# MEMORANDUM OF LAW

**DATE:** March 20, 1997

**TO:** Scott Tillson, Chief of Staff, District No. 1

**FROM:** City Attorney

**SUBJECT:** Effect of Proposition 208 on Announced Recall Effort

Your memorandum of March 10, 1997, asks the City Attorney several questions about the effect of Proposition 208 on local and state law governing financing of recall campaigns.[1] Your e-mail request of March 12, 1997, asks the City Attorney to examine how the Cohen Advice Letter recently published by the Fair Political Practices Commission affects contribution limits on recall elections. Because your memo and e-mail request deal with closely related issues, they are all being addressed in this memorandum.

## BACKGROUND

According to your memorandum, on March 6, 1997, Evalyn Drobnicki filed Fair Political Practices Commission Form 410 (Statement of Organization Recipient Committee) with the City Clerk on behalf of the "Committee to Recall Harry Mathis," listing herself as both Treasurer and Chairperson. She declared the "Type of Committee" as "primarily formed to support or oppose specific candidates or measures in a single election." Although not apparent on the face of the 410 form, you state that she also declared her intent to oppose Harry Mathis as the Councilmember for Council District No. 1. We understand this to mean that she intends to run as a replacement candidate for the District No. 1 seat in the event the recall effort is successful.

You also point out that in a local newspaper article Ms. Drobnicki was quoted as saying that the purpose of the filing was "to prepare themselves for a fundraising campaign to collect signatures." (North County Times, Mar. 7, 1997, at B1).

Recently, the City Attorney stated that recall proceedings may not be commenced until six months have elapsed from the commencement of a councilmember's current term. San Diego City Attorney Memorandum of Law No. 97-7, Feb. 26, 1997.

Councilmember Mathis was sworn into office for his second term on December 2, 1996. He was elected in a district that contains fewer than 1,000,000 residents.

On February 18, 1997, the FPPC issued an advice letter to attorney Thomas Cohen in the City of Thousand Oaks, California, about the applicability of Proposition 208's contribution limits to that City's recall elections. Priv. Adv. Ltr. I-96-364 (Feb. 18, 1997). A copy of that advice letter is attached.

## QUESTIONS AND SHORT ANSWERS

**QUESTION NO. 1:** Is it a violation of either local campaign finance laws (San Diego Municipal Code (SDMC) sections 27.2901-27.2975) or the Political Reform Act of 1974, as amended by Proposition 208 adopted by the voters on November 5, 1996 (California Government Code sections 81000-91015) to form a recall campaign committee before a recall proceeding is allowed by law to commence?

**ANSWER TO NO. 1:** No. Neither formation of nor fundraising by a committee in support of or against a recall effort before a recall proceeding has commenced, or is allowed by law to commence, is prohibited by local law. Whether it violates state law is answered in our response to question three (3).

**QUESTION NO. 2:** In light of the City Attorney's Memorandum of Law issued on February 26, 1997, is formation of a committee with the express purpose of fundraising in furtherance of signature-gathering and pursuing a recall election a "recall proceeding," and thus prohibited at this time?

**ANSWER TO NO. 2:** No. Mere formation of a campaign committee in support of a recall effort does not constitute a "recall proceeding" and is not prohibited by law.

**QUESTION NO. 3:** What fundraising limits (timing, source and amount, etc.) are applicable to this recall committee?

**ANSWER TO NO. 3:** Proposition 208's contribution limits, time limits on fundraising, and limits on sources of contributions do not apply to recall elections in this City. Formation of a recall campaign committee, therefore, does not violate Propostion 208's time limits on campaign fundraising. The City's contribution limits and limits on sources of contributions, however, do apply. City laws impose no time periods on when fundraising may occur.

**QUESTION NO. 4:** May an opposing committee (i.e., a committee whose stated purpose is to retain Harry Mathis in his current office) be formed at this time?

**ANSWER TO NO. 4:** Yes. A committee that opposes the recall effort may be formed at this time.

**QUESTION NO. 5:** If so, what fundraising limits (timing, source and amount, etc.) would be applicable to this committee?

**ANSWER TO NO. 5:** A committee opposing the recall will be subject to the same laws as the committee supporting the recall. Please see our response to question 3.

**QUESTION NO. 6:** Are there any differences in how this "retain-Mathis-committee" could operate if it is formed as either a candidate-controlled, or independent expenditure committee, or both?

