

San Jose panel to reconsider fining business group over 2006 mayoral campaign mailers

By John Woolfolk
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San Jose's 2006 mayoral primary is a fading memory, but the city's Elections Commission today will revisit the unresolved issue of fining a local business group over mailers critical of labor candidate Cindy Chavez.

The commission in May 2006 ruled that the San Jose Silicon Valley Chamber of Commerce Political Action Committee, or COMPAC, violated city limits on campaign contributions and was facing thousands of dollars in fines.

That punitive effort was halted when COMPAC challenged the contribution limits in federal court as an unconstitutional muzzle on free-speech rights. Though COMPAC's challenge initially was upheld, an appellate court reversed that ruling as premature because the city had yet to impose any penalty.

"Now we're back to square one," said Jim Sutton, the lawyer handling COMPAC's case.

The 2006 COMPAC mailers and related telephone campaign hammered Chavez, then San Jose's vice mayor, as a free-spender and property-rights foe. They cited her votes backing a controversial subsidy for the San Jose Grand Prix car race and a failed effort to seize the Tropicana Shopping Center through eminent domain.

When Chavez's backers complained about the mailers, the Elections Commission found COMPAC had exceeded city contribution limits of \$250 per person while raising money for the effort. But COMPAC's initial court victory voided those limits before the commission could consider a fine.

After the mailers landed, Chavez — a former labor activist who enjoyed backing from influential union and Democratic Party interests — finished second in the June primary to fellow council member Chuck Reed. With chamber backing, Reed went on to defeat her overwhelmingly in the November runoff.

With the city's appeals court victory a few months ago, the commission is free to levy fines against COMPAC. But because the appellate court did not address whether the city contribution limits are constitutionally sound, any fine the commission might impose will surely invite a fresh legal challenge.

"The minute they issue a fine," Sutton said, "we can go to federal court."

City Attorney Rick Doyle said the city is working on modifications to its contribution limits that would address some of the concerns raised in the court challenge.

Complicating matters further, city law indicates that a fine must be imposed by the same commissioners who found the violation. But of the five commissioners that found COMPAC in violation, only Fred de Funiak, the current chairman, remains.

Doyle has suggested the commission recommend changes that would clarify that provision of the city law.

The commission also will have to decide whether it's worthwhile to pursue a fine. The commission's

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own consultants in a report last year on 2006 campaign spending found no link between independent expenditures and election results.

The report by MGT of America said that while Reed and Chavez each spent nearly \$1.3 million in their campaigns, independent expenditures on Chavez's behalf totaled more than \$2.3 million compared with less than \$99,000 benefiting Reed.

Advocates of campaign spending controls, however, argue that factors other than so-called "soft money" shaped the race. Craig Dunkerley, a coordinator with the California Clean Money Campaign, said corruption charges against outgoing incumbent Ron Gonzales proved a heavy drag on Chavez, who was considered his political ally.

Those charges have since been dropped. But at the time, "her perceived association with the corruption charges may have doomed her candidacy," Dunkerley wrote in a proposed rebuttal to the MGT report, "no matter how much money had been spent on her behalf."

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