



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Germond, Commissioners Cardenas, Hatch, and Hayward

From: Erin Peth, Executive Director
Galena West, Chief of Enforcement
Christopher Burton, Commission Counsel

Subject: Request for Authority to File a Civil Complaint.

Case Name: *In the Matter of Alfonso Sanchez and Alfonso Sanchez for School Board 2016*;
FPPC No. 16/20105

Date: July 9, 2018

The Executive Director presents this matter to the Fair Political Practices Commission (the “Commission”) to request authority to file a civil complaint against the above-named respondents to enforce the provisions of the Political Reform Act (the “Act”).¹

INTRODUCTION

Alfonso Sanchez (“Sanchez”) has served as trustee to the Ontario-Montclair Elementary School District (the “School District”) since 2014. In 2016, Sanchez sought re-election and created the controlled committee Alfonso Sanchez for School Board 2016 (the “Committee”), which qualified on August 12, 2016. However, the Committee has failed to meet its campaign reporting obligations despite winning the election and remaining in office.

Sanchez has failed to respond to numerous Enforcement Division communications over the course of more than a year, has now been served with an accusation in this case, and remains in office, so the Executive Director believes the appropriate resolution is a civil proceeding to compel disclosure.

Regulation 18361.2 (attached) governs the procedure for civil litigation. After reviewing this memorandum, the Commission may direct the Executive Director to do any of the following in this case:

- (1) Initiate civil litigation.
- (2) Return the matter to staff for further investigation.
- (3) Take no further action on the matter or take whatever other action it deems appropriate.

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

APPLICABLE LAW

Definition of Controlled Committee

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$2,000 or more in a calendar year. (Section 82013, subd. (a).) This type of committee is commonly referred to as a “recipient committee.” A recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” (Section 82016.) A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subd. (a).)

Mandatory Filing of Campaign Statements and Reports

At the core of the Act’s campaign reporting system is the requirement that committees file campaign statements and reports for certain reporting periods and by certain deadlines. (Sections 84200, *et seq.*)

For example, in connection with the election held November 8, 2016, candidates and their controlled committees were required to file pre-election campaign statements (Form 460s) with the filing officer by the deadline of September 29, 2016 for the reporting period of July 1 through September 24, 2016; and by the deadline of October 27, 2016 for the reporting period of September 25 through October 22, 2016. (Sections 84200.5, subd. (a); 84200.8, subds. (a) and (b); and 84215.)

Further, controlled committees participating in the November 8, 2016 election were required to file semiannual campaign statements (Form 460s), including one due on January 31, 2017 for the reporting period of October 23, 2016 through December 31, 2016. (Section 84200, subd. (a).)

Candidates and controlled committees are also required to file 24-hour contribution reports (Form 497s) when they either make or receive a contribution in the final days preceding an election. (Section 84203.) Such reports must include certain information, including the name and address of both the maker and recipient of the contribution, and the date and amount of the late contribution. (Section 84203, subd. (a).)

Joint and Several Liability of Candidate, Committee, and Treasurer

It is the duty of a committee treasurer to ensure that the committee complies with the Act. (Sections 81004, 84100, 84104, and 84213; Regulation 18427.) A treasurer may be held jointly and severally liable, along with the candidate and the committee, for violations committed by the committee. (Sections 83116.5 and 91006.)

Civil Liability

The Commission may seek injunctive relief in a superior court to compel disclosure consistent with the Act, and the court shall grant expedited review of the matter. (Section 90009.)

Any person who intentionally or negligently violates any of the Act's reporting requirements shall be liable in a civil action for an amount not more than the amount or value not properly reported. (Section 91004.)

FACTS

The Enforcement Division received an anonymous complaint on or about November 16, 2016 correctly alleging that Sanchez and the Committee had failed to file any pre-election campaign statements in conjunction with the November 8, 2016 General Election.

On or about August 12, 2016, Sanchez filed a Candidate Intention Statement (Form 501), disclosing his intention to seek re-election to the School District, and an initial Statement of Organization (Form 410), designating the Committee as Sanchez's controlled committee and Sanchez as its treasurer. On or about October 6, 2016, the Committee filed an amended Statement of Organization specifying August 12, 2016 as the date the Committee qualified as a recipient committee.