**ANSWER TO NO. 6:** No. The City's $250 contribution limit and prohibition against organizational contributions apply to any candidate-controlled committee or independent expenditure committee formed to support retention of an officeholder who is the target of a recall effort. Recent changes in state law do not change how those local laws apply.

**QUESTION NO. 7:** Does the Cohen advice letter's conclusion that Proposition 208's contribution limits do not apply to recall elections prohibit the City from imposing its own contribution limits on recall elections?

**ANSWER TO NO. 7:** No. The Cohen private advice letter issued by the Fair Political Practices Commission on February 18, 1997, does not prevent the City from imposing its own contribution limits on committees formed to support or oppose a recall effort.

**QUESTION NO. 8:** Does the Cohen advice letter contradict the City's own election ordinance?

**ANSWER TO NO. 8:** No. The Cohen letter does not contradict and does not affect the City's own election or campaign finance laws.

## ANALYSIS

### I. Is It a Violation of Either Local or State Campaign Finance Laws to Form a Recall Campaign Committee Before a Recall Proceeding is Allowed by Law to Commence?

The question contains an ambiguity because of the reference to permitted time requirements. Does it refer to the fact that a recall proceeding may not commence until six months have passed after a councilmember is sworn in for his or her current term? Or, does it refer to the limits placed on time periods in which campaign fundraising may take place that were imposed by newly adopted Proposition 208? Because we deal at length with Proposition 208's time limits on fundraising in our response to your third question, here we limit the analysis to whether formation of committees and fundraising are permitted under local law before a recall proceeding has commenced, or is allowed by law to commence.

Even under this narrowed question, two separate subissues emerge, which must be analyzed and resolved separately:

(1) Whether simply going through the formalities of forming a campaign fundraising

committee, that is, filing the applicable disclosure form published by the Fair Political Practices Commission, is permitted under local law before a recall proceeding has commenced, or is by law allowed to commence?

(2) Assuming the answer to that question is "yes," whether a committee that has gone through the formalities of declaring itself a committee is permitted under local law to raise funds before a recall proceeding has commenced, or is by law allowed to commence?

**A. Whether Filing a Form Declaring that a Committee Has Been Formed is Prohibited by City Law**

On February 26, 1997, the City Attorney issued Memorandum of Law No. 97-7 interpreting the City's election laws to determine when recall proceedings may lawfully be commenced after a councilmember is sworn into office. The City Attorney stated that a recall proceeding may not commence before six months have elapsed from the date a councilmember was sworn into office for his or her current term. Under both local and state law, recall proceedings commence at the time a notice of intention to circulate a recall petition is filed. SDMC 27.2704, 27.2905; City Attorney Opinion No.90-3, August 28, 1990, at pp. 7, 10; California Elections Code 11006. If recall proponents try to begin proceedings, for example, by publishing their notice of intention to circulate a recall petition before the permitted commencement date or by circulating petitions, their actions will be ineffective and the City would not be required to place a recall election on the ballot. Under the City's election laws, publishing a notice of intention to circulate a recall petition is a prerequisite to actually gathering signatures on the petition.

Campaign finance laws impose separate prerequisites on fundraising activities associated with election campaigns in this state. A primary prerequisite is that campaign disclosure requirements must be met. The City expressly adopts state law to determine what campaign disclosure forms must be filed and when they must be filed. SDMC 27.2931.[2]

Persons in this state who want to form committees for campaign fundraising purposes must file "statements of organization." Cal. Gov't Code 84101. Government Code section 84101 requires a person or group of persons who qualify as a committee to file a statement of organization with the Secretary of State within ten (10) days after qualifying. A committee becomes qualified as soon as it receives or spends a minimal amount of money.[3]

State law is silent about whether a committee may be formed by filing a statement of organization before these fundraising thresholds are reached. Although the law is silent, the forms and manuals implementing Government Code section 84101 are not. Fair Political Practices Commission Form 410 is used by "Recipient Committees" for filing statements of organization. A box appears on the first page where a committee may indicate whether it has "qualified" as a committee. If the box is checked, the committee is indicating that it has not yet raised or spent the requisite amounts of money to qualify as a committee.

We conclude that under City laws campaign committees for and against a recall election may initiate the formalities of formation, that is, file the requisite statements of organization,

even though a recall proceeding has not actually commenced, or is allowed by law to be commenced.

