

1 GARY S. WINUK
Chief of Enforcement
2 BRIDGETTE CASTILLO
Commission Counsel
3 FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA
10

11 In the Matter of) FPPC No: 10/504
12)
13)
14 PUT CALIFORNIA BACK TO WORK,) STIPULATION, DECISION and
15 SPONSORED BY THE CIVIL JUSTICE) ORDER
16 ASSOCIATION OF CALIFORNIA and)
17 J. RICHARD EICHMAN,)
18 Respondents.)

19 Complainant John W. Wallace, Acting Executive Director of the Fair Political Practices
20 Commission, and Respondents Put California Back To Work, Sponsored by the Civil Justice
21 Association and J. Richard Eichman agree that this Stipulation will be submitted for consideration by
22 the Fair Political Practices Commission at its next regularly scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in
24 this matter, and to reach a final disposition without the necessity of holding an administrative hearing
25 to determine the liability of Respondents.

26 Respondents understand and hereby knowingly and voluntarily waive any and all procedural
27 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections
28 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not

1 limited to, the right to personally appear at any administrative hearing held in this matter, to be
2 represented by an attorney at Respondents own expense, to confront and cross-examine all witnesses
3 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
4 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
5 reviewed.

6 Respondents Put California Back To Work, Sponsored by the Civil Justice Association
7 (Respondent Committee) and J. Richard Eichman further stipulate and agree that, as described in
8 Exhibit 1, they violated the Political Reform Act by: 1) failing to file an amended statement of
9 organization within 10 days to disclose that Respondent Committee was a primarily formed committee,
10 failing to add the full name and office of the candidate it supported as its primary activity, and failing
11 to include the name of the candidate, office sought and year of the election for whom the committee
12 supported or opposed in the name of the Respondent Committee, in violation of Government Code
13 sections 84102, subdivisions (d) and (g) and 84103, subdivision (a) (1 count); and 2) failing to display
14 the top two contributors of \$50,000 or more on a mass mailing during the 12 month period prior to
15 making the independent expenditure, in violation of Government Code section 84506 (1 count), as
16 described in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference, as though fully set
17 forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

18 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
19 Respondents also agree to the Commission imposing upon them an administrative penalty in the
20 amount of Six Thousand Dollars (\$6,000). A cashier's check from Respondents totaling said amount,
21 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
22 payment of the administrative penalty, and shall be held by the State of California until the
23 Commission issues its decision and order regarding this matter. The parties agree that in the event the
24 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
25 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
26 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
27 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full
28 evidentiary hearing before the Commission becomes necessary, neither any member of the

1 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
2 Stipulation.

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4 Dated: _____

John W. Wallace
Acting Executive Director
Fair Political Practices Commission

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7 Dated: _____

J. Richard Eichman, individually and on behalf of Put
California Back To Work, Sponsored by the Civil Justice
Association of California, Respondents

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11 **DECISION AND ORDER**

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13 The foregoing Stipulation of the parties “In the Matter of Put California Back To Work,
14 Sponsored by the Civil Justice Association of California and J. Richard Eichman, FPPC No. 10/504,”
15 including all attached exhibits, is hereby accepted as the final Decision and Order of the Fair Political
16 Practices Commission, effective upon execution below by the Chair.

17
18 IT IS SO ORDERED.

19
20 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Put California Back To Work, Sponsored by the Civil Justice Association of California (“Respondent Committee”) formed as a state general purpose committee on January 19, 2010. At all relevant times, Respondent J. Richard Eichman (“Respondent Eichman”) was the treasurer of the Respondent Committee.

The Political Reform Act (the “Act”) ¹ requires that whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within 10 days to reflect the change. In addition, the Act requires that a mass mailing must include complete disclosure statements. In this matter, Respondents Committee and Eichman failed to amend the statement of organization to disclose that the Respondent Committee was a primarily formed committee to support the election of Juan Vargas for State Senate District 40 in the June 8, 2010 Primary Election, failed to add the full name and office of the candidate it supported as its primary activity, and failed to include in Respondent Committee’s name, the name of the candidate, office sought and year of the election for whom the committee supported or opposed. Additionally, Respondents failed to include complete disclosure statements on a mass mailing, in violation of the Act.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

Count 1: Respondents Put California Back To Work, Sponsored by the Civil Justice Association of California and J. Richard Eichman failed to file an amended statement of organization within 10 days to disclose that Respondent Committee was a primarily formed committee, failed to add the full name and office of the candidate it supported as its primary activity, and failed to include the name of the candidate, office sought and year of the election for whom the committee supported or opposed in the name of the Respondent Committee, in violation of Government Code sections 84102, subdivisions (d) and (g), and 84103, subdivision (a).

