

1 GARY S. WINUK
Chief of Enforcement
2 BRIDGETTE CASTILLO
Senior Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 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. 13/1130

12
13 MERCED COUNTY DEMOCRATIC
CENTRAL COMMITTEE AND RICH GIPSON,

STIPULATION, DECISION AND ORDER

14 Respondents.

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16 **STIPULATION**

17 Complainant Fair Political Practices Commission and Respondents Merced County Democratic
18 Central Committee and Rich Gipson hereby agree that this Stipulation will be submitted for
19 consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

20 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
21 matter and to reach a final disposition without the necessity of holding an additional administrative
22 hearing to determine the liability of Respondents, pursuant to section 83116 of the Government Code.

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

1 the hearing as a hearing officer, and to have the matter judicially reviewed.

2 As described in Exhibit 1, it is further stipulated and agreed that Respondents Merced County
3 Democratic Central Committee and Rich Gipson failed to file a Pre-Election campaign statement for the
4 reporting period October 17, 2010, through November 20, 2010, by November 29, 2010, in connection
5 with the January 4, 2011 Special Election, in violation of Sections 84200.5 and 84200.8, subdivision (a)
6 (1 Count); and failed to properly disclose a \$55,000 late contribution in a late contribution report made to
7 Anna Caballero for Senate on or about October 19, 2010 and failed to properly disclose a \$50,000 late
8 contribution in a late contribution report made to Anna Caballero for Senate 2010 on or about October
9 25, 2010, in violation of Section 84203 (1 Count). Exhibit 1, which is attached hereto and incorporated
10 by reference as though fully set forth herein, is a true and accurate summary of the facts in this matter.

11 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and
12 Respondents agree to the Commission imposing upon him an administrative penalty in the amount of
13 \$4,500. A cashier's check or money order from Respondents totaling said amount, made payable to the
14 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
15 administrative penalty and shall be held by the State of California until the Commission issues its
16 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
17 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
18 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
19 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
20 agree that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the
21 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

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24 Dated: _____

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

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Dated: _____

Rich Gipson, individually and on behalf of
Merced County Democratic Central Committee,
Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Merced County Democratic Central Committee and Rich Gipson,” FPPC No. 13/1130, 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 Chair.

IT IS SO ORDERED.

Dated: _____

Joann Remke, Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Merced County Democratic Central Committee (“Respondent Committee”) is a county general purpose, political party committee. During all relevant time periods, Rich Gipson (“Respondent Gipson”) was the Treasurer.

This case is the result of an FTB Audit. As a general purpose committee under the Political Reform Act (the “Act”)¹, Respondents have a duty to file campaign statements and reports. However, Respondents failed to file a pre-election campaign statement and failed to file properly reported late contribution reports.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

COUNT 1: Respondents Merced County Democratic Central Committee and Rich Gipson failed to file a Pre-Election campaign statement for the reporting period October 17, 2010, through November 20, 2010, by November 29, 2010, in connection with the January 4, 2011 Special Election, in violation of Sections 84200.5 and 84200.8, subdivision (a).

COUNT 2: Respondents Merced County Democratic Central Committee and Rich Gipson failed to properly disclose a \$55,000 late contribution in a late contribution report made to Anna Caballero for Senate on or about October 19, 2010 and failed to properly disclose a \$50,000 late contribution in a late contribution report made to Anna Caballero for Senate 2010 on or about October 25, 2010, in violation of Section 84203.

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, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Duty to File Pre-Election Campaign Statements

Section 82013, subdivision (a), defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” Section 82027.5, subdivision (c), defines a “county general purpose committee” as a committee to support or

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.

oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county. According to Section 85205, “Political party committee” means the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 of the Elections Code. Under the Act’s campaign reporting system, county general purpose committees are required to file specified campaign statements and reports disclosing contributions received and expenditures made by certain deadlines.

According to Section 84200.5, subdivision (f)², in addition to the campaign statements required by Section 84200, political party committees shall file the applicable pre-election statements specified in Section 84200.7 or 84200.8 in connection with a state election if the committee receives contributions totaling one thousand dollars (\$1,000) or more, or if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more, during the period covered by the pre-election statement.

For elections not held in June or November of an even-numbered year, Section 84200.8 specifies the time for filing pre-election campaign statements. For political party committees, for the January 4, 2011 Special Election, the first pre-election campaign statement filing deadline was November 29, 2010, for the period October 17, 2010, through November 20, 2010.

Duty to File Late Contribution Reports

Under Section 84203, subdivisions (a) and (b), when a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report filed at each office with which the committee is required to file its next campaign statement pursuant to Section 84215, within 24 hours of making or receiving the contribution. Section 82036 defines a “late contribution” as a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate or measure before an election, but after the closing date of the last campaign statement that is required to be filed before the election.

Treasurer Liability

As provided in Section 84100, every committee shall have a treasurer. Under Section 81004, subdivision (b), Section 84100 and Regulation 18427, subdivision (a), a committee’s treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Pursuant to Sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee’s violations.

² All statutory references and discussions of law pertain to the Act’s provisions as they existed during the time of the violations.

SUMMARY OF THE FACTS

Respondent Committee is a county general purpose, political party committee. During all relevant time periods, Respondent Gipson was the Treasurer.

This case is the result of an FTB Audit. As a general purpose committee under the Act Respondents have a duty to file campaign statements and reports. However, Respondents failed to file a pre-election campaign statement and failed to file properly reported late contribution reports.