The "Committee to Recall Harry Mathis" completed a "statement of organization" (Form 410), and filed a copy with the San Diego City Clerk. We do not know whether they filed the original with the Secretary of State, as they are required by law to do. The form contains a box to be checked by a committee if it has not yet qualified as a committee, that is, it has not yet raised or spent the threshold amounts. This is the box checked by Evalyn Drobnicki, who filed the form as both treasurer and "other principal officer" of the committee. By checking this box, she is indicating that the committee has not yet raised or spent the threshold amounts for requiring a statement of organization to be filed. In the following sections, we address whether that committee or another committee in support of or against the recall may start raising money and, if so, what contribution limits apply.

### B. Whether Fundraising Before Recall Proceeding Commenced is Prohibited by City Law

In the previous section, we concluded that mere formation of a fundraising committee is not prohibited by City law. Neither does it trigger any of the City's duties to place the recall issue on a ballot. This does not answer the question, however, of whether a recall campaign committee may begin fundraising before a recall proceeding has commenced, or before it is entitled by law to be commenced.

The City's campaign finance laws do not limit when fundraising may begin before a recall proceeding is commenced. Just as filing a statement of organization does not trigger commencement of a recall proceeding, neither does fundraising. However, a committee raising funds in support or against a recall election before the recall proceeding has commenced must observe the City's contribution limits. With that caveat, City laws do not prohibit fundraising before a recall proceeding has commenced, or is allowed by law to commence. The City's contribution limits are discussed at length in Section III of this memorandum.

## II. In Light of the City Attorney's Opinion of February 26, 1997, is Formation of a Campaign Committee Whose Purpose is to Raise Funds in Furtherance of Signature-gathering, and to Pursue a Recall Election, a "Recall Proceeding," and Thus Prohibited at this Time?

The City Attorney's memorandum of February 26, 1997, dealt solely with the City's election laws, not its campaign finance laws. It stated that, under the City's election laws, a recall election may not be commenced until six months have elapsed from the date a councilmember is sworn into office for his or her current term. Does the fact that a campaign committee goes through the formalities of forming a committee, that is, files the requisite forms, constitute commencement of a recall proceeding in violation of local law? No.

Formation of a campaign committee whose purpose it is to raise funds in support of or against a recall is not an act that triggers commencement of a recall proceeding in violation of the City's election laws. SDMC 27.2701-27.2732. Even if it were an attempt to trigger

commencement of a recall proceeding, the act would be ineffective to do so. The City would have no duty to place a recall question on the ballot just because someone started fundraising for it. See Sections IA and IB of this memorandum. Any recall campaign committee, however, must comply with the City's campaign contribution limits, which are discussed in Section III of this memorandum.

## III. Assuming Formation of a Committee to Raise Funds in Support of or Against a Recall Effort is Lawful, What Contribution Limits Apply, What is the Permissible Time Period for Raising Funds, and What Are Lawful Sources of Campaign Funds?

This question goes to the heart of whether the Political Reform Act of 1974, as amended by Proposition 208 adopted in November 1996, applies to this City's recall elections, and if so, with what effect.

If determined to be applicable to a particular election, among many other things not relevant here, Proposition 208 imposes:

(1) limits on the amount of money people may contribute to local and state campaigns in this state;

(2) time limits on when campaign fundraising may take place both before and after an election; and,

(3) limits on the categories of persons or entities eligible to contribute to campaigns.

Besides Proposition 208, the City's campaign finance laws also contain limits on the amount of money that persons may contribute to certain campaigns. Local laws also limit the categories of persons or entities eligible to contribute to campaigns. These laws in some ways differ from Proposition 208's limits. In striking contrast with Proposition 208, the City's laws contain no time limits on when fundraising may take place. We turn now to the issue of whether Proposition 208 or the City's limits, or both, apply to the present recall efforts.

### A. Limits on the Amount that May be Contributed (Contribution Limits)

In a recently issued private advice letter, the Fair Political Practices Commission made a key decision pertaining to the applicability of Proposition 208's contribution limits to recall elections in this state. In re Cohen, Priv. Adv. Ltr. I-96-364 ( Feb. 18, 1997).

In Cohen, the Fair Political Practices Commission noted that efforts were underway to recall several councilmembers in the City of Thousand Oaks, California. Attorney Cohen had remembered that the contribution limits of Proposition 73 were determined in previous years to be inapplicable to elected officials subject to recall, and he asked whether the same was true of Proposition 208. In the Cohen letter the Commission concluded that, "[t]he recall of an officeholder is considered to be a 'measure' under the [Political Reform] Act and therefore the contribution limits of Proposition 208 do not apply to the proponents of the recall or to

contributions to the officeholder defending the recall."