Count 2: On or about June 2, 2010, Respondents Put California Back To Work, Sponsored by the Civil Justice Association of California and J. Richard Eichman made an independent expenditure which caused a mass mailing to be sent in support of Juan Vargas for State Senate District 40 and in opposition of his opposing candidate, Mary Salas, which failed to display the top two contributors of \$50,000 or more during the 12 month period prior to the expenditure, in violation of Government Code section 84506.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that contributions and expenditures effecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and improper practices may be inhibited. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose.

State General Purpose Committee

The Act defines a state general purpose committee, in relevant part, as a committee to support or oppose candidates or measures voted on in a state election, or in more than one county. (Section 82027.5, subdivision (b).)

Primarily Formed Committee

Section 82047.5 defines a primarily formed committee, in relevant part, as a committee which is formed or exists primarily to support or oppose a single candidate, a single measure, a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election. Regulation 18247.5, subdivision (a), states that a recipient committee that makes more than 70% of its total contributions and expenditures on a single candidate or against that candidate's opponents, is a primarily formed committee. Further, Regulation 18247.5, subdivision (c)(1)(B), requires that a new committee formed within six months of an election in connection with which the committee makes contributions and expenditures, shall calculate the percentage at the end of each month.

Section 84102, subdivision (d), in relevant part, requires that the full name and office sought by any candidate which the committee supports or opposes as its primary activity must be included in the statement of organization.

Section 84102, subdivision (g), states that other information must be included in the statement of organization required by the rules or regulations of the Commission consistent with the purposes and provisions of this chapter. Regulation 18402, subdivision (c)(3), requires that the name of a non-candidate controlled committee primarily formed to support or oppose one or more candidate, shall include the last name of each candidate whom the committee supports or opposes as listed on its statement of organization, the office sought, and year of the election, and shall state whether the committee supports or opposes the candidate.

Statement of Organization

Section 84103, subdivision (a), requires that whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change.

Duty to Disclose the Two Highest Cumulative Contributors of \$50,000 or More in a

Broadcast or Mass Mailing Advertisement

Section 84501, subdivision (a), defines an advertisement as any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures. Regulation 18450.1, subdivision (a), explains further that these advertisements include, among other things, communications placed in newspapers and direct mailings not solicited by the recipient and intended for delivery in substantially similar form to 200 or more households.

Section 82031, in relevant part, defines an Independent Expenditure as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate.

Regulation 18450.4, subdivision (b), further explains what is required in the disclosure statement required under Section 84506. It states that the disclosure shall explicitly indicate that the contributor was a major donor to the committee by stating, for example, “major funding by” or “paid for by.”

Section 84506, subdivision (a), requires that a broadcast or mass mailing advertisement supporting or opposing a candidate or ballot measure, that is paid for by an independent expenditure, shall include a disclosure statement that identifies both of the following: (1) The name of the committee making the independent expenditure. (2) The names of the persons from whom the committee making the independent expenditure has received its two highest cumulative contributions of fifty thousand dollars (\$50,000) or more during the 12 month period prior to the expenditure.

Administrative penalties for violations of Section 84506 are governed by Chapter 11 of the Act, and by Section 84510. Section 84510, subdivision (a), states that, in addition to the typical administrative remedies available under the Act (Section 91000 and following), any person who violates the advertisement disclosure rules is liable in a civil or administrative action brought by the Commission for a fine up to three times the cost of the advertisement, including placement costs.

Thus, the Commission has discretion to seek administrative penalties of up to three times the amount of the cost of an advertisement that does not have the proper disclosure.

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

SUMMARY OF THE FACTS

Respondent Committee formed as a state general purpose committee on January 19, 2010. At all relevant times, Respondent Eichman was the treasurer of the Respondent Committee.

The Respondent Committee filed a statement of organization stating that it had qualified as a committee on January 19, 2010. The Respondent Committee statement of organization stated that the Respondent Committee expected to make independent expenditures to support or oppose numerous candidates for state constitutional offices, state legislature, county, and city offices. According to Respondent Committee campaign statements, during the period January 1, 2010, through June 30, 2010, Respondent Committee made expenditures of approximately \$1,449,440. Approximately \$1,270,440 was made in support of Juan Vargas and in opposition to his opponent, Mary Salas. Therefore, approximately 88% of the campaign activity was in support of the election of Juan Vargas for State Senate District 40 and in opposition of a candidate opposing him in the same election. At no time prior to the June 8, 2010 Primary Election did the contributions or expenditures in support of Juan Vargas and opposing Mary Salas fall below 70%.

