

Subcommittee Report

Ethics Campaign Review Board

Subcommittee Meetings: January 23, 2015; February 4, 2015

Present: Members, Paul Biderman, Tara Lujan, Ruth Kovnat

Staff, Zachary Shandler

The subcommittee met to discuss framing issues to present to the full board for its consideration. Our subcommittee's work was limited to: identifying subjects for consideration, researching the approaches taken by several other jurisdictions, and defining some of the options available for the Board to consider at an open meeting.

Subject: Coordination between candidates and/or their campaigns and independent expenditure groups or individuals. The subcommittee discussed three topics.

- I. Rules that describe facts that constitute 'prima facie' evidence of coordination;
- II. Process by which rules should be promulgated: i.e. (a) by ordinance adopted by the governing body; (b) by board regulation under ECRB rule-making authority under section 6-16.2(B) SFCC (regulation may take the form of rule, commentary and guidance); and
- III. Ways for the Board to educate the candidates, political organizations and the public on the laws.

Coordinated Expenditures

- I. A coordinated expenditure shall be considered a contribution from the individual or group that made the expenditure to the candidate or campaign committee by whom or by whose agent or representative the expenditure was directed or requested or with whom (or with whose agent or representative) the expenditure was made in cooperation, consultation or concert.

An expenditure that is made by an individual or group to urge the election or defeat of a candidate, or that is susceptible to no other reasonable interpretation than as an appeal to vote for or against a clearly identified candidate is made in cooperation, consultation or concert with a candidate and shall be presumed to be coordinated if:

- a. There is evidence of substantial discussion between the spender and the candidate or his/her representatives or agents. Substantial discussion includes but is not limited to exchange of campaign strategies, polling information voter lists and any other information that would facilitate the election or defeat of a clearly identifiable candidate.
- b. An expenditure is coordinated with a candidate's campaign if the expenditure is made at the request or suggestion of the candidate or his/her campaign.
- c. An expenditure is coordinated with a candidate's campaign if an individual or group suggests making an expenditure and the campaign assents to the suggestion.
- d. An expenditure is coordinated with a candidate's campaign if the spender is directly or indirectly formed or established by or at the request or suggestion of, or with the encouragement of the candidate, campaign committee or agent of the candidate or campaign committee.
- e. An expenditure is coordinated with a candidate's campaign if the candidate, or campaign committee or an agent of the candidate or campaign committee has solicited funds or engaged in other fundraising activities on behalf of the person or group making the expenditure during the twelve-month period preceding the date of the expenditure, including by providing the spender with names of potential donors or other lists to be used by that person in engaging in fundraising activity, regardless of whether or not the person pays fair market value for the names or lists provided.
- f. An expenditure is coordinated with a candidate's campaign if the individual or group making the expenditure finances an advertisement that disseminates, distributes or republishes, in whole or in part, any broadcast or any written, graphic, or other form of campaign material prepared by the candidate or his/her campaign committee.
- g. An expenditure is coordinated with a candidate's campaign if the individual or group making the expenditure has employed or has in a leadership position, or has accepted a donation of the professional services of any person or member of that person's household, who, during the twelve-month period preceding the date of the expenditure, has been an employee of, has advised, or provided or is providing services to the candidate or his/her campaign committee, including any services in support of the candidate's or campaign committee's campaign activities, such as advertising, message, strategy or policy services, polling, allocation of resources, fundraising or campaign operations.

(1) Provided that, an expenditure will not be considered a coordinated expenditure if a spender and a candidate or his/her campaign use the same vendor to provide polling services, printing services or physical space provided that the vendor have in place prior to the expenditure a firewall to insure that there is no exchange of information between a candidate or his/her campaign and the spender. Evidence of an adequate firewall is a vendor's formal written policy prohibiting the exchange of

information between the spender and the candidate or his/her campaign and which policy is distributed to all relevant employees, consultants and clients affected by the policy. The firewall must be designed and implemented to prohibit the flow of information between employees and consultants providing services to the spender and those currently or previously providing services to the candidate or to the candidate's campaign committee. Coordination will be presumed in the absence of such a firewall.

- II. An expenditure will not be considered a coordinated expenditure merely because:
 - a. The person or group making the expenditure interviews a candidate.
 - b. The person or group making the expenditure has endorsed a candidate.
 - c. The person or group making the expenditure has obtained from the candidate a biography of the candidate or a position paper, press release, or similar material about the candidate;
 - d. The person or group making the expenditure has invited the candidate to make an appearance before the person's members, employees or shareholders.
 - e. The person or group making the expenditure has shared space with a candidate or his/her campaign committee for single events of limited duration.

Process by which the above rules should be promulgated.

The subcommittee asked Attorney Zach Shandler if he could advise the Board whether the Board had authority under its rule-making powers to promulgate substantive provisions such as those listed above. Attorney Shandler may be able to provide that advice at the Board meeting scheduled for February 18th. Whether the Board decides to promulgate the substantive provisions by rule (if it has the power to do so) or by means of recommending ordinance changes to the governing body, the subcommittee discussed the value of preparing a guidance manual to be used for educating candidates, political committees, independent spenders and the public on the distinction between independent expenditures and coordinated expenditures.