We hasten to point out that the Cohen letter is limited to a recall effort taking place in the City of Thousand Oaks, a general law city, and limited to the law which was being construed, namely, the Political Reform Act as amended by Proposition 208. The Cohen letter does not stand for the proposition that all recall efforts are ballot measure campaigns. Nor does it stand for the proposition that locally imposed limits on contributions to recall campaigns are prohibited by the constitution. Nevertheless, because of the issues in Cohen and because of the danger that some may use the Cohen letter to assert (incorrectly) that no contribution limits apply to recall elections in this state, we will examine in depth why Cohen leaves the City free to apply its own laws.

1. Analysis of the Cohen Private Advice Letter

The Fair Political Practices Commission based its conclusion in the Cohen letter on several grounds. First, the statute defining the term "measure" in the Political Reform Act specifically refers to recall procedures. Second, without reexamining the bases for those opinions, they relied on two of their prior opinions, which had concluded that for purposes of the Political Reform Act recall elections are "more like" ballot measure elections than candidate elections. Roberti Priv. Adv. Ltr. A-89-358 (July 14, 1989); Burgess Priv. Adv. Ltr. I-94-393 (Feb. 9, 1995). Lastly, they relied on the United States Supreme Court case of Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981), in which the Court held that a city ordinance's imposition of limits on contributions to committees formed to support or oppose ballot measures is unconstitutional.

a. Definition of the Term "Measure" in the Political Reform Act

The Cohen advice letter quoted the definition of the term "measure" contained in the Political Reform Act, as follows: "'Measure' means any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot" (emphasis in the Cohen letter). Proposition 208, which amends the Political Reform Act, is subject to this definition. [4] Given this express language, it is not surprising that the Fair Political Practices Commission would find that a "recall election" is part of a "recall procedure" and therefore a "measure" for purposes of the Act.

In contrast with the Political Reform Act's definition of "measure," San Diego's campaign finance laws expressly provide: "The term 'measure' does not include a recall election." SDMC 27.2903(k). In addition, the City's definition of the term "candidate" includes "a City office holder who becomes the subject of a recall election." SDMC 27.2903(b)(4).

Is the City's law preempted by state law? No. Government Code section 85706,

adopted by Proposition 208, states that "[n]othing in this act shall nullify contribution limitations or other campaign disclosures or prohibitions of any local jursidiction that are as or more stringent than set forth is this act." As is amply demonstrated in this memorandum, the City's laws operate in the present instance to set more stringent limits on financing of recall elections than does the Political Reform Act. By its terms, the Political Reform Act allows local governments to enact more stringent laws governing recall election financing. Neither Proposition 208 nor the Political Reform Act requires local governments to adopt the definition of "measure" contained in the Political Reform Act.

b. Effect of Prior Opinions of the Fair Political Practices Commission

As pointed out above, for purposes of the Political Reform Act, the Commission ruled in the Cohen letter that recall elections are to be treated as ballot measure elections. In the Cohen letter, the Commission relied in part on two prior advice letters: In re Roberti, A.-89-358, and In re Burgess, I-94-393.

(1) Roberti Letter

In the Roberti letter, the issue involved recall of a state, not local, elected official. Just as in the Cohen letter, the Fair Political Practices Commission construed the statutory definition of the term "measure" discussed above. Just as they did in the Cohen letter, the Commission noted that the term includes the phrase "recall procedure." The letter also contained a discussion of the City of Berkeley case, supra. In the Roberti letter, the Commission cited the Berkeley case for the proposition that contribution limits cannot be imposed in ballot measure campaigns.

Significantly, in the Roberti letter the Commission also took special note of a constitutional provision that applies to recall of state officers. This provision states: "A state officer who is not recalled shall be reimbursed by the State for the officer's recall election expenses legally and personally incurred." Cal. Const. art. II, 18. (Emphasis in the Roberti letter.) In light of the extra burden imposed by this state constitutional provision, the Commission felt constrained to find that recall elections were more like ballot measure elections than candidate elections. As they said themselves, to rule otherwise would have invalidated then existing Government Code section 85300, which had been adopted by initiative in June 1988 as part of Proposition 73. Proposition 73 was later largely invalidated by the courts in Service Employees International Union "SEIU" v. Fair Political Practices Commission, 955 F.2d 1312 (9th Cir. 1992).

There is no equivalent constitutional provision requiring that public moneys be used to reimburse local elected officeholders if they successfully defeat a recall effort.

In summary, the Roberti letter contains nothing to suggest that recall elections necessarily should be treated as ballot measure elections for purposes of evaluating the validity of local campaign contribution limits.

