contacts with any member of the Commission regarding the merits of the matter; (3) the Commission members only consider those facts stipulated to by the parties, or, in the absence of such stipulation, those facts presented by the parties, as well as arguments presented by the parties, when deciding the merits of this matter; (4) Commission members and staff do not publicly discuss the merits of this matter prior to the Commission rendering a decision, other than at the Hearing; and (5) the Commission members and staff do not engage in any unanticipated misconduct that compromises my or Respondent Committee's due process rights;

h) I understand and agree that should I or Respondent Committee fail to timely serve our Notices of Defense, our case will proceed to a default recommendation by the Enforcement Division to the Fair Political Practices Commission at the Commission's next regularly scheduled hearing date.

4. No waiver in this Waiver of Rights constitutes an admission as to any allegations that either I, Respondent Committee, or any other Respondent in FPPC Case No. 12/761 have violated the Political Reform Act, the regulations enacted thereunder, or any other law.

Dated: Aug 8, 2013



Benjamin J. Roth, Respondent, individually and on behalf of San José Fiscal Reforms, Mayor Reed, Chamber PAC And Issues Mobilization PAC Proponents, Respondent

EXHIBIT B

1 GARY S. WINUK, SBN 190313
Chief of Enforcement
2 ANGELA J. BRERETON, SBN 209972
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
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6 Attorneys for Complainant

7 JAMES R. SUTTON, SBN 135930
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Telephone: (415) 732-7700
10 Facsimile: (415) 732-7701

11 Attorneys for Respondents

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

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

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.

27 ///

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**

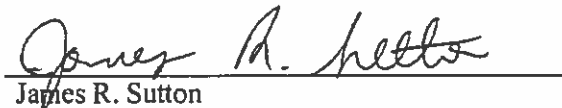
18 By: Gary S. Winuk
19 Chief of Enforcement

20 

21 Angela J. Brereton
22 Senior Commission Counsel

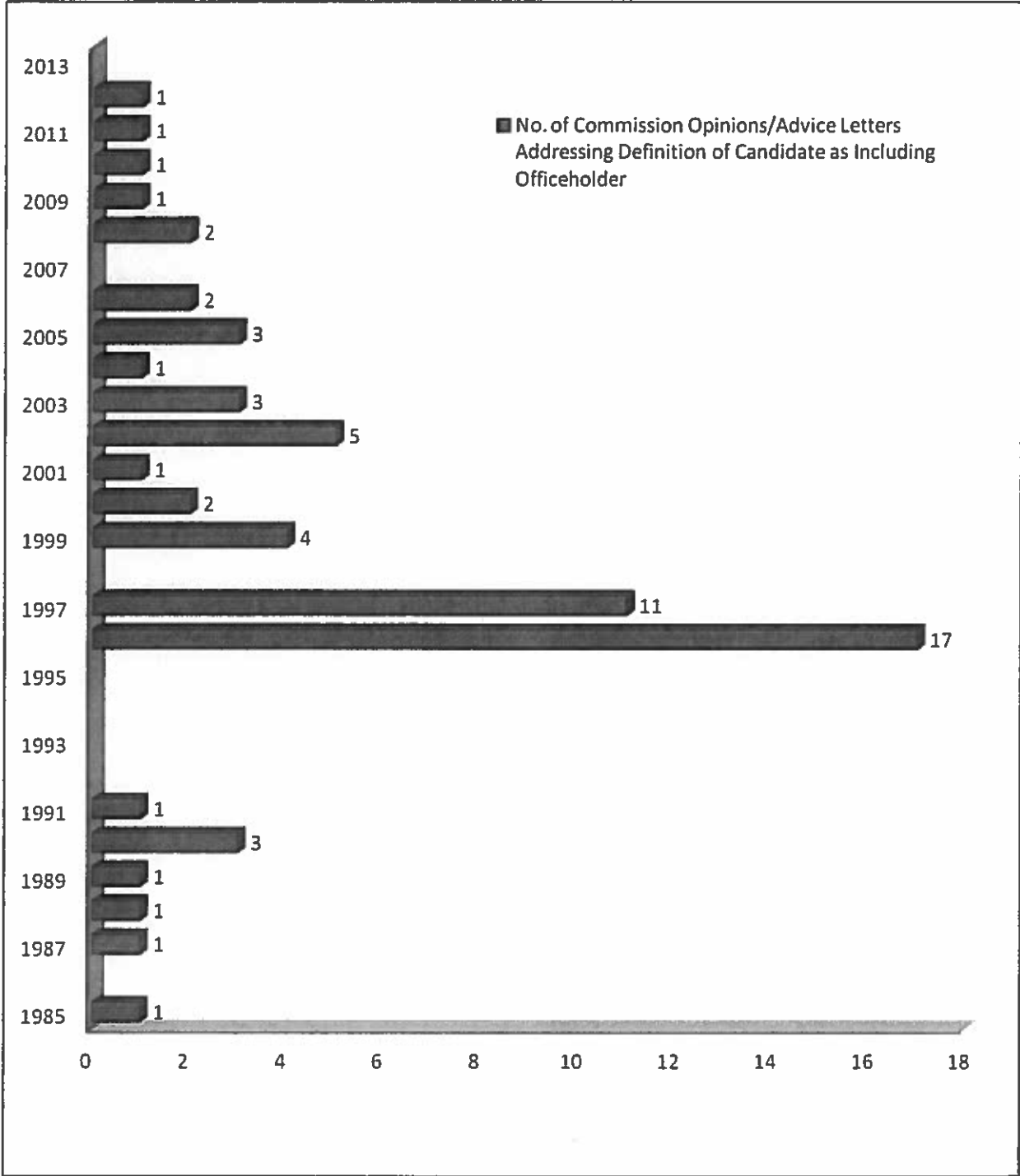
23 Dated: 8/16/13

24 **THE SUTTON LAW FIRM**

25 
26 James R. Sutton

27
28

EXHIBIT C



Opinions: 1 (In re Lui (1987) 10 FPPC Ops. 10)

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		<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.)</p> <p>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.)</p> <p>As District Attorney, Paul Gallegos is a candidate for purposes of the Act."</p>	3
A-04-254	Paul F. Walker, Councilmember	01/13/2005	<p>"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.)"</p>	2
I-05-030	Mark Peterson, Concord City Council Member	03/23/2005	<p>"As a city council member, you are a "candidate" for purposes of the Act. (Section 82007.)"</p>	2
A-05-087	Irene Sundberg	05/27/2005	<p>"Because you are an elected official and continue to have status as a candidate under section 82007, [Section 82015] is applicable to you."</p>	3
A-05-191	David Reid	09/27/2005	<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 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.</p>	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	"Section 82016 describes two ways in which a committee may become a controlled committee. First, if a candidate, his or her agent, or his or her controlled committee directly or indirectly controls the committee by exerting significant influence on the actions or decisions of the committee. Second, if a candidate, his or her agent, or his or her controlled committee acts jointly with a candidate in connection with the making of expenditures. 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 9, 2013, I served the following document(s):

1. COMPLAINANT'S ADMINISTRATIVE HEARING BRIEF (Regulation § 18361.5, subd. (a).) 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

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.

SERVICE LIST

Personal Delivery

Fair Political Practices Commission
Kelli Breton, Commission Assistant
Fair Political Practices Commission
428 J Street, Suite 620
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 9, 2013.



Ali Noonan