

**LAW DEPARTMENT****MEMORANDUM**

To: Charter Review Commission

From: Anne L. Morgan, City Attorney

Date: November 13, 2017

Subject: *Zimmerman v. City of Austin* lawsuit

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Pursuant to Resolution 20170622-040, the City Council has asked the Charter Review Commission to review campaign finance regulations. You have appropriately asked about any legal restrictions in play due to the *Zimmerman v. City of Austin* lawsuit. I write to provide a status report on that lawsuit, and would be happy to update you further as needed.

In July 2015, then city council member Don Zimmerman filed a lawsuit in federal court challenging the constitutionality of four provisions of the city charter related to campaign finance and funding. The challenged articles are the following:

- Article III Section 8(A)(1) —base contribution limits of \$350;
- Article III Section 8(A)(3)—non-voter contribution cap;
- Article III Section 8(F)(2)—six-month fundraising window;
- Article III Section 8(F)(3)(6)—campaign defunding post-election.

In July 2016, following a two-day trial, Judge Yeakel issued an opinion and an injunction. He found these 8(F) articles to be unconstitutional:

8(F)(2)-the restriction limiting fundraising to the 6 months before an election; and

8(F)(3)(6)-the requirement that post-election campaign fund balances above \$20,000 be disgorged.

The city is currently enjoined from enforcing those provisions of the charter.

Judge Yeakel upheld Section 8(A)(1)- the section that limits contribution amounts to \$350. That section remains in effect.

Judge Yeakel's ruling did not impact the Section 8(A) (3)-the non-voter contribution cap- so it is in effect as well.

#### Appeal

Mr. Zimmerman appealed the case to the federal 5<sup>th</sup> Circuit Court of Appeals. The City cross-appealed on the items the court found unconstitutional. The case is pending. The court will hear oral arguments in early December 2017, and we anticipate a ruling from the court within four-to-six months after oral argument. Once the Court of Appeals rules, there is the possibility of Mr. Zimmerman attempting to seek review in the U.S. Supreme Court if he is unsuccessful at the 5<sup>th</sup> Circuit.

In light of the appeal, it seems likely that the case will still be in litigation after the Charter Review Commission concludes its work in March 2018.

#### Current Status

Practically, Judge Yeakel's ruling means that the six-month campaign window is no longer in effect. The Court did not say whether creating a longer campaign window would be constitutional, nor did it give any direct indication of how long would be long enough. [Candidates must still follow all state law election requirements concerning financing—which includes the requirement that a campaign treasurer must be established.] The city council has recently passed an ordinance, effective October 16, 2017, setting a one-year fundraising window. Ordinance No. 20171005-079.

Second, the Court's ruling eliminates the disgorgement requirement. The disgorgement provision originally required candidates to transfer campaign fund balances to officer holder accounts, or to a charitable organization, or to the Austin Fair Campaign Fund. The court provided no direction regarding disgorgement other than the provision was enjoined.

Cc: Jerikay Gayle, Assistant City Attorney