(2) Burgess Letter

In the Burgess letter, the Commission directly resolved the issue of whether Proposition 73's contribution limits applied to local recall elections. It also treated an issue that is raised indirectly in your inquiry, namely, whether Proposition 208 or the City's limits apply to committees formed to support or oppose replacement candidates in local recall elections.

In the Burgess letter, the Fair Political Practices Commission ruled not only that: (1) contributions to a recall effort in the City of Diamond Bar[5] or to the officeholder who is the target of the recall are not subject to Proposition 73's limits[6]; but also that: (2) the limits of Proposition 73 do not apply to candidates who are running to succeed the target of the recall. The Commission relied on the Roberti letter to reach its conclusion in the first issue, therefore we will not examine that portion of the Burgess ruling.

The Commission admitted the second issue was much more difficult to resolve. They reluctantly concluded that, because the election of replacement candidates was on the same ballot as the recall question itself, it was simply impossible to impose contribution limits on replacement candidates, but not on the incumbent officeholder who was fighting the recall.

The Commission has not yet ruled whether Proposition 208's limits will apply to committees formed to support or oppose replacement candidates on a recall ballot. However, in a lengthy telephone conversation with Hyla Wagner, the staff attorney who wrote the Cohen letter on behalf of the Commission, she informed us that a Commission ruling on a closely related topic was imminent.[7] Meanwhile the best guidance we can give in this area is based on a close reading of the Cohen letter, which suggests that the Commission will follow its prior advice in this area and rule that Proposition 208's limits do not apply to committees formed to support or oppose replacement candidates on a recall ballot.

Except by way of footnote, the Burgess letter simply does not address whether a local government may treat a recall election differently from how the state does. In footnote 3 of that letter, the Commission noted that local contribution limits were not affected by the SEIU injunction. Significantly, however, the Burgess letter does not hold that recall elections are necessarily ballot measure elections.

### c. Effect of Citizens Against Rent Control v. City of Berkeley on Constitutionality of Local Contribution Limits on Recall Campaigns

One of the chief weaknesses of the Cohen private advice letter is that it can be too easily read to imply that as a matter of constitutional law all recall elections must be treated as ballot measure elections for purposes of campaign finance laws. Such an implication is simply incorrect.

The Fair Political Practices Commission in the Cohen letter properly cited the U.S. Supreme Court case of Citizens Against Rent Control v. City of Berkeley, 454 U.S. 290 (1981), for the proposition that it is unconstitutional for a local government to impose limits on contributions to committees formed to support or oppose ballot measures. Where the

Commission goes astray, however, is implying that as a matter of constitutional law, recall measures are the equivalent of ballot measures. Berkeley certainly did not so hold.

Berkeley concerns a committee formed in opposition to a rent control ballot measure. The committee collected contributions, some of which were in excess of a $250 limit imposed by a city ordinance. The ordinance limited contributions in campaigns involving both candidates and ballot measures. The United States Supreme Court found that the ordinance violated the rights of association and speech guaranteed by the First Amendment. The Court determined that contributions by individuals to support a concerted action on a ballot measure is a form of protected political expression. The Court further stated that contributing to a ballot measure did not involve the same dangers as contributing to a candidate. 454 U.S. at 297-98. The only reason that recall elections and ballot measures were linked in the Berkeley case is because the ordinance that was challenged linked the two. 454 U.S. at 496, n.1.

In sum, the Berkeley case does not stand for the proposition that for purposes of campaign finance laws all recall elections must be treated as if they were ballot measure elections. Notwithstanding the Commission's opinion in the Cohen, Roberti and Burgess advice letters, we believe the City of San Diego's laws imposing contribution limits on committees supporting or opposing recall elections, and on committees supporting or opposing replacement candidates, are constitutional.

d. Constitutional Power to Provide for Recall of Local Officer Granted Specifically to Charter Cities

The Cohen letter addresses issues of recall elections in the City of Thousand Oaks, a general law, not a charter city. Charter cities, such as The City of San Diego, are granted the express right in the California Constitution to establish their own election procedures. Cal. Const. art. II, 5(b) (3). Moreover, another constitutional provision specifically states that statutes adopted by the State Legislature governing recall in general law cities do not apply to cities "whose charters provide for recall." Cal. Const. art II, 19. This City has adopted a charter which provides for recall of its officers. San Diego City Charter 8, 23. Since in its Cohen letter the Fair Political Practices Commission essentially decided that Proposition 208's contribution and other limits do not apply to recall elections in general law cities, it is fair to expect that the question of preemption will not be successfully raised in San Diego, a charter city. If it were to be raised, we believe the City has strong arguments that its own laws should govern recall elections, not the state's.

