



To: Chair Miadich and Commissioners Cardenas, Hatch, and Hayward

From: Loressa Hon, Acting Executive Director
Galena West, Chief of Enforcement
Ruth Yang, Commission Counsel

Date: May 6, 2019

Subject: Assignment of Hearing to Administrative Law Judge

Case Name: In the Matter of G. Rick Marshall and G. Rick Marshall for School Board 2015 (ID# 1379665); FPPC No. 15/2013

I. INTRODUCTION

Respondent G. Rick Marshall (“Marshall”) was an unsuccessful candidate for the Torrance Unified School District Board of Education (“Board”) in the 2015 General Election. Respondent G. Rick Marshall for School Board 2015 (the “Committee”) was his candidate-controlled committee for the 2015 General Election.

Marshall and the Committee failed to include the name of the Committee in robocalls, failed to file a 24-hour contribution report, and made a prohibited cash expenditure of \$100 or more, as detailed in the Accusation attached to this memorandum. Marshall filed a notice of defense in response to the Accusation and requested an administrative hearing.

II. COMMISSION ACTION ONLY REQUIRED IF THE COMMISSION DESIRES TO PARTICIPATE IN THE ADMINISTRATIVE HEARING

The Executive Director and the Chief of Enforcement are recommending an administrative law judge (“ALJ”) conduct the hearing pursuant to Government Code section 11512, subdivision (a). The ALJ will then make a recommendation to the Commission on the findings of fact, law and penalty, if applicable, in the matter. The Commission will then make the final determination on the case.

This memorandum is submitted to each member of the Commission pursuant to California Code of Regulation section 18361.5, subdivision (b), which provides:

If the Executive Director determines that a hearing on the merits should be conducted before an administrative law judge alone pursuant to Government Code section 11512(a), he or she shall provide a copy of the accusation as well as a memorandum describing the issues involved to each member of the Commission. If, at the next regularly scheduled

meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an administrative law judge is available.

Thus, no Commission action is required if the Commission approves the recommendation that the administrative hearing in this matter should be conducted before an ALJ. However, two or more Commissioners may vote to keep the matter with the Commission if so desired.

III. PROCEDURAL HISTORY

The Enforcement Division initiated this administrative action against Marshall and the Committee by serving him with a Report in Support of a Finding of Probable Cause (“Report”) by electronic mail, a means of service to which Marshall agreed, on or about July 16, 2018.

On August 17, 2018, Marshall requested discovery pursuant to Regulation 18361.4, subdivision (c)(2), and stipulated that he would accept documents by electronic mail. On August 20, 2018, the Enforcement Division produced documents responsive to Marshall’s request for discovery. On September 10, 2018, Marshall provided a written response to the Report and requested a probable cause conference.

Hearing Officer Jack Woodside conducted the probable cause conference on October 4, 2018, and Marshall appeared by phone. On or about October 5, 2018, Hearing Officer Woodside issued an order finding, based on the probable cause conference and Report, that there was probable cause to believe that Marshall and the Committee violated the Act and directed the Enforcement Division to issue an Accusation against Marshall and the Committee in accordance with the finding.

On January 15, 2019, the Commission’s Chief of Enforcement Galena West, issued an Accusation against Marshall and the Committee. The Accusation was delivered to Marshall by substitute service on January 22, 2019, and service was completed on February 1, 2019. Marshall submitted a signed notice of defense, dated February 15, 2019, to request an administrative hearing on this matter.

IV. HEARING OPTIONS

Every hearing in a contested case must be presided over by an ALJ. The agency itself shall determine whether the ALJ is to hear the case alone or whether the agency itself is to hear the case with the ALJ.¹

When the agency itself hears the case, the ALJ shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency itself shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the ALJ. When the ALJ hears a case, he or she shall exercise all powers relating to the conduct of the hearing. A rule of the ALJ admitting or excluding evidence is subject to review in the same manner and to the same extent as the ALJ’s proposed decision in the proceeding.²

¹ See Gov’t Code § 11512, subd. (a).

² See Gov’t Code § 11512, subd. (b).

