

November 2014

## *The November 4 Municipal Ballot*

### **Billionaires Buying Elections**

by Patrick Monette-Shaw

San Francisco's November 2014 election is but one example of the *Citizens United* ruling allowing wealthy organizations and individuals to drown out other voices in the campaign. It didn't take much to discover that Mayor Lee's pals, billionaires Ron Conway and Reid Hoffman, are spending heavily in local and state races to unfairly influence election outcomes, and elect into office legislators who will support their political agendas and financial interests.

When the U.S. Supreme Court ruled in *Citizens United vs. Federal Elections Commission* in 2010 that restrictions on corporate expenditures in elections violated the First Amendment protections of free speech for corporations, the potential was unleashed for billionaires to dramatically expand buying themselves elections and politicians. Under the premise that money equals speech, billionaires were unleashed to spend even more money to influence politicians, or to buy increased "access" to politicians.

On March 25, 2012, the *New York Times* [editorialized](#) that the Supreme Court's 5-to-4 ruling in *Citizens United* in 2010 "was shaped by an extreme view of the First Amendment: money equals speech, and independent spending by wealthy organizations and individuals poses no problem to the political system."

The editorial also noted "The court cavalierly dismissed worries that those with big bank accounts — and big megaphones — have an unfair advantage in exerting political power" and "The flood of money ... has allowed wealthy organizations and individuals to drown out other voices in the campaign."

Even before the *Citizens United* ruling, San Francisco was rife with "independent expenditure committees" raising funds for their preferred candidates and ballot measures under the pretext that the independent committees would not (wink, wink, wink) communicate and coordinate their activities with actual candidates or official ballot measure sponsors.

### **Buying David Chiu's Airbnb Legislation**

As I reported in the *Westside Observer's* [October](#) issue, Supervisor David Chiu has taken over two years to develop legislation to "regulate" Airbnb conversion of rental housing stock into short-term rentals — hotel rooms for tourists — driving out San Franciscans who are being displaced out of town. Over those two years, Chiu has met more than 50 times with lobbyists for Airbnb.

Chiu cannot *not* have known that two of Airbnb's investors are none other than billionaire venture capitalist Ron Conway and his wife Gayle, and billionaire venture capitalist Reid Hoffman, the co-founder of Linked-In.

According to the State of California's Cal-Access campaign donor database, Ron Conway has contributed \$154,800 to date in 2014, and his wife Gayle has contributed another \$94,200 to state elections, while Reid Hoffman has contributed at least \$702,350, for a combined total of \$951,350. That allows these two billionaires to buy a lot of access to politicians.

In addition, San Francisco's Ethics Commission campaign data for local elections shows that in 2014 Ron and Gayle Conway, and various probable relatives — including Christopher Conway, Daniel Conway, Michele Conway, and Ronny Conway — have donated at least another \$254,500 to local candidates and measures.



A mailer paid for by the David Campos for Assembly 2014 committee (FPPC #1359298) says it all: David Chiu is playing politics with domestic violence with billionaire Ron Conway (left) and billionaire Reid Hoffman.

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The ballot measures Ron Conway is supporting include the Prop “A” MUNI bond, Prop “J” to raise the minimum wage, and Prop “C” to extend San Francisco’s Children’s Fund for another 25 years. Local candidates the extended Conway family have contributed to include at least \$2,000 to Supervisor Malia Cohen, \$2,500 to Supervisor Mark Farrell, and \$1,000 to Supervisor Scott Wiener.

The three supervisors are each up for re-election on November 4, and notably, all three of them voted on second reading to pass David Chiu’s Airbnb legislation on Tuesday, October 21. And all three supervisors, along with Chiu himself, voted against an amendment that would have required Airbnb to pay its past due back taxes *before* the legislation could become effective. The amendment failed.

Between the Conway’s and Hoffman, they have contributed at least \$1,205,850 to state and local elections through Sunday October 20. Add on to that \$1,193,000 in contributions made by another mega-billionaire venture capitalist, Sean Parker, who served as tech giant Facebook’s first president.