Prior to the June 8, 2010 Primary Election, Respondents Committee and Eichman paid for multiple advertisements and mass mailers in support of the election of Juan Vargas for State Senate District 40 and in opposition of Mary Salas, none of which included the proper disclosure. Specifically, on or about June 2, 2010, Respondents Committee and Eichman made an independent expenditure which caused a mass mailer to be sent that did not include complete disclosure statements.

Count 1 **Failure to Amend Statement of Organization**

Section 82047.5 defines a primarily formed committee, in relevant part, as a committee which is formed or exists primarily to support or oppose a single candidate, a single measure, a group of specific candidates being voted upon in the same city, county, or multicounty election, or two or more measures being voted upon in the same city, county, multicounty, or state election. Regulation 18247.5, subdivision (a), states that a committee that makes more than 70% of its total contributions and expenditures on a single candidate or against that candidate's opponents, is a primarily formed committee. Further, Regulation 18247.5, subdivision (c)(1)(B), requires that a new committee formed within six months of an election in connection with which the committee makes contributions and expenditures, shall calculate the percentage at the end of each month.

On January 19, 2010, Respondent Committee filed a statement of organization as a state general purpose committee, disclosing the Respondent Committee expected to make expenditures to support or oppose numerous candidates for state constitutional offices, state legislature, county, and city offices. The Respondent Committee made multiple expenditures in support of Juan Vargas for State Senate District 40 and in opposition of the opposing candidate, Mary Salas, in connection with the June 8, 2010 Primary Election. As a committee newly formed within six months of the June 8, 2010 Primary Election, in which they were making

expenditures, Respondents were required to calculate the percentage of the financial activity at the end of each month.

According to an interview with Respondent Eichman, he was aware of the requirement to base a newly formed committee's filing status on its monthly spending. In March of 2010, Respondent Eichman informed the Principal Officer of Respondent Committee, John Sullivan, that the committee was acting as a primarily formed committee. According to an interview of Respondent Eichman, Mr. Sullivan informed him that the committee was going to support other candidates. However, according to Respondent Committee's financial activity, Respondents were required to amend the statement of organization to reflect the activity of the Respondent Committee as a primarily formed committee to support Juan Vargas at least at the beginning of March. Further, according to an interview with Respondent Eichman, he informed the Principal Officer in May of 2010 that the Respondent Committee was continuing to act as a primarily formed committee. Respondents failed to amend the statement of organization in March, April, or May. At no time prior to the June 8, 2010 Primary Election was the Respondent Committee financial activity consistent with a state general purpose committee.

As a non-candidate controlled primarily formed committee, Respondents were required to include in the name of the Respondent Committee the last name of each candidate whom the committee supported or opposed as listed on its statement of organization, the office sought, and year of the election, and were required to state whether the committee supported or opposed the candidate. Respondents failed to provide this required information in the name of Respondent Committee as a result of failing to amend the statement of organization.

Thus, Respondents Committee and Eichman failed to amend the Respondent Committee statement of organization to disclose that it was a primarily formed committee, failed to add the full name and office of the candidate it supported as its primary activity, and failed to include the name of the candidate, office sought and year of the election for whom the committee supported or opposed in the name of the Respondent Committee, in violation of Government Code sections 84102, subdivisions (d) and (g), and 84103, subdivision (a).

Count 2

Failure to Disclose the Two Highest Cumulative Contributors of \$50,000 or More in a Broadcast or Mass Mailing Advertisement

Section 84506, subdivision (a), requires that a broadcast or mass mailing advertisement supporting or opposing a candidate or ballot measure, that is paid for by an independent expenditure, shall include a disclosure statement that identifies both of the following: (1) The name of the committee making the independent expenditure. (2) The names of the persons from whom the committee making the independent expenditure has received its two highest cumulative contributions of fifty thousand dollars (\$50,000) or more during the 12 month period prior to the expenditure.

On or about June 2, 2010, Respondents made an independent expenditure by sending approximately 28,823 mass mailers supporting Juan Vargas and opposing Mary Salas, the opposing candidate. The front page of the mailer stated, "Predator-someone who exploits others

for selfish gain.” On the back page, the mailer stated, “Who are you going to believe? CA Firefighters or Mary Salas?” The end of the mailer stated, “On June 8, please join CDF Firefighters Local 2881 in supporting Juan Vargas for State Senate.” The cost of the mailer was approximately \$19,362. The sender identification on the mass mailer was “Put California Back To Work, Sponsored by the Civil Justice Association of California.”

