

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

ANGELA ALIOTO, an individual; and
ANGELA ALIOTO FOR MAYOR 2018, a
political campaign organization,

Case No. CGC-18-563628

Petitioners,

**[TENTATIVE] ORDER DENYING
INJUNCTIVE RELIEF**

vs.

LEEANN PELHAM, in her official capacity
as Executive Director of the San Francisco
Ethics Commission, *et al.*,

Respondents.

Factual and Procedural Background

Due to San Francisco Mayor Ed Lee's sudden death on December 12, 2017, the City set an election for June 5, 2018 to fill the vacancy and complete his term. Seven candidates filed for this election.

In 2000, San Francisco voters adopted a public financing program for mayoral and supervisory elections. Under that program, a candidate may seek money from an "election campaign fund" to match campaign contributions made by San Francisco residents. (The contributions by residents are called "matching contributions.") The San Francisco Ethics Commission's executive director – currently LeeAnn Pelham – determines a candidate's eligibility for public funds under the program.

On January 11, 2018, mayoral candidate Angela Alioto and her campaign organization filed a “Complaint for Injunctive Relief for Violation of San Francisco Campaign Finance Reform Ordinance.” Respondents are the campaign organization of mayoral candidate Mark Leno, as well as Pelham and City Controller Ben Rosenfield.

Alioto’s complaint pleads that Leno’s 2018 campaign filed a form on January 5, 2018 stating it had reached the first \$50,000 campaign funding threshold. Alioto alleges Leno did so by a transfer of funds previously raised for his 2019 mayoral bid (the next general election) to his 2018 campaign, and that such transfers are unlawful under Ethics Commission regulation 1.104-1. That regulation reads: “‘Matching contribution’ shall not include a contribution made to a candidate to support the candidate’s election to a different office, or to support the candidate’s election to the same office in a different election year, where the contribution was unexpended and carried forward as a contribution to a new campaign.”

Legal Analysis

In determining whether to order preliminary injunctive relief, a trial court is to evaluate (1) the likelihood that petitioner will prevail on the merits at trial and (2) the irreparable harm petitioner may suffer if the request for injunctive relief is denied. (*Tahoe Keys Property Owners’ Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1470-71.)

I find that petitioners here are unlikely to prevail on the merits. The rules of statutory interpretation govern interpretation of regulations that administrative agencies promulgate. (*Butts v. Board of Trustees of the California State University* (2014) 225 Cal.App.4th 825, 835.) And where, as here, an agency like the Ethics Commission interprets a statute or regulation it is charged with enforcing, that “interpretation of the statute or regulation is to be given great weight unless it is clearly erroneous or unauthorized.” (*Lusardi Construction Co. v. California*

Occupational Safety & Health Appeals Bd. (1991) 1 Cal.App.4th 639, 645.) Here, the Ethics Commission provides interpretations that are not clearly erroneous or unauthorized, and thus must be given great weight. (*Id.*)

As the Ethics Commission points out, regulation 1.104-1 excludes contributions made to a candidate seeking “the same office in a different election year” only “where the contribution was unexpended and carried forward as a contribution to a new campaign.” Leno’s contributions are not “carried forward” (if anything, they are carried *backward* – from the November 2019 election to the June 2018 election).

Further, regulation 1.104-1 is “to” the San Francisco Campaign Finance Reform Ordinance, so “unexpended” funds is to be construed the same way in the former as in the latter, which defines them as “funds remaining in the candidate committee’s account on the 30th day after the candidate...is either elected or not elected to office.” (CFRO §1.104.) Leno has yet to be elected mayor or not, so the requisite 30 days cannot have passed.

I also find that petitioners have not shown the likelihood of irreparable harm from denial of injunctive relief. The chief harm claimed by petitioners is: “Because of the large number of candidates in the race, there is a possibility that there will not be enough public funds for all the candidates to receive their full allotment of matching funds from the City of San Francisco.” (Cmplt. 5:18-20.)

However, respondent Pelham declares that the election campaign fund has a current balance of \$7,034,525, so even were all candidates to receive the maximum amount (\$975,000 each), the fund would not be exhausted for the June 5, 2018 election. Petitioners also complain that Leno “violates the spirit of the law” by supposedly having “the first opportunity to access

the limited funds available for public financing.” (Cmplt. 5:22-24.) But because no candidate will be denied full participation, “the first opportunity” is of little moment.

Petitioners’ Unpled New Arguments

In a supplemental brief dated January 17, 2018, petitioners newly argued that Leno “has effectively withdrawn his candidacy for Mayor of San Francisco in the 2019 General Election” and that contributions to Leno’s “2019 committee are not eligible for public financing because they were made over 18 months prior to the 2019 election.” Neither argument appears anywhere in petitioners’ complaint and thus they are not properly before me.¹

Petitioners’ request for preliminary injunctive relief is DENIED.²

Dated: January 19, 2018

Richard B. Ulmer Jr.
Judge of the Superior Court

¹ I permitted supplemental briefing to further elucidate the issues raised in petitioners’ complaint and to permit other mayoral candidates to be heard from; I did not invite argument on new and unpled claims.

² Because petitioners’ request is denied, I need not reach the City’s argument that 60 days’ notice was required. I do note that the City concedes a private right of action for voters who believe a campaign finance violation has occurred, but requiring 60-days’ notice in the fast-paced world of electoral politics could render that right largely meaningless. The requests for judicial notice are granted.