Count 1: Failure to File a Pre-Election Campaign Statement

In connection with the special election held on January 4, 2011, Respondents Committee and Gipson had a duty to file a pre-election campaign statement if the Respondents Committee and Gipson received contributions of \$1,000 or more or made independent expenditures or contributions totaling \$500 or more during the period covered by the pre-election period. During the pre-election period, October 17, 2010, through November 20, 2010, Respondents received contributions of approximately \$112,400 and made expenditures of approximately \$166,575. As a result, Respondents were required to file a pre-election campaign statement for the period October 17, 2010, through November 20, 2010, by November 29, 2010.

By failing to file the required Pre-Election campaign statement for the reporting period October 17, 2010, through November 20, 2010, by November 29, 2010, Respondents violated Sections 84200.5 and 84200.8, subdivision (a).

Count 2: Failure to Properly Report Late Contribution Reports

In connection with the November 2, 2010 Election, Respondents Committee and Gipson had a duty to file late contribution reports within 24 hours of making or receiving any late contributions during the late contribution reporting period. The late contribution reporting period for the November 2, 2010 Election was October 17, 2010, through November 1, 2010.

On or about October 19, 2010, Respondents made a contribution to Anna Caballero for State Senate in the amount of \$55,000. Additionally, on or about October 25, 2010, Respondents made a contribution to Anna Caballero for State Senate 2010 in the amount of \$50,000.

On or about October 19, 2010, Respondents filed a late contribution report, disclosing a contribution made in the amount of \$50,000 to Anna Caballero for State Senate. This late contribution report was underreported by \$5,000.

On or about October 25, 2010, Respondents filed a late contribution report, disclosing a contribution made in the amount of \$25,000 to Anna Caballero for State Senate 2010. This late contribution report was underreported by \$25,000.

By failing to properly file the required late contribution reports in connection with the November 2, 2010 Election, Respondents violated Section 84203.

CONCLUSION

This matter consists of two counts of violating the Act, which carries a maximum administrative penalty of \$5,000 for each violation, for a total of \$10,000.

In determining the appropriate penalty for a particular violation of the Act, the Commission 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 Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): 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; and whether there was a pattern of violations.

The public harm inherent in reporting violations is that the public is deprived of time-sensitive information regarding the sources and amounts of expenditures. In this matter, Respondents failed to file a pre-election campaign statement and underreported \$30,000 in two late contribution reports. In mitigation, Respondents stated that they mistakenly believed that they did not have to file pre-election campaign statements for the special election since the Respondent Committee was not involved in the special election. Respondents stated that underreporting the late contribution reports by \$30,000 was an error.

Pre-election Campaign Statements: The typical administrative penalty for failing to timely file a pre-election campaign statement has been in the middle of the penalty range, depending on the circumstances. Failing to timely file a pre-election statement deprives the public of important information about Respondents' financial activities before an election. In this matter, Respondent failed to timely file one pre-election campaign statement disclosing contributions received of approximately \$112,400 and made expenditures of approximately \$166,575. Recent fines approved by the Commission for this type of violation include:

In the Matter of Republicans Central Committee of San Luis Obispo County, FPPC No. 11/441, in September 2012, the Commission approved a penalty of \$2,000 for failing to timely file a pre-election campaign statement. In this case, Respondent failed to timely file a pre-election campaign statement and failed to file multiple late contribution reports. In mitigation, the Respondent cooperated with the Enforcement Division and had no history of violations.

In the Matter of Yolo County Democratic Central Committee Local Account, Bob Bockwinkel and William Julian II; FPPC No. 08/357. Respondents, a state general purpose, political party committee, and its treasurers, failed to file four pre-election campaign statements in a timely manner, in violation of Government Code Sections 84200.5, and 84200.7 (2 counts). Penalty per relevant count: \$2,500. Approved by Commission January 2011.

The imposition of a \$2,500 administrative penalty is recommended for Count 1.

Late Contribution Reports: The typical administrative penalty for failing to properly disclose late contribution reports have varied, depending on the circumstances. Failing to properly file a late contribution report deprives the public of important information regarding political activity before an election. In this matter, Respondents underreported late contribution reports by \$30,000. Recent fines approved by the Commission for this type of violation include:

In the Matter of Supporters for a Better San Clemente and Jeanne O'Grady, FPPC No. 10/1048. Respondents made a contribution of approximately \$2,111 in the form of advertisements and failed to timely disclose this contribution in a late contribution report, in violation of Section 84203. In February 2014, the Commission approved a penalty amount of \$2,500. In mitigation, Respondents did not have a history of enforcement actions and cooperated with the Enforcement Division's investigation.

In the Matter of Republican Central Committee of San Luis Obispo County, Patricia Smith, Elizabeth Van Note, and Danielle Duboff, FPPC No. 11/441. In September 2012, the Commission approved a fine of \$2,000 for the Respondents' failure to timely report a late contribution. In mitigation, the Respondents had no history of enforcement actions and cooperated with the Enforcement Division's investigation.

The imposition of a \$2,000 administrative penalty is recommended for Count 2.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5 and consideration of the penalties imposed in recent cases, a penalty of \$2,500 for Count 1 is recommended and a penalty of \$2,000 for Count 2 is recommended, for a total penalty of \$4,500.

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