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

10
11 In the Matter of) FPPC No. 12/927
12)
13)
14 JERALD "JERRY" HYDE,) STIPULATION, DECISION and ORDER
15)
16 Respondent(s).)

17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission, and Respondent Jerald "Jerry" Hyde,
19 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
20 Commission at its next regularly scheduled meeting.

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

24 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
25 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
26 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
27 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
28 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to

1 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
2 the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondent violated the Political Reform Act by sending
4 a mass mailing which failed to display the required sender identification, in violation of Government
5 Code Section 84305, subdivision (a) (1 count), as described in Exhibit 1. Exhibit 1 is attached hereto
6 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
7 of the facts in this matter.

8 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
9 Respondent also agrees to the Commission imposing an administrative penalty in the total amount of
10 Two Thousand Dollars (\$2,000). A cashier's check from Respondent in said amount, made payable to
11 the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
12 administrative penalty, and shall be held by the State of California until the Commission issues its
13 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
14 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
15 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
16 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
17 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
18 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
19 shall be disqualified because of prior consideration of this Stipulation.
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21 Dated: _____

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

24 Dated: _____

Jerald "Jerry" Hyde, Respondent

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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Jerald “Jerry” Hyde, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chairman.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Jerald “Jerry” Hyde (“Respondent”) qualified as an independent expenditure committee in October 2012.

This matter arose out of a sworn complaint alleging that a mass mailing in October 2012, sent to residents of St. Helena, CA, opposing local Measure C, failed to disclose the mailing address for the sender of the mass mailing. Under the Political Reform Act (the “Act”)¹, mass mailings must disclose the name, street address, and city of the sender of the mass mailing. The investigation in this matter revealed that Respondent was the sender of this mass mailing, and failed to disclose the proper sender identification.

For the purposes of this Stipulation, Respondent’s violations are as follows:

COUNT 1: On or about October 18, 2012, Respondent Jerald “Jerry” Hyde paid for and caused to be sent a mass mailing expressly advocating the defeat of a local school bond measure in the November 6, 2012, election, which failed to display required sender identification, in violation of Government Code Section 84305, subdivision (a).

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore requires senders of mass mailings to properly identify themselves on the mass mailings.

Independent Expenditure Committees

Section 82013, subdivision (b) defines a “committee” as including any person or combination of persons who makes independent expenditures totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as an “independent expenditure” committee.

Section 82031 defines an “independent expenditure” as including an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate or committee.

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.

Mass Mailing Sender Identification

Section 84305, subdivision (a) requires candidates and committees to properly identify themselves when sending a mass mailing. Specifically, the statute provides that no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing.

Section 82041.5 defines a “mass mailing” as over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or other inquiry. Regulation 18435, subdivision (a), clarifies this section, and further defines a mass mailing as over two hundred substantially similar pieces of mail sent in a calendar month. Regulation 18435, subdivision (b), defines the term “sender,” as used in Section 84305, as the candidate or committee who pays for the largest portion of expenditures attributable to the designing, printing or posting of the mailing.

SUMMARY OF THE FACTS

Respondent Jerald “Jerry” Hyde (“Respondent”) qualified as an independent expenditure committee in October 2012. On October 18, 2012, Respondent paid \$1,350 to Gutenberg Transfer Printing to cover the costs of design, printing, and postage for a mailer expressly advocating the defeat of Measure C, a local school bond measure for the St. Helena Unified School District. The mailer identified the sender as an organization called “Citizens for Responsible School Spending, St. Helena,” but did not include the address and city of the organization. The mailer was delivered to approximately 4,400 households in the St. Helena Unified School District on or about October 24, 2012. Measure C passed in the November 6, 2012 election.

Respondent, during an interview with the Commission’s Special Investigator, Ann Flaherty, admitted that he acted alone and paid for the design, printing and posting for the mailer. He used the name “Citizens for Responsible School Spending, St. Helena” because that was the “mission” of the mailer. In his opinion, Measure C was not being fairly represented by the proponents in that their campaign literature did not disclose that it was a “bond measure” and did not disclose the amount of the bond. Respondent’s mailer did this. In Respondent’s opinion, cost estimates for all projects should have been determined and considered publicly before the amount of the bond was established, otherwise public money might be wasted. Additionally, Respondent stated that before he sent the mailer, he was advised by the vendor that he did not have to disclose his name or address, and that he was not aware of the Act’s sender identification requirements.

In this matter, Respondent sent a mass mailing without providing the proper sender identification. By failing to provide Respondent’s proper sender information on the mass mailing named above, Respondent violated Government Code Section 84305, subdivision (a).

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CONCLUSION

This matter consists of one count of violating the Act, carrying a maximum administrative penalty of \$5,000.

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 context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6):

1. The seriousness of the violations;
2. The presence or lack of intent to deceive the voting public;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the Respondent demonstrated good faith in consulting with Commission staff;
5. Whether there was a pattern of violations; and
6. Whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

Failure to include the proper sender identification on a mass mailing can be a serious violation of the Act as it deprives the public of important information regarding the sponsor of the mailing. The typical administrative penalty for a failure to include the proper sender identification on a mass mailing violation, depending on the facts of the case, has been in the low to middle range of available penalties.

In this matter, the sender identification provided on the mass mailers was misleading because the name of a committee that doesn't exist was identified instead of Respondent, the true sender.

In mitigation, Respondent has no history of violating the Act, and fully cooperated with the investigation. Additionally, the amount of the independent expenditure for the mailer was relatively low. Also, at the time of sending the mailer, Respondent was unaware of the sender identification requirements under the Act, and he therefore believed that he could send the mailer anonymously without violating any laws. Further, when advised by Commission staff during this case, Respondent filed all independent expenditure campaign statements which were required. Thus, Respondent's violation appears to be negligent.

Other similar cases regarding a violation of Section 84305, subdivision (a) that have been recently approved by the Commission include:

In the Matter of Peter Cuthbert, FPPC No. 10/1000. This case involved a mailer in a local election campaign, sent to approximately 15,000 households, which lacked proper sender identification. The total cost of the mailer was approximately \$5,100. Respondent in this matter did not have an enforcement history, and no other campaign activity. A \$2,500 penalty was approved by the Commission on September 22, 2011.

In the Matter of Ken Ortega and Committee to Elect Ken Ortega, FPPC No. 06/841. This case involved a mailer in a local election campaign, sent to approximately 6,000 households, which lacked proper sender identification. The total cost of the mailers was approximately \$3,000. Respondent in this matter did not have an enforcement history. A \$2,000 penalty was approved by the Commission on January 14, 2010.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and whether the Respondent engaged in a pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) for Count 1 is recommended.

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