Parker augmented his \$1.2 million in state elections contributions during 2014 with an additional \$299,000 to measures on San Francisco’s November ballot, for a combined total of \$1,492,000 in contributions.

Ron Conway appears to have donated at least \$50,000, and Parker donated \$200,000, to help pass the Prop “A” bond measure to raise \$500 million for MUNI, perhaps in part because as the *Observer* reported last month, Caltrains may be a beneficiary of the MUNI bond.

Both billionaires may want taxpayers to foot the bill via the Prop. “A” bond financing to extend Caltrains to the Transbay Transit Center to assist venture capitalists, investors, and developers of high-rise buildings around the planned Transbay Transit Center who had hired former Mayor “Slick” Willie Brown to help them wiggle out of their tax obligations in the Mello-Roos property tax district.

The *San Francisco Chronicle*’s Matier and Ross [reported](#) on Monday, October 20 that Caltrains is in line to receive \$40 million from the \$500 million bond in order to “electrify” the system. In previous media reports, Caltrains was reported to be a potential beneficiary of the MUNI bond in order to complete its *extension* to the Transbay Terminal. Now we’re being told it is to “electrify” Caltrains. It’s unclear at this point whether Caltrains will receive multiple portions of the MUNI bond, to both complete its extension and “electrify” it.

Part of that uncertainty is because there is no precise language in the question being put before voters dedicating how the bond will be spent, other than that Mayor Ed Lee and the Board of Supervisors will be able to carve up the spending any way they please if voters are dumb enough to pass a bond that provides no clear or precise language on how the bond will be spent.

Between the three billionaires — Conway, Hoffman, and Parker — and their relatives, they have sank at least \$2.7 million in spending through October 20 on state and local elections, and may contribute more between now and the election on November 4. The flood of their money may well drown out other voices in this election, just as the *New York Times* warned two years ago.

## Buying a State Assembly Seat

How many so-called “Independent Expenditure Committees” does Supervisor Chiu need to buy himself a seat in the California Assembly?

California’s Cal-Access campaign donor database reported that as of September 30, 2014, David Chiu’s official campaign (“Chiu for Assembly 2014,” ID # 1360422) had received \$1,401,737 in contributions, compared to David Campos’ \$864,524 (“Campos for Assembly 2014,” ID # 1359298). Late contribution reports filed between after September 30 and

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before October 20 reveal another \$61,100 in contributions to Chiu, and \$32,640 to Campos, bringing their official campaign totals to \$1,462,837 and \$897,164 respectively.

David Chiu has garnered at least four independent expenditure committees — “San Franciscans to Hold Campos Accountable (Opposing David Campos)” (ID # 1366671); “San Francisco Alliance For Jobs And Sustainable Growth” (ID # 1369934); “San Franciscans For Effective Government” (ID # 1365064); and the “Public Service Coalition, Sponsored By Public Safety, Building Trades and Retail Workers Organizations” (ID # 1371281) — who have combined contributions of an additional \$999,282, of which \$733,900 came from the “San Franciscans to Hold Campos Accountable” committee Reid Hoffman has so lavishly donated to.

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Additional spending on behalf of Chiu includes \$374,208 in late independent expenditures not reported above from nine other PAC’s supporting him and \$12,136 from the “San Francisco Police Officers Association PAC Opposing Campos,” bringing Chiu’s campaign war chest to at least \$2,848,463.

By way of contrast, two other PAC’s supporting David Campos raised \$79,339 as of October 20, and another \$269,000 was raised by the “Nurses, Teachers and Working Families United to Support David Campos for Assembly 2014 Sponsored By Labor Organizations (Opposing David Chiu)” (ID #1366930), which brings Campo’s war chest to just \$1.2 million (actually \$1,245,502), less than half of Chiu’s \$2.8 million.

Clearly, additional “official” independent expenditure committees supporting David Chiu have skewed the political spending by the elite few having money to burn.