**B. Time Period for Fundraising**

The Political Reform Act, as amended by Proposition 208, now imposes what are being called "black out" periods on fundraising before elections. New Government Code section 85305(a) prohibits candidates or candidate-controlled committees in districts of fewer than 1,000,000 residents from accepting "contributions more than six months before any primary or special primary election or, in the event there is no primary or special primary election, any regular election or special election in which the candidate is attempting to be on the ballot or is a write-in candidate." Assuming for purposes of argument that this language purports to apply to

recall elections, it is clear from the advice in the Cohen letter that the Fair Political Practices Commission believes it cannot apply to recall elections.

On its face the Cohen letter deals only with the question of whether Proposition 208's contribution limits apply to committees to support or oppose recall efforts. Its holding that for purposes of the Act recall elections are ballot measure elections means that the "black out" periods for fundraising before an election do not apply to a recall election. The City's campaign finance laws contain no "black out" periods on fundraising.

### C. Categories of Persons Entitled to Contribute

Among other things, the Political Reform Act, as amended by Propostion 208, sets limits on the categories of individuals and entities which may contribute to campaigns in local elections. For example, it is unlawful for an elected officeholder, candidate, or the candidate's controlled committee to solicit or accept a campaign contribution from, through, or arranged by a registered local lobbyist. Cal. Gov't Code 85704. It is also unlawful for any person appointed to a public board or commission to donate to, solicit or accept any campaign contribution for any committee controlled by the person who made the appointment to that office if certain other requirements are met. Cal. Gov't Code 85705. There are several other provisions in the Act that place limits on categories of individuals and entities which may contribute to candidate campaigns.

The Fair Political Practices Commission has not yet ruled directly on whether these limits on categories of individuals and entities apply to recall committeees. However, since they continue to treat recall elections as ballot measure elections for purpose of contribution limits, it is safe to assume they will also do so for this purpose. To be certain, you will need to seek advice directly from the Commission.

The City's laws prohibit contributions from any organization to any candidate-controlled or independent expenditure committee that is formed for purposes of supporting or opposing a recall effort. SDMC 27.2903(b)(4), (d); 27.2947.

## IV. May an Opposing Committee (i.e., a committee whose stated purpose is to retain Harry Mathis in his current office) be Formed at this Time?

Yes. The same rules that apply to a committee formed to support a recall effort apply to a committee formed to oppose the effort. See especially Sections I and III of this memorandum.

## V. If So, What Fundraising Limits (timing, source and amount, etc.) Would be Applicable to this Committee?

The same contributions rules apply to a committee formed to support retention of a councilmember as apply to a committee formed in support of the recall effort. The City's contribution limit of $250 per individual and prohibition on contributions from organizations apply to committees either supporting or opposing a recall effort.

## VI. Are There Any Differences in How this "Retain-Mathis-Committee" Could Operate if it is Formed as Either a Candidate-Controlled, or Independent Expenditure Committee, or Both?

The City's laws permit an individual to contribute no more than $250 to a candidate-controlled or independent expenditure committee that support or oppose a recall effort. Also, the City's laws prohibit organizations from contributing to either candidate-controlled or independent expenditure committees that support or oppose a recall effort.

## VII. Does the Cohen Advice Letter's Conclusion that Proposition 208's Contributions Limits Do Not Apply to Recall Elections Prohibit the City from Imposing its Own Contribution Limits on Recall Elections?

No. The City is entitled to impose its own contribution limits on recall elections. The Fair Political Practice Commission's Cohen private advice letter, which is discussed at length in Section III of this memorandum, does not contradict this conclusion.

## VIII. Does the Cohen Advice Letter Contradict the City's Own Election Ordinance?

No. The Cohen private advice letter does not contradict the City's election or campaign finance laws. The Cohen private advice letter is discussed at length in Section III of this memorandum.

## CONCLUSION

Proposition 208's contribution limits, limits on when fundraising may occur, and limits on sources of contributions do not apply to recall elections in this City. The City's contribution limits and prohibition on organizational contributions do apply.

CASEY GWINN, City Attorney

By
Cristie C. McGuire
Deputy City Attorney

CCM:jrl:011:(x043.2)
Attachment
cc: Honorable Mayor and Council

City Manager
City Clerk
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