

**BEFORE THE
FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA**

In the Matter of the Accusation against:

G. RICK MARSHALL and G. RICK MARSHALL FOR

SCHOOL BOARD 2015, Respondents

FPPC No. 15/2013

OAH No. 2019060256

PROPOSED DECISION

Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter on December 9, 2019, in Los Angeles.

Ruth Yang, Commission Counsel, represented complainant.

G. Rick Marshall was present and represented respondents.

The record was held open after the conclusion of the hearing for respondents to submit additional evidence, which was timely received, marked, and admitted, without objection, as described in the ALJ's order which closed the record. (Ex. H.) The matter was submitted for decision on December 13, 2019.

SUMMARY

G. Rick Marshall (Marshall) unsuccessfully ran for a seat on the Torrance Unified School District Board of Education in the 2015 General Election. G. Rick Marshall for School Board 2015 (Committee) was his candidate-controlled committee.

Under the Political Reform Act (Gov. Code, §§ 81000-91014), when a committee pays for robocalls (an aggregate of 500 or more similar telephone calls that are made), the robocall must announce the name of the committee. Further, when a committee receives a contribution within 90 days of the election, it must file a report disclosing the contribution within 24 hours of receipt. Lastly, committees are prohibited from making cash expenditures of \$100 or more.

In this case, complainant established by a preponderance of the evidence that respondents violated the Political Reform Act (the Act) by failing to announce the name of the Committee on one set of robocalls, failing to timely report a contribution consisting of a \$1,600 loan from Marshall's wife made within 90 days of the election, and making \$500 in cash expenditures. In light of the established violations, balanced against aggravating and mitigating facts, monetary penalties totaling \$6,500 are warranted.

FACTUAL FINDINGS

Jurisdictional Matters

1. Complainant is the Enforcement Division of the Fair Political Practices Commission (Commission), which has the legal duty to administer, implement, and enforce the Act.

2. Marshall was an unsuccessful candidate for the Torrance Unified School District Board of Education (Board) in the November 3, 2015 General Election.

3. Committee was Marshall's candidate-controlled committee for the November 3, 2015 General Election.

4. On or after July 26, 2018, complainant initiated an administrative action against respondents by serving them with various documents, including a Report in Support of a Finding of Probable Cause. On October 4, 2018, a hearing officer conducted a probable cause conference, in which respondents participated. On October 5, 2018, the hearing officer issued an order finding that there was probable cause for complainant to file an accusation against respondents for violating the Act.

5. On January 15, 2019, complainant filed the Accusation against respondents, alleging three violations of the Act.

6. Respondents timely requested a hearing to challenge the Accusation.

Robocalls

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

8. Between October 8, 2015, and November 2, 2015, the Committee paid for six sets of robocalls supporting Marshall and Paulson, and/or opposing the incumbents. Each set consisted of between approximately 9,700 and 10,100 calls.

9. Five of the six sets of robocalls identified the Committee as having paid for the call. Those five sets of robocalls discussed political topics such as a lawsuit attempting to recover \$109 million of an alleged illegal construction contract entered into by the Board, the Common Core States Standards Initiative, an aquatic center funded by the Board, and a Torrance High School wrestling coach who molested at least 17 boys over an extended period of time. Four of the calls were voiced by Marshall supporters; the fifth was voiced by Marshall, and focused on the Board's purported failures concerning the high school wrestling coach.

10. However, the sixth set of robocalls did not identify the Committee as the source. It consisted of 10,104 calls. The total cost to the Committee for that set of robocalls was \$505.20. The following is the text of that robocall:

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

11. Before making any of the above-described robocalls, Marshall asked Paulson to run on a slate with him and pay for a portion of the robocalls. Paulson did not agree and declined to be involved with the robocalls. Marshall still included Paulson's name in the robocalls. Paulson was not aware that Marshall had included his name on the robocalls until after the calls were made.

12. During the hearing, Marshall testified that he believed it was clear to recipients of the robocall in question that he was the source. As support, Marshall played during the hearing a recording of a robocall paid for by the incumbents' committees made in response to his robocall in question. (Exs. G1 & G2.) The incumbents' robocall was voiced by a former mayor of Torrance and was laudatory of the incumbents. Marshall was not named in the incumbents' robocall; it simply described Marshall's robocall as "false and misleading." (*Ibid.*) In addition, Marshall points to the complaint submitted to the Commission from incumbent Terry Ragins concerning his robocall in question, in which Marshall was identified as a responsible person, along with Paulson. (Ex. A.) Ragins apparently did not know Paulson had declined to be involved in the robocall.