## Smearing Campos

Many observers wonder whether Supervisor Chiu’s official election committee is coordinating messages with various independent expenditure committees to unfairly blame Supervisor Campos for the Board of Supervisors vote to reinstate Sheriff Mirkarimi.

Leading up to the primary election last June, both the Police Officers Association PAC and the “Committee to Hold David Campos Accountable” funded nasty campaign mailers voters were inundated with, seeking to discredit Campos for his vote on reinstating Mirkarimi as Sheriff. They seek to place the blame for Mirkarimi keeping his job solely on Campos.

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This is ludicrous, as I wrote in October 2012 in “[Swimming in ‘Official Misconduct’](#).” At the time, an anonymous [analysis](#) of the Ethics Commission’s handling of the Mirkarimi case clearly laid out how the Mayor and Ethics Commission had gotten it wrong charging Mirkarimi with official misconduct. The analysis noted the Ethics Commission was strictly limited to a *single* legal question: Did a public official commit “official misconduct” as defined in City Charter Section 15.105(e), or not? The Ethics Commission didn’t answer this question.

Ethics Commission president Ben Hur may also have been made aware in October 2012 of the anonymous analysis. Hur was the single Commissioner who voted against finding Mirkarimi had engaged in official misconduct.

It’s a wonder that the billionaires haven’t gone after Ethics president Ben Hur.

Indeed, as I reported in October 2012, the anonymous analysis noted that even Mayor Lee’s attorneys conceded that Ethics Commissioner Renne’s argument — that any and all misconduct is official misconduct, whether it relates to official duties or not — “would cause San Francisco’s ‘official misconduct’ law to fail this [basic] constitutional test,” (that to be constitutional, a law must be sufficiently clear that people required to obey it can easily determine what conduct is prohibited). It would be an example of the precise opposite of the rule of law, more appropriately called the “law of rulers.”

As I [noted](#) in the “*Consensus Mayor’s Sour Grapes*” in November 2012, there’s no sympathy to be found for Ed Lee’s reliance on the stupid legal strategy against Sheriff Mirkarimi developed by Deputy City Attorney’s Sherri Kaiser and Peter Keith, most probably with the concurrence of their boss, City Attorney Dennis Herrera.

More so than then-Supervisor Christina Olague — or David Campos — then and current Supervisor Jane Kim peppered Ms. Kaiser with astute questions. Kaiser’s waffling under cross examination so startled Kim that she then asked Kaiser:

“Does that open us up to the vagueness issue, which may make that clause then unconstitutional, because then a person may not reasonably be able to predict when their behavior is official misconduct or not?” Honing in on the “standard of decency” clause added to the Charter in 1995, Kim noted that any standard of decency may change over time, depending on who is appointed to the Ethics Commission, who has been elected to the Board of Supervisors, and who is the elected Mayor, opening the question of whether the definition is too vague for anyone to determine what is or isn’t official misconduct.

A legal theory holds that any law that “forbids an act in terms so vague that men of common intelligence and understanding must guess as to its meaning and differ as to its application violates the first essential of due process of law.”

At some point after the Board of Supervisors October 8, 2012 hearing to determine Mirkarimi’s fate, the anonymous author identified himself as Eric A. Brill, a San Francisco lawyer.

Brill’s update to his analysis noted his essay was written and published before the Board of Supervisors’ special meeting held on October 8, 2012 in a frank effort to persuade the Supervisors to reject the Ethics Commission’s August 16, 2012 four-to-one vote recommending Mirkarimi be removed from office, with Ethics Commission president Ben Hur dissenting. Brill also notes his essay was sent to the then 11 members of the Board of Supervisors prior to its hearing, presumably read.