V. SUMMARY OF THE ACCUSATION

The Accusation alleges that Marshall and the Committee violated the Political Reform Act as follows:

Count 1: Failure to Include the Name of the Committee in Robocalls

Having paid for over 500 substantially similar telephone calls, Marshall and the Committee had a duty to announce the Committee as the source of those calls. Marshall and the Committee failed to announce the Committee as the source of those calls. By failing to announce the Committee as the source for over 500 substantially similar telephone calls, Marshall and the Committee violated Government Code section 84310.

Count 2: Failure to File 24-Hour Contribution Report

As a candidate and his active committee, Marshall and the Committee had a duty to file a 24-hour contribution report to disclose the late contribution of \$1,600 from Janice Marshall to the Committee. Marshall and the Committee failed to file the 24-hour contribution report to disclose the late contribution of \$1,600 from Janice Marshall to the Committee. By failing to file the 24-hour contribution report, Marshall and the Committee, violated Government Code section 84203, subdivision (a).

Count 3: Making a Cash Expenditure of \$100 or More

Marshall and the Committee are prohibited from making a cash expenditure of \$100 or more. Marshall and the Committee made a cash expenditure of \$500 to Janice Marshall as partial repayment of a loan. By making a cash expenditure of \$100 or more, Marshall and the Committee violated Government Code section 84300, subdivision (b).

VI. CONCLUSION

If, at the next regularly scheduled meeting, two or more Commissioners indicate a desire to participate in the hearing, the matter will be scheduled for a hearing before the Commission when an ALJ is available.³ Otherwise, hearing of this matter will be conducted before an ALJ alone pursuant to Section 11512, subdivision (a).

³ Reg. § 18361.5, subd. (b).

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

10
11 In the Matter of) FPPC No. 15/2013
12)
13)
13 G. RICK MARSHALL and G. RICK) **ACCUSATION**
14 MARSHALL FOR SCHOOL BOARD)
2015,)
15) (Gov. Code §11503)
16 Respondents.)

17
18 Complainant, the Enforcement Division of the Fair Political Practices Commission, after a finding
19 of probable cause pursuant to Government Code Section 83115.5, alleges the following:

20 **JURISDICTION**

21 1. Complainant is the Enforcement Division of the Fair Political Practices Commission (the
22 “Commission”) and makes this Accusation in its official capacity and in the public interest.

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

1 3. When enacting the Political Reform Act (the "Act"),¹ California voters specifically found
2 and declared that previous laws regulating political practices had suffered from inadequate enforcement,
3 and it was their purpose to ensure that the Act be vigorously enforced.²

4 4. To that end, Section 81003 requires that the Act be liberally construed to achieve its
5 purposes.

6 5. One of the stated purposes of the Act is to ensure voters are fully informed and improper
7 practices are inhibited by requiring all political candidates, as well as the committees that support or
8 oppose them, to disclose the source of an advertisement on the advertisement and to disclose all
9 contributions and expenditures made throughout a campaign.³

10 **RESPONDENTS**

11 6. Respondent G. Rick Marshall ("Marshall") was an unsuccessful candidate for the
12 Torrance Unified School District Board of Education ("Board") in the 2015 General Election.

13 7. G. Rick Marshall for School Board 2015 (the "Committee") was Marshall's candidate-
14 controlled committee for the 2015 election.

15 **APPLICABLE LAW**

16 8. All applicable law in this Accusation is the law as it existed during the relevant time for
17 the violations alleged.

18 **A. Duty to Provide Proper Disclosure**

19 9. A committee that pays for telephone calls that are similar in nature and aggregate 500 or
20 more made by electronic means (known commonly as "robocalls") that advocate support of, or opposition
21 to, a candidate or candidates, must announce during the call the full name of the committee responsible
22 for the call.⁴

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24 ///

26 ¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. The regulations of the
27 Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of
28 Regulations.

² Sections 81001, subd. (h), and 81002, subd. (f).

³ Section 81002, subd. (a).

⁴ Section 84310, subd. (a)

1 **B. Duty to File Campaign Reports**

2 10. A contribution, including a loan, of \$1,000 or more received by a candidate-controlled
3 committee within 90 days before an election where the candidate appears on the ballot is a “late
4 contribution.”⁵

5 11. A committee must report a late contribution on a 24-hour report within 24 hours of
6 receiving the contribution.⁶

7 **C. Prohibition of Cash Expenditures**

8 12. An expenditure means any payment by a committee unless it is clear it is not for a political
9 purpose.⁷

10 13. A committee cannot make expenditures of over \$100 or more in cash.⁸

11 **D. Factors to be Considered by the Fair Political Practices Commission**

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

21 **GENERAL FACTS**

22 15. In the November 3, 2015 General Election, Marshall and another candidate, Clint Paulson,
23 sought to unseat incumbents Don Lee and Terry Ragins on the Board. Lee and Ragins finished first and
24 second in the voting thereby retaining their seats, with Marshall finishing third and Paulson finishing
25 fourth.