Late Contribution

13. Marshall's candidate ballot statement cost \$1,600. Marshall's wife, Janice Marshall, paid the \$1,600 by her personal credit card, on August 17, 2015.

14. The Committee reported the \$1,600 payment on Schedule D of the Committee's pre-election campaign statement for the period ending September 19, 2015, and reported it on Schedule B of that same pre-election statement as a loan from Janice Marshall to the Committee received on August 17, 2015.

15. Although this transaction occurred within 90 days of the November 3, 2015 General Election, the Committee did not file a 24-hour report for it.

16. Marshall testified that he did not file a 24-hour report for this transaction because he did not view it as a loan or otherwise a contribution. He clearly knew of the requirement for a "late contribution" report (as contributions made within 90 days of an election are referred to), as demonstrated by the fact he filed one on August 20,

2015, for a \$1,200 contribution received on August 19, 2015. Marshall testified that, in this instance, his wife paid for his campaign's ballot statement. Marshall testified that because she is a housewife with no independent source of income, community funds were used to purchase the ballot statement, and therefore it was as if he had personally paid for the ballot statement himself. His understanding is that such an expense would not need to be reported. In support, Marshall points to the Commission's Form 470, which advises candidates that a candidate's personal funds used to pay a filing fee or ballot statement are excluded from determining whether such a form must be filed. (Ex. E, p. 1.)

Cash Payments

17. The Committee paid back most of the loan to Janice Marshall over two reporting periods.

18. On its pre-election statement for the period ending September 19, 2015, the Committee reported a payment of \$568.00 on the loan by a check from the Committee's bank account. (Ex. 6, attach. 3.) However, the check produced by respondents was actually in the amount of \$600.00. (Ex. 8, attach. 1.)

19. The Committee's semi-annual statement for the period ending December 31, 2015 indicates the Committee paid Janice Marshall another \$912.39 on the loan during that period (ex. 6, attach. 5); and that she forgave the remaining \$119.61 on the loan (*ibid.*)

20. According to Marshall, the Committee paid \$500 of the reported \$912.39 in the second statement period from cash withdrawals of \$200 and \$300 from the Committee's bank account. Marshall provided Commission Special Investigator Garrett Micheels with Committee records, including a spreadsheet used to track its

expenditures, purporting to show that the withdrawals were cash payments made to Janice Marshall for the purpose of paying back the loan. However, none of the documents show how the cash was spent, such as a receipt or note. Moreover, Special Investigator Micheels could not reconcile the documents he received with what was reported to him by Marshall.

21. In 2014, Marshall ran for a position on the State Board of Equalization. In 2019, the Commission issued him a warning letter, in connection with that unsuccessful effort, for loaning campaign funds for an unrelated purpose and failing to disclose the loan in a required report. (Ex. D.) Marshall testified his cash payments in this case were technical in nature and should have been treated similarly, i.e., by a warning letter instead of a fine. The warning letter clarified that the matter was being resolved by a written warning because Marshall had otherwise substantially complied with the Act, the loan was repaid within seven days and before contact from the Commission, and only accounted for a small fraction of his total campaign. (*Id.*, p. 1.) The events described in the warning letter occurred before the events addressed in the Accusation.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In an administrative case such as this, the burden of proof rests upon the party making the charges, here complainant. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.)

2. Because this case does not involve discipline of a professional license, and no law provides otherwise, the standard of proof is a preponderance of the

evidence. (Evid. Code, § 115; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916–918.) Preponderance of evidence means evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

General Provisions of the Act

3. Government Code section 81003 requires the Act to be liberally construed to achieve its purpose.

4. There are many purposes of the Act, including ensuring that voters are fully informed and improper practices are inhibited by requiring all political candidates and their committees to disclose all contributions and expenditures made throughout a campaign. (Gov. Code, § 81002, subd. (a).)

5. Prior to 2016, a committee qualified as a "recipient committee" when it received one thousand dollars (\$1,000) or more in contributions in a single year.

6. "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes. (Gov. Code, § 82015, subd. (a).) "Expenditure" means any payment, unless it is clear from the surrounding circumstances that the payment is not made for political purposes. (Gov. Code, § 82025.)