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Brill’s update after the Supervisors failed to find Mirkarimi guilty of official misconduct noted:

“ ‘Official misconduct’ laws are there to punish official misconduct, period — not as political tools for mayors to remove elected opponents based on misconduct that occurred before they took office. Voters may recall an elected official at any time, for any reason or no reason at all, either at the next election or in a special election held just for that purpose. Mayor Lee could have asked the voters to do that. None of his predecessors had ever sought to remove an elected official based on pre-office conduct. Mayor Lee should not have done so, and no mayor should do so in the future. One hopes the outcome of this case will make such self-restraint more likely.”

While then-Supervisors Christina Olague, Jane Kim, David Campos, and John Avalos clearly understood this, and voted against hanging the Sheriff, Supervisor David Chiu seems not to have understood this at all, despite Brill’s dispassionate analysis. Perhaps Supervisors Kim, Campos, Olague, and Avalos read and understood Brill’s analysis, which billionaires Conway and Hoffman clearly seem not to have read, or understood.

Chiu, Conway, and Hoffman keep using a political tool against Campos, to punish him for having understood that official misconduct laws are there to punish official misconduct, not to remove elected officials the Mayor may have disagreements with.

The Committee to Hold David Campos Accountable is again pushing its smear campaign against Campos during the general election, using funds from billionaires Conway and Hoffman. And at the same time, a recent mailer from David Chiu’s official campaign alleges that Campos “Let Sheriff Ross Mirkarimi keep his job.” This is the same message, which seems to be carefully coordinated among various committees. Voter mailboxes were crammed with two separate mailers from Reid Hoffman’s the Committee to Hold David Campos Accountable committee on Saturday, October 25, continuing its smear campaign against Campos.

As I [reported](#) in “*The Three-David Race for Assemblyperson*” in May 2014, this tactic may backfire badly on David Chiu. Apparently, his billionaire backers just don’t get it.



## The Mayor's Lie on Behalf of David Chiu

Surprisingly, on Saturday, November 1 (just four days before the election), voter mailboxes were stuffed with a [personal appeal](#) from Mayor Ed Lee in support of David Chiu, advertising paid for by Chiu's official campaign. No candidate for Assembly District 17 has, in recent memory, ever stooped to resorting to a mailer featuring "From the Desk of a Mayor" on the outside of the envelope, but this envelope carried in its upper left-hand corner a banner reading "From the Desk of Mayor Ed Lee."

It appears that the race between David Campos and David Chiu for the Assembly seat is so neck-and-neck, that Chiu desperately stooped at the last minute to using such a tactic. The problem is Lee's personal appeal is based on a big lie.

Mr. Mayor's letter claims (wrongly) that David Chiu did the "right thing" in voting to hang the Sheriff, while Chiu's opponent (Campos) did not do the "right thing." It's clear that the Mayor either did not read Eric Brill's initially anonymous analysis of the trumped-up charges against Mirkarimi, or Mr. Ed Lee did not fully *comprehend* Brill's brilliant analysis. Comically, the Mayor's last-minute letter supporting Chiu doesn't acknowledge that even Ethics Commissioner Ben Hur had reached the same conclusion David Campos had — that Mirkarimi's behavior, outrageous as it may have been, did not rise to the level of official misconduct.

In truth, Campos had, in fact, done the "right thing," just as had Ethics Commissioner Ben Hur. It was Chiu, not Campos, who had done the "wrong thing" by voting to hang the Sheriff. This suggests Mr. Mayor may also not understand "right" from "wrong" and that the Mayor prefers sending the wrong Supervisor off to Sacramento to keep doing wrong things at the state level.

Indeed, the Mayor appears to have waited to endorse Chiu until the day after Chiu's legislation was passed granting Airbnb and Airbnb's prime investor, Ron Conway, a license to avoid paying Airbnb's back taxes and a license to gut San Francisco's rental housing stock. If the Mayor is so convinced Chiu had done the "right thing" regarding the Mirkarimi vote, why didn't Lee endorse Chiu early enough to potentially sway absentee voters before they cast ballots by mail?

Many observers wonder why Mayor Lee is only belatedly supporting Chiu at the 11<sup>th</sup> hour.