26 ⁵ Section 82036, subd. (a).

27 ⁶ Section 84203.

28 ⁷ Section 82025.

⁸ Section 84300, subd. (b).

⁹ Regulation 18361.5, subd. (d).

1 Robocalls

2 16. Between October 8, 2015 and November 2, 2015, the Committee paid for six sets of
3 robocalls supporting Marshall and Paulson, and/or opposing the incumbents. Each set consisted of
4 between approximately 9,700 and 10,100 calls. Five of the six sets of robocalls identified the Committee
5 as having paid for the call.

6 17. One set of robocalls did not identify the Committee as the source of the robocalls. It
7 consisted of 10,104 calls. The total cost to the Committee of that set of calls was \$505.20. The following
8 is the text of that robocall:

9 Hi, my name is Orly Stephenson, mother of a former Torrance High School sophomore. Please
10 send a message to the school board on November 3rd. Elect Clint Paulson and Rick Marshall. Our
11 Torrance High wrestling coach molested his students for ten years. The incumbents did nothing.
12 47 molestation counts, 17 ruined lives, and 37 costly lawsuits. The incumbents say nothing.
13 Protect our kids. Vote Clint Paulson and Rick Marshall for accountability. Thank you.

14 18. Before making any of the robocalls, Marshall asked Paulson to run as a slate with him and
15 pay for a portion of the robocalls. Paulson did not like the idea of running as a slate and declined to be
16 involved with the robocalls.

17 19. Marshall still included Paulson's name in the robocalls because he thought it would be
18 advantageous to his campaign to attempt to unseat both incumbents. Paulson was not aware Marshall had
19 included his name on the robocalls until after the calls were made.

20 Loan

21 20. Marshall's wife, Janice Marshall, paid \$1,600 for the candidate ballot statement by
22 personal credit card.

23 21. The Committee reported the payment on Schedule D of the Committee's pre-election
24 campaign statement for the period ending September 19, 2015, and reported it as a loan from Janice to
25 the Committee received on August 17, 2015 on Schedule B of that same pre-election statement.

26 22. The Committee did not file a 24-hour report for the loan, which constituted a late
27 contribution.

28 23. The Committee paid back most of the loan over two statement periods.

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1 24. On its pre-election statement for the period ending September 19, 2015, the Committee
2 reported a payment of \$600 on the loan.

3 25. The Committee's semi-annual statement for the period ending December 31, 2015
4 indicates the Committee paid Janice Marshall \$912.39 on the loan and that she forgave \$119.61
5 remaining on the loan.

6 26. According to Marshall, the Committee paid \$500 of the reported \$912.39 in cash.

7 **PROCEDURAL HISTORY**

8 27. The Enforcement Division initiated an administrative action against the Committee and
9 Marshall in this matter by serving them with a packet containing a cover letter, a Report in Support of a
10 Finding of Probable Cause ("PC Report"), a fact sheet regarding probable cause proceedings, selected
11 sections of the Government Code regarding probable cause proceedings for the Commission, and selected
12 regulations of the Commission regarding probable cause proceedings.

13 28. The information contained in the PC Report packet advised the Committee and Marshall
14 that they had 21 days in which to request a probable cause conference, file a written response to the PC
15 Report, or both.

16 29. On August 17, 2018, Marshall requested discovery pursuant to Regulation 18361.4,
17 subdivision (c)(2), and stipulated that he would accept documents by electronic mail.

18 30. On August 20, 2018, the Enforcement Division produced documents responsive to
19 Marshall's discovery request.

20 31. On September 10, 2018, Marshall provided a written response to the PC Report and
21 requested a probable cause conference.

22 32. A Hearing Officer conducted the probable cause conference on October 4, 2018, and
23 Marshall appeared by phone.