Cause for Monetary Penalties

ROBOCALLS

7. A committee that pays for an aggregate of 500 or more similar telephone calls, which advocate support of or opposition to a candidate or candidates, i.e., robocalls, must announce in the call the full name of the committee that paid for the call. (Gov. Code, § 84310, subd. (a).)

8. In this case, complainant established by a preponderance of the evidence that respondents violated Government Code section 84310, subdivision (a), by failing to announce during the call that the Committee paid for the set of robocalls voiced by the mother of a high school student. (Factual Findings 1-12.)

9. A. Respondents point to the part of Government Code section 84310, subdivision (a), that provides, "Unless the organization that authorized the call and in whose name it is placed has filing obligations under this title, and the name announced in the call either is the full name by which the organization or individual is identified in any statement or report required to be filed . . . or is the name by which the organization or individual is commonly known, the candidate [or] committee . . . that paid for the call shall be disclosed." Respondents argue that because they had filing obligations and Marshall was twice mentioned by name during the robocall, the excerpt in question absolves them of liability.

B. While novel, this argument fails. The part of the statute cited by respondents uses the word "announced." The word "announced" is generally defined as "to make known publically." (*The Merriam-Webster.com Dictionary*, Merriam-Webster Inc., www.merriam-webster.com/dictionary/announce.) Use of the word "announced" in this part of the statute therefore suggests that at some point during

the call, the source of the call must be made known to the public, i.e., Marshall or the Committee. Doing so would dispense with the need to thereafter state who paid for the call, since the source of the call already would have been made known. One would presume a word different than “announced” would have been used in this part of the statute if simply mentioning the name of the candidate or committee was all that was required, without announcing to the public who was responsible for the call. But that did not happen with this set of calls. Although Marshall was mentioned by name, there was no indication during the call who was responsible for making it.

C. Even ignoring the above interpretation, perhaps this part of the statute might work as respondents argue if Marshall was the only candidate mentioned during the call by the narrator. But the problem is that both Marshall and Paulson were mentioned. A recipient would not know which of the two was responsible, if not both. In this case, Paulson was not responsible for the call, having expressly rejected taking part in it. It could not have been the intention of the drafters of this statute to countenance a robocall message so vague that the source of the funding could not be divined. (See also subparagraph D. below.)

D. Respondents argue the message during the robocall provided enough information to allow recipients to determine who had paid for it. Not so. Based on the script of the robocall, a recipient could have assumed the call was paid by respondents, Marshall's supporters (including the mother who voiced the message), or even Paulson. The fact that Ragins' complaint to the Commission about the robocall correctly identified Marshall as a source does not mean that members of the public who received the call had the same understanding. If anything, this point is proven by the fact that Ragins also incorrectly identified in the complaint Paulson as a

responsible party for the call, indicating even those heavily involved in that election could be fooled to some extent.

E. Finally, respondents point to the last sentence of section 84310, subdivision (a), which states, "This section shall not apply to telephone calls made by the candidate, the campaign manager, or individuals who are volunteers." Respondents argue this exception applies to them because the robocall in question was voiced by a campaign supporter. However, this exception was meant to apply only to telephone calls actually placed by a campaign volunteer, not one previously recorded and pushed out to hundreds of telephones by an automated call center.

LATE CONTRIBUTION

10. A contribution, including a loan, of \$1,000 or more, received by a candidate-controlled committee, within 90 days preceding an election where the candidate appears on the ballot, is considered a "late contribution." (Gov. Code, § 82036, subd. (a).) A candidate-controlled committee must report a late contribution on a "24-hour report" within 24 hours of receiving the late contribution. (Gov. Code, § 84203, subd. (b).) For the November 3, 2015 General Election, the 90-day period began on August 5, 2015.

11. In this case, complainant established by a preponderance of the evidence that respondents violated Government Code section 84203, subdivision (b), when they failed to file a 24-hour report to disclose the late contribution of \$1,600 from Janice Marshall to the Committee when it was received within 90 days of the election. (Factual Findings 1-16.)

12. A. Respondents point to the explanation in Form 470 excluding personal funds used to buy ballot statements from filing consideration, as well as

the language in section 82015, subdivision (c), in which “personal funds of the candidate used to pay . . . a candidate statement” are not considered a “contribution.” Respondents argue that because Marshall’s ballot statement was paid by his wife from community property funds, the \$1,600 in question was not a contribution but use of personal funds that are exempt.

