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7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 WOMEN'S VOTER GUIDE and
13 TRACEY POMERANCE-POIRIER,

14 Respondents.

FPPC No. 10/1023

STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant, the Fair Political Practices Commission, and Respondents, Women's Voter Guide
17 and Tracey Pomerance-Poirier, agree that this Stipulation will be submitted for consideration by the Fair
18 Political Practices Commission at its next regularly scheduled meeting.

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

22 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondents Women’s Voter
2 Guide and Tracey Pomerance-Poirier committed one violation of Government Code section 84219,
3 subdivision (e). Exhibit 1, which is attached hereto and incorporated by reference as though fully set
4 forth herein, is a true and accurate summary of the facts in this matter.

5 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and
6 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
7 \$2,000. One or more cashier’s checks or money orders totaling said amount—to be paid to the General
8 Fund of the State of California—is/are submitted with this Stipulation as full payment of the
9 administrative penalty described above, and same shall be held by the State of California until the
10 Commission issues its Decision and Order regarding this matter. The parties agree that in the event the
11 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
12 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
13 by Respondents in connection with this Stipulation shall be reimbursed. Respondents further stipulate
14 and agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before
15 the Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
16 shall be disqualified because of prior consideration of this Stipulation.

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18 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

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21 Dated: _____

Tracey Pomerance-Poirier, Individually and on
Behalf of Women’s Voter Guide, Respondents

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24 **DECISION AND ORDER**

25 The foregoing Stipulation of the parties “In the Matter of Women’s Voter Guide and Tracey
26 Pomerance-Poirier,” FPPC No. 10/1023, including all attached exhibits, is hereby accepted as the final

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1 decision and order of the Fair Political Practices Commission, effective upon execution below by the
2 Chairman.

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4 IT IS SO ORDERED.

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6 Dated: _____

7 Ann Ravel, Chair
8 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Women’s Voter Guide (“Respondent WVG”) is a slate mailer organization. At all relevant times, Respondent Tracey Pomerance-Poirier (“Respondent Poirier”) was Respondent WVG’s treasurer.

In 2010, Respondent WVG produced and sent slate mailers supporting various candidates and ballot measures being voted on in the general election. Some of these candidates and ballot measures did not pay for the support of the slate mailers. Respondents were required to disclose this on a campaign statement filed for the period ending December 31, 2010. However, Respondents failed to provide this required disclosure as to seven candidates and one ballot measure.

For purposes of this stipulation, Respondents’ violation of the Political Reform Act (the “Act”)¹ is set forth as follows:

Count 1: In 2010, Respondent Women’s Voter Guide produced and sent slate mailers supporting various candidates and ballot measures being voted on in the general election. Some of these candidates and ballot measures did not pay for the support of the slate mailers. Respondents Women’s Voter Guide and Tracey Pomerance-Poirier were required to disclose this on a campaign statement filed for the period ending December 31, 2010, but they failed to provide this required disclosure as to seven candidates and one ballot measure in violation of Section 84219, subdivision (e).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violation in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

¹ The 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.

One of the purposes of the Act is to ensure transparency in election campaigns so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

Required Filing of Campaign Statements and Reports

Slate mailer organizations are required to file campaign statements and reports, including semi-annual campaign statements. (Section 84218.) For example, semi-annual campaign statements must be filed each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31. (Section 84218, subd. (a).)

Required Reporting of Candidates and Ballot Measures that do not Pay for Slate Mailer Support

Many times, a slate mailer organization will produce and mail slate mailers in support of candidates and ballot measures *without* receiving payment from the candidates and ballot measures. When this happens, the slate mailer organization is required to disclose the name of each such candidate or ballot measure, the jurisdiction, and in the case of a candidate, the office sought. (Section 84219, subd. (e).)

Joint and Several Liability of Treasurer

The treasurer of a slate mailer organization is charged with the duty to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements are properly filed, and to otherwise comply with the provisions of the Act. (See Sections 81004, 84100, 84104, and 84108, subd. (a).) The treasurer may be held jointly and severally liable, along with the slate mailer organization, for reporting violations. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

As stated above, Respondent WVG is a slate mailer organization. At all relevant times, Respondent Poirier was Respondent WVG’s treasurer.

Count 1

In 2010, Respondent WVG produced and sent slate mailers supporting various candidates and ballot measures being voted on in the general election. Some of these candidates and ballot measures did not pay for the support of the slate mailers. On a campaign statement filed for the period ending December 31, 2010, Respondents were required to disclose the name of each such candidate and ballot measure, the jurisdiction, and in the case of each candidate, the office sought. However, Respondents failed to report this information for the following candidates and ballot measures:

1. Abel Maldonado
2. Ryan Arba
3. Jay Boatwright
4. Carl Burton
5. Warren Harding
6. Anthony Hernandez
7. Mary Ose
8. Yes on Measure D.

In failing to report the information described above, Respondents committed one violation of Section 84219, subdivision (e).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000. (Section 83116, subd. (c).)

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. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5, subdivision (d)(1) through (6):

- (1) The seriousness of the violation;
- (2) The presence or absence of any intention to conceal, deceive or mislead;
- (3) Whether the violation was deliberate, negligent or inadvertent;
- (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other government agency in a manner not constituting a complete defense under Government Code section 83114(b);
- (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and
- (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, there are no recent stipulations involving a violation of Section 84219, subdivision (e). However, this sort of violation is very similar to the failure of a candidate or committee to report expenditures made (because supporting a candidate or ballot measure in a slate mailer—without receiving compensation therefor from the candidate or ballot

measure—is similar to making a contribution or independent expenditure, both of which are types of expenditures). One of the more recent stipulations involving such a violation shows that the penalty has been in the mid-range. (See *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652, approved Feb. 10, 2011 [\$2,000 to \$2,500 penalty imposed per count for three counts of failure to report expenditures].)

The public harm inherent in campaign reporting violations of this sort is that the public is deprived of important information such as whether the slate mailer organization made disbursements to support candidates and ballot measures without receiving compensation therefor from the candidates and ballot measures supported. In this case, the violation was aggravated by Respondents' failure to comply with Section 84305.5, which requires that asterisks be placed in slate mailers next to the names of candidates and ballot measures—if the candidates and ballot measures paid to appear in the slate mailer. However, Respondents' slate mailers incorrectly included asterisks next to the names of the candidates and ballot measure described above—even though the candidates and ballot measure had not paid to appear in the slate mailers. This compounded the problem when, subsequently, Respondents filed their campaign statement for the period ending December 31, 2010 and failed to disclose the nonpayment by the candidates and ballot measure.

Under these circumstances, imposition of an agreed upon penalty in the amount of \$2,000 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, Respondents maintain that they hoped to receive payment at some point from the candidates and ballot measure involved. Additionally, there is no history of prior violations of the Act by Respondents. Also, this violation involved failure to report eight candidates/measures on the Schedule D of the campaign statement in question—as compared to approximately 156 that were reported on Schedule D of that statement. Additionally, in connection with this settlement, Respondents voluntarily amended the campaign statement in question to disclose that the eight candidates/measures were billed but never paid.