Despite qualifying as a committee in 2016, the Committee has not filed any of the required campaign statements, including:

- (1) the first pre-election statement due on September 29, 2016;
- (2) the second pre-election statement due on October 27, 2016; and
- (3) the semiannual statement due on January 31, 2017.

The only campaign report filed by the Committee was a single, incomplete 24-Hour Contribution Report, which was filed on September 9, 2016. It reported a contribution received from Gloria Negrete McLeod Supervisor 2018 on September 9, 2016, but failed to disclose the amount of the contribution, as required under the Act.

Sanchez was re-elected as trustee of the School District in the November 8, 2016 General Election with approximately 35 percent of the vote.

The following is a list of contacts and actions taken thus far by the Enforcement Division to obtain compliance:

- November 16, 2016 - the Enforcement Division notified Sanchez that a complaint had been received alleging the failure to file any campaign statements.
- December 5, 2016 - the Enforcement Division contacted Sanchez via email, requesting that the Committee file its past-due campaign statements.
- December 20, 2016 - the Enforcement Division again contacted Sanchez, both by email and telephone, requesting the filing of the pertinent campaign statements.
- January 4, 2017 - the Enforcement Division sent a letter to Sanchez, requesting that he file the past-due campaign statements within 30 days of the letter.

- February 23, 2017 - the Enforcement Division left a voicemail for Sanchez.
- March 8, 2017 – Served Sanchez and the Commission with the Report in Support of a Finding of Probable Cause via certified mail, initiating an administrative action against the Committee and Sanchez. No response received.
- April 6, 2017 – submitted Ex Parte Request for an Order Finding Probable Cause and an Order that an Accusation Be Prepared and Served (“Ex Parte Request”) to the Hearing Officer for a determination of probable cause.
- April 20, 2017 - the Hearing Officer issued an Order finding probable cause to believe the Committee and Sanchez violated the Act and directed the Enforcement Division to issue an accusation against the Committee and Sanchez.
- June 15, 2017 - Accusation in the administrative action was personally served on Sanchez, personally and on behalf of the Committee.
- January 25, 2018 – renewed efforts to establish contact with Sanchez in order to resolve this matter, the Enforcement Division left a voicemail and sent an email to Sanchez.
- February 7, 2018 – the Enforcement Division sent an email to Sanchez.
- February 14, 2018 - the Enforcement Division sent an email to the President of the Board of Trustees of the School District, Elvia Rivas, soliciting her assistance in contacting Sanchez.²
- February 21, 2018 - the Enforcement Division received a call from Marlon Wadlington, an attorney tasked with facilitating a resolution to this matter, seemingly in response to the email to Ms. Rivas. Mr. Wadlington subsequently assured the Enforcement Division that Sanchez was in the process of preparing and filing the missing campaign statements.
- April 5, 2018 - After exchanging several emails with Mr. Wadlington, he asked that the Enforcement Division reach out to Sanchez directly to inquire as to the status of the promised filings.
- April 16, 2018 - the Enforcement Division attempted to contact Sanchez without response.

As of the date of this memorandum, Sanchez and the Committee have failed to file the outstanding campaign statements or amend the pertinent 24-Hour Contribution Report to include the contribution amount or respond to any outreach in this matter.

VIOLATIONS

Failure to Timely File Pre-Election Campaign Statement Due September 29, 2016

As a “controlled committee” under the Act, the Committee and Sanchez were required to file a pre-election campaign statement for the period of July 1, 2016 to September 24, 2016, by September 29, 2016. However, the Committee and Sanchez failed to do so, in violation of Sections 84200.5, subdivision (a); and 84200.8, subdivision (a).

Failure to Timely File Pre-Election Campaign Statement Due October 27, 2016

² In a situation such as this, Counsel would normally reach out to the clerk of the pertinent entity; however, Sanchez, himself, is the clerk of the Board of Trustees.