24 33. On or about October 5, 2018, the Hearing Officer issued an order finding, based on the
25 probable cause conference and the PC Report, that there was probable cause to believe the Committee
26 and Marshall violated the Act and directed the Enforcement Division to issue an accusation against the
27 Committee and Marshall in accordance with the finding.

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1 **VIOLATIONS**

2 34. The Committee and Marshall committed 3 violations of the Act as follows:

3 **Count 1**

4 **Failure to Include the Name of the Committee in Robocalls**

5 35. Complainant incorporates paragraphs 1 – 34 of this Accusation, as though completely set
6 forth here.

7 36. Having paid for over 500 substantially similar telephone calls, the Committee and
8 Marshall had a duty to announce the Committee as the source of those calls.

9 37. The Committee and Marshall failed to announce the Committee as the source of those
10 calls.

11 38. By failing to announce the Committee as the source for over 500 substantially similar
12 telephone calls, the Committee and Marshall violated Section 84310.

13 **Count 2**

14 **Failure to File 24-Hour Report**

15 39. Complainant incorporates paragraphs 1 – 38 of this Accusation, as though completely set
16 forth here.

17 40. As an active committee and its candidate, the Committee and Marshall had a duty to file
18 a 24-hour report to disclose the late contribution of \$1,600 from Janice Marshall to the Committee.

19 41. The Committee and Marshall failed to file the 24-hour report to disclose the late
20 contribution of \$1,600 from Janice Marshall to the Committee.

21 42. By failing to file the 24-hour report, the Committee and Marshall violated Section 84203,
22 subdivision (a).

23 **Count 3**

24 **Making a Cash Expenditure of \$100 or More**

25 43. Complainant incorporates paragraphs 1 – 42 of this Accusation, as though completely
26 set forth here.

27 44. The Committee and Marshall are prohibited from making a cash expenditure of \$100 or
28 more.

1 45. The Committee and Marshall made a cash expenditure of \$500 to Janice Marshall as
2 partial repayment of a loan.

3 46. By making a cash expenditure of \$100 or more, the Committee and Marshall violated
4 Section 84300, subdivision (b).

5 **MITIGATING OR EXCULPATORY FACTORS**

6 47. None.

7 **AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS**

8 48. The Committee and Marshall included a statement in the other five robocalls identifying
9 themselves as the source of those calls, so the Committee and Marshall should have known to include a
10 similar statement in the sixth robocall. The content of the sixth robocall was significantly more incendiary
11 than the other five robocalls.

12 **PRAYER**

13 WHEREFORE, Complainant prays as follows:


- 14 1. That the Fair Political Practices Commission hold a hearing pursuant to Section 83116 and
15 Regulation 18361.5, and at such hearing find that the Committee and Marshall violated the
16 Act as alleged herein;
- 17 2. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
18 order the Committee and Marshall to pay a monetary penalty of up to \$5,000 for the
19 violation of the Political Reform Act alleged in **Count 1**;
- 20 3. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
21 order the Committee and Marshall to pay a monetary penalty of up to \$5,000 for the
22 violation of the Political Reform Act alleged in **Count 2**;
- 23 4. That the Fair Political Practices Commission, pursuant to Section 83116, subdivision (c),
24 order the Committee and Marshall to pay a monetary penalty of up to \$5,000 for the
25 violation of the Political Reform Act alleged in **Count 3**;
- 26 5. That the Fair Political Practices Commission, pursuant to Regulation 18361.5, subdivision
27 (d), consider the following factors in framing a proposed order following a finding of a
28 violation pursuant to Section 83116: (1) the seriousness of the violation; (2) the presence

1 or absence of any intention to conceal, deceive or mislead; (3) whether the violation was
2 deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by
3 consulting the Commission staff or any other government agency in a manner not
4 constituting a complete defense under Section 83114, subdivision (b); (5) whether the
5 violation was isolated or part of a pattern and whether the violator has a prior record of
6 violations of the Act or similar laws; and (6) whether the violator, upon learning of a
7 reporting violation, voluntarily filed amendments to provide full disclosure.

- 8 6. That the Fair Political Practices Commission grant such other and further relief as it deems
9 just and proper.

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12 Dated:

13 15 Jan 19

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15 _____
16 Galena West
17 Chief of Enforcement
18 Fair Political Practices Commission
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