As a primarily formed committee, Respondents were required to include the top two highest cumulative contributors of fifty thousand dollars (\$50,000) or more during the 12 month period prior to the expenditure. The top two contributors that were required to be disclosed were Diversity PAC and JobsPAC.

Thus, Respondents Committee and Eichman failed to provide the required disclosure on a mass mailing, that was paid for by an independent expenditure, in violation of Section Government Code section 84506.

CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of ten thousand dollars (\$10,000). However, in this case, Section 84510 authorizes the administrative penalty in the amount of three times the cost of the advertisement in Count 2, including placement costs.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Count 1: Respondents had a duty to file an amendment to the statement of organization to disclose it was a primarily formed committee, to add the full name and office of the candidate supported as its primary activity, and were required to include in the name of the Respondent Committee the last name of each candidate whom the committee supported or opposed as listed on its statement of organization, the office sought, and year of the election, and were required to state whether the committee supported or opposed the candidate. The failure to amend the statement of organization concealed from the public the true nature of the Respondent Committee’s activity. In aggravation, Respondent Eichman is an experienced, professional treasurer. According to an interview of Respondent Eichman, he informed the Principal Officer of the Respondent Committee in both March of 2010 and May of 2010 that the financial activity

of the Respondent Committee qualified as a primarily formed committee and they were required to amend the statement of organization. The Respondents Committee and Eichman failed to amend the statement of organization in March, April, or May. In mitigation, Respondents cooperated with the investigation. Further, Respondents timely filed electronic campaign statements disclosing financial activity.

Other cases regarding the failure to amend a statement of organization recently approved by the Commission include:

In the Matter of Californians for SAFE Food, a coalition of public health and food safety experts, labor unions, consumers, family farmers, and veterinarians. No on Proposition 2, FPPC No. 08/515. This case involved 1 count of failing to name a sponsor on the statement of organization and one count of failing to amend the statement of organization to include a sponsor. A \$2,500 penalty for the each count, was approved by the Commission on April 8, 2010.

In the Matter of Mary Ann Andreas, et. al., FPPC No. 06/77. This case involved multiple counts altogether, with one count of failing to amend a statement of organization to reflect the true treasurer. A \$2,250 penalty was approved for this violation by the Commission on June 10, 2010.

In this matter, Respondent's actions were more serious as Respondents were aware of the requirement and did not amend the statement of organization. Therefore, imposition of an administrative penalty in the amount of three thousand five hundred dollars (\$3,500) is recommended.

Count 2: As a primarily formed committee, Respondents had a duty to display in a mass mailing the top two contributors of \$50,000 or more during the 12 month period prior to the expenditure. The failure to provide proper disclosure in a mass mailing deprives the public of important information regarding the major donors of political advertisements. In aggravation, Respondent Eichman, as an experienced professional treasurer, should have been aware of the disclosure requirement for primarily formed committees. Additionally, as a result of failing to amend the statement of organization to disclose the Respondent Committee as a primarily formed committee, the Respondent Committee name did not include the required information regarding the name, office sought and year of the election that was supported or opposed by the Respondent Committee as its primary activity. Further, Respondent Committee was involved in multiple advertisements, all of which failed to provide proper disclosure. In mitigation, Respondents cooperated with the investigation and timely filed campaign statements electronically.

Other similar cases regarding failing to properly include the required disclosure statements on advertisements recently approved by the Commission include:

In the Matter of Friends of Cuesta College, FPPC No. 06/465 & 06/848. This case involved 3 counts of failing to disclose major donors on newspaper advertisements and mass mailers. A \$2,000 penalty was approved for each of these violations by the Commission on February 11, 2010.

In the Matter Yes on Proposition B, FPPC No. 10/932. This case involved one count of failing to provide written disclosure identifying persons whose contributions were \$50,000 or

more for a period of at least 5 seconds on a television advertisement. A \$2,000 penalty was approved for this violation by the Commission on January 28, 2011.

In this matter, Respondents failed to provide proper disclosure statements as a result of failing to properly file as a primarily formed committee. Taking into consideration the factors above, this case is not recommended for imposition of treble damages. Rather, imposition of an administrative penalty of two thousand five hundred dollars (\$2,500) is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Six Thousand Dollars (\$6,000) is recommended.