As a “controlled committee” under the Act, the Committee and Sanchez were required to file a pre-election campaign statement for the period of September 25, 2016 to October 22, 2016, by October 27, 2016. However, the Committee and Sanchez failed to do so, in violation of Sections 84200.5, subdivision (a); and 84200.8, subdivision (b).

Failure to Timely File Semiannual Campaign Statement Due January 31, 2017

As a “controlled committee” under the Act, the Committee and Sanchez were required to file a semiannual campaign statement for the period of October 23, 2016 to December 31, 2016, by January 31, 2017. However, the Committee and Sanchez failed to do so, in violation of Section 84200, subdivision (a).

Failure to Disclose Information Regarding Late Contribution

As a “controlled committee” under the Act, the Committee and Sanchez are required to file 24-hour reports that disclose certain information, including the amount of the late contribution. On its 24-Hour Contribution Report filed on September 9, 2016, the Committee and Sanchez failed to disclose the contribution amount for a contribution received on September 9, 2016, in violation of Section 84203, subdivision (a).

The Enforcement Division is not aware of any exculpatory or mitigating information related to the aforementioned violations.

RECOMMENDATION FOR CIVIL ACTION

Civil action in this case is appropriate given the severity of the campaign reporting violations. Sanchez ran for office in 2016, and was successful, yet failed to report any campaign activity, with the exception of an incomplete 24-hour report. As a result, the public was almost completely deprived of any information regarding the financial activity of the Committee. The public harm involved here is further aggravated by the fact that Sanchez remains in office, serving in the position of “clerk” for the School Board. This situation is also aggravated by the fact that Enforcement Division has reached out to the school district for assistance and they too were unsuccessful. In addition, Sanchez has had many opportunities to communicate with the Enforcement Division, and to file the missing statements, yet has failed to do so for over a year now. Therefore, after reviewing the Enforcement Division’s efforts, the Executive Director recommends filing a civil action against Sanchez and the Committee in order to seek an order compelling them to file the necessary campaign statements and reports and awarding civil penalties pursuant to Section 91004.

CONCLUSION

I recommend that the Commission authorize staff to file a civil complaint in this matter against Alfonso Sanchez and Alfonso Sanchez for School Board 2016 for injunctive relief and penalties.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18361.2. Memorandum Respecting Civil Litigation.

(a) If the Executive Director concludes civil litigation should be initiated, he or she shall submit to the Commission a written memorandum, which shall be first reviewed by the General Counsel, or an attorney from the Legal Division, summarizing the facts and the applicable law of the case and recommending the initiation of a lawsuit. The memorandum shall include all exculpatory and mitigating information known to the staff.

(b) The Commission shall review the memorandum at an executive session. The General Counsel, or an attorney from the Legal Division, and the Commission Assistant shall be in attendance. No other member of the staff may be present unless the Commission meets with a member of the staff for that person to answer questions. The Commission may not resume its deliberations until the person is no longer present. Any communication between the Commission and the person during the executive session shall be recorded. After review of the memorandum, the Commission may direct the Executive Director to do any of the following:

(1) Initiate civil litigation.

(2) Decide whether probable cause proceedings should be commenced pursuant to 2 Cal. Code of Regulations Section 18361.4.

(3) Return the matter to the staff for further investigation.

(4) Take no further action on the matter or take any other action it deems appropriate.

(c) If the Commission decides to initiate civil litigation, the Commission may then permit other members of the staff to attend the executive session.

(d) If the Executive Director deems it necessary, he or she may call a special meeting of

the Commission to review a staff memorandum recommending the initiation of civil litigation.

(e) It is the intent of the Commission in adopting this section to preserve for the members of the Commission the authority to decide whether alleged violations should be adjudicated in administrative hearings or in civil litigation, while at the same time avoiding the possibility that discussions with members of the staff might cause members of the Commission to prejudge a case that might be heard by the Commission under Government Code Section 83116.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83115, 83115.5 and 83116, Government Code.

HISTORY

1. New section filed 10-26-2004; operative 11-25-2004 (Register 2004, No. 44).
2. Amendment filed 7-18-2007; operative 8-17-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2007, No. 29).