Might this suggest that Chiu's campaign is in such last-minute polling trouble that it felt a need for the Mayor to spread a lie conflating domestic violence with Campos' vote, simply to sway voters who go to the ballot box instead of voting absentee by mail? Not only is Chiu playing politics with domestic violence issues, so too is the Mayor and billionaire Reid Hoffman.

By way of contrast, an official mailer from Campos' Assembly Committee rightfully notes that three men — billionaire Conway, billionaire Hoffman, and David Chiu right in the middle — are playing politics with domestic violence. Many women reject the negative attacks on Campos, including Kim Shree Maufus on San Francisco's School Board, former Police Commissioner Angela Chan, and former State Senator Carole Migden.

The *San Francisco Chronicle* [reported](#) on October 16 that a group of domestic violence survivors staged a rally denouncing the smear campaign against Campos, and submitted a letter signed by more than 50 women at Chiu's campaign headquarters demanding that Chiu stop playing politics with domestic violence. According to the *Chronicle* the letter reads, in part:

"If you really cared about us, about this extremely difficult and complicated issue ... then you would stop using us to win votes. You would tell your billionaire friends to take the \$600,000 they have spent on vicious ads filled with hyperbole and lies and instead use that money to directly help domestic violence survivors like us."

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One signer of the letter, Trisha Fogleman, asserted that Chiu and his billionaire backers are focusing their attacks solely on Campos. She noted “You can’t use it against one candidate and not others,” since Campos’ vote to reinstate Mirkarimi was just one of four votes finding that the charges against the Sheriff were too unconstitutionally vague.

The *San Francisco Chronicle* also [reported](#) on October 21 that Campos’ campaign manager, Nate Allbee, believes this is “pay-to-play politics at its worst.” Allbee says “David Chiu’s Airbnb investor friends have realized that their sleazy attempt to use domestic violence to get their friend elected has backfired and angered women.”

So it’s not too surprising that the Mayor is also using domestic violence in another sleazy attempt to get Chiu elected.

Another group — the League of Pissed-Off Voters — also cries foul with David Chiu’s dealings with Airbnb lobbyists. The *Examiner* [reported](#) on October 21 that the League filed a complaint with San Francisco’s Ethics Commission involving a consultant on Chiu’s Assembly campaign, Nicole Derse, who co-founded 50+1 Strategies. The League alleges that Chiu did not disclose the relationship between himself, 50+1 Strategies, and Airbnb prior to the Board of Supervisors vote legalizing Airbnb’s short-term rental business. As I reported in [October](#), Chiu’s two-year delay developing the Airbnb legislation clearly has benefited Airbnb’s prime investors: Billionaires Conway and Hoffman.

This isn’t the only ethics complaint relating to David Chiu. The *San Francisco Bay Guardian* [reported](#) in May during the primary election cycle that former Ethics Commissioner Eileen Hansen had filed a complaint with the Ethics Commission in April alleging that several San Francisco neighborhoods were targeted with illegal campaign flyers against Campos that broke both state election laws requiring the group and its funding source to be identified, and local laws against placing political flyers on utility poles and other surfaces.

Don’t buy in to the garbage coming from Chiu, Conway, and Hoffman. Vote for David Campos for your Assemblyperson. And vote “No” on the Prop “A” MUNI bond!

Otherwise, billionaires will buy the November election.

*Monette-Shaw is an open-government accountability advocate, a patient advocate, and a member of California’s First Amendment Coalition. He received the Society of Professional Journalists–Northern California Chapter’s James Madison Freedom of Information Award in the Advocacy category in March 2012. Feedback: <mailto:monette-shaw@westsideobserver>.*

## Further Reading

Eric Brill’s dispassionate, initially anonymous analysis of the Ethics Commission’s handling of Sheriff Ross Mirkarimi’s case can be found online at <http://rjemirkarimi.blogspot.com/2012/09/ethics-commission-proceeding-against.html>. It’s well worth the read, disputing much of the nonsense being raised by billionaires Conway and Hoffman against Campos.

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