B. Respondents’ argument fails. Respondents would be correct had Marshall’s wife paid the \$1,600 from her credit card account and nothing else was done. However, the Committee reported the transaction as a loan and Marshall’s wife was paid back most of the loan from Committee funds, demonstrating that the source of the \$1,600 was not from Marshall’s personal funds. Put another way, once Marshall’s wife was reimbursed for the ballot statement purchase, the \$1,600 could no longer be considered a personal expense.

CASH PAYMENTS

13. Cash expenditures of \$100 or more are prohibited. (Gov. Code, § 84300, subd. (b).) There are no exceptions.

14. In this case, complainant established by a preponderance of the evidence that respondents violated Government Code section 84300, subdivision (b), by making cash expenditures of \$200 and \$300 to Janice Marshall as partial repayment of her loan to the Committee. (Factual Findings 1-21.)

15. A. Respondents argue that the cash repayments of the loan were duly reported and tracked like a credit card transaction, thus fulfilling the spirit of the law, and that the law has not caught up with economic realities or modern practices.

B. As complainant correctly argues, the Act prohibits cash expenditures of \$100 or more because cash cannot be tracked, which can lead to financial mismanagement or worse. In this case, the documents submitted by respondents could not be reconciled with Marshall's explanation of the transactions. While Marshall's explanation of this transaction was accepted by the Commission, it remains unclear where the \$500 in cash paid by the Committee actually went. Thus, contrary to respondents' contentions, the spirit of the law is not met in this case. In any event, there is no exception to the prohibition of cash expenditures of \$100 or more, even if meticulously documented.

Disposition

16. Each violation of the Act is punishable by imposition of a monetary penalty of up to \$5,000 per violation, which must be paid to the General Fund of the State of California. (Gov. Code, § 83116, subd. (c).)

17. In framing a proposed order following a finding of a violation pursuant to Government Code section 83116, the Commission and the ALJ shall consider all the surrounding circumstances, including but not limited to: (1) the seriousness of the violation(s); (2) the presence or absence of any intention to conceal, deceive or mislead; (3) whether the violation was deliberate, negligent or inadvertent; (4) whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114, subdivision (b); (5) whether the violation was isolated or part of a pattern, and whether the violator has a prior record of violations of the Act or similar laws; and (6) whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure. (Cal. Code Regs., tit. 2, § 18361.5, subd. (d).)

18. With regard to the count involving the one set of robocalls, complainant requests a "moderate to high" monetary penalty of \$3,500. (Ex. 1, pp. 22-23.) The six factors described above support that amount. Specifically, respondents' failure to announce who paid for the robocall in question created confusion as to its source, including leading respondents' opponents to believe an innocent person, Paulson, was involved. The violation was deliberate and apparently meant to deceive the public, in that respondents' five other sets of robocalls correctly announced who paid for them. On the other hand, this particular violation was isolated and respondents have no known prior record of similar violations. Moreover, respondents fully cooperated with complainant's investigation. Thus, while this was a serious violation, there are enough mitigating facts warranting a fine in the amount of \$3,500. (Factual Findings 1-21.)

19. With regard to the count involving the late contribution, complainant requests a "moderate" monetary penalty of \$1,500. (Ex. 1, p. 23.) The six factors described above support that amount as well. Specifically, respondents knew about this disclosure requirement, since they had filed a 24-hour report for another late contribution received by the Committee at or about the same time. Because of respondents' failure to file the 24-hour report, the public was deprived of information regarding Janice Marshall's loan, until it was finally described in a separate filing 47 days after-the-fact. It is not clear that respondents intended to deceive the public; this violation appears more inadvertent than purposeful. Respondents fully cooperated with complainant's investigation in this regard as well. Thus, there are enough mitigating facts, and less negative consequences of this violation, to warrant a fine in the amount of \$1,500. (Factual Findings 1-21.)

20. With regard to the count involving the cash payments, complainant also requests a "moderate" monetary penalty of \$1,500. (Ex. 1, p. 23.) The six factors

described above also support that amount. Specifically, the public will never know with certainty where the \$500 in question went. It was not established whether this violation was intentional, negligent, or done in good faith. It appears to be an isolated violation, though it happened twice in this campaign. Under the circumstances, a fine in the amount of \$1,500 is also warranted. (Factual Findings 1-21.)

ORDER

Respondents G. Rick Marshall and G. Rick Marshall for School Board 2015 shall pay \$6,500 to the General Fund of the State of California.

DATE: January 7, 2020

DocuSigned by:

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings