

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

5 Attorneys for Complainant

6
7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11
12 In the Matter of) FPPC No. 14/324
13)
14 CALIFORNIA TAXPAYERS ADVOCATE,) STIPULATION, DECISION and
and CATHERINE ANDERSON,) ORDER
15 TREASURER,)
16 Respondents.)

17
18 Complainant, the Fair Political Practices Commission, and respondents California Taxpayers
19 Advocate and Catherine Anderson (collectively “Respondents”) agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 meeting.

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

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at the respondent's own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents failed to timely report three independent
5 expenditures of \$1,000 or more made in support of a candidate for elective state office during the June 8,
6 2010, election cycle, to the Secretary of State within 24 hours, in violation of Government Code section
7 85500, subd. (a) (1 count), and failed to file a supplemental independent expenditure report with the
8 Secretary of State by May 27, 2010, for the January 1 through May 22, 2010, reporting period, in
9 violation of Government Code section 84203.5 (1 count).

10 All counts are described in Exhibit 1, which is attached hereto and incorporated by reference as
11 though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

12 ///

1 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
2 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
3 of \$5,500. A cashier's check from Respondents in said amount, made payable to the "General Fund of
4 the State of California," is submitted with this Stipulation as full payment of the administrative penalty,
5 to be held by the State of California until the Commission issues its decision and order regarding this
6 matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall
7 become null and void, and within fifteen business days after the Commission meeting at which the
8 Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be
9 reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission
10 rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither
11 any member of the Commission, nor the Chief of Enforcement, shall be disqualified because of prior
12 consideration of this Stipulation.

13
14 Dated: _____ Gary Winuk, Enforcement Chief,
15 On behalf of Fair Political Practices Commission
16

17 Dated: _____ Catherine Anderson, Respondent
18 Individually and on behalf of
19 Respondent California Taxpayers Advocate
20
21
22
23
24
25
26
27
28

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of California Taxpayers Advocate and Catherine Anderson, Treasurer” FPPC No. 14/324, 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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondent California Taxpayers Advocate (“Respondent Committee”) has been a state general purpose committee since May 5, 2010, and Respondent Catherine Anderson (“Respondent Anderson”) was, at all relevant times, Respondent Committee’s treasurer. As a state general purpose committee and its treasurer, Respondent Committee and Respondent Anderson (collectively “Respondents”) had a duty under the Political Reform Act¹ (the Act”) to timely and accurately report contributions received and expenditures made.

This case arose from the Franchise Tax Board’s (“FTB”) audit of Respondent Committee for the January 1 through December 31, 2010, period. The FTB audit and subsequent investigation by the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (the “Enforcement Division”) revealed that Respondents failed to timely report independent expenditures as required by the Act.

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

COUNT 1: Respondent California Taxpayers Advocate, a state general purpose committee, and its treasurer Respondent Catherine Anderson failed to timely report three independent expenditures of \$1,000 or more, totaling \$58,508, made in support of a candidate for state elective office during the June 8, 2010, election cycle, to the Secretary of State within 24 hours, in violation of Government Code section 85500, subdivision (a).

COUNT 2: Respondent California Taxpayers Advocate, a state general purpose committee, and its treasurer Respondent Catherine Anderson failed to file a supplemental independent expenditure report with the Secretary of State by May 27, 2010, for independent expenditures, totaling \$86,836, made in support of a candidate for state elective office during the January 1 through May 22, 2010, reporting period, in violation of Section 84203.5.

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 violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

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.

When the 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.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed 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).)

Duty to File Campaign Statements

Section 82013, subdivision (a), includes within the definition of “committee” any person or combination of persons who receives contributions of \$1,000 or more during a calendar year. This type of committee is commonly referred to as a “recipient committee.”

Under the Act, there are different kinds of recipient committees, defined by the type of election activity in which they engage. A recipient committee that is formed or exists primarily to support or oppose candidates or measures voted on in a state election, or in more than one county, is defined, at Section 82027.5, subdivision (b), as a “state general purpose committee.”

Every state general purpose committee must file a preelection statement for each period in which it makes contributions or independent expenditures totaling \$500 or more. (Section 84200.5, subd. (i).) For the period ending on May 22, 2010, a preelection statement was required to be filed no later than May 27, 2010.² (Section 84200.7, subd. (a)(2).)

In 2010, a state general purpose committee was required to file an original and a copy of all required campaign statements with the Secretary of State, a copy with the Registrar-Recorder of Los Angeles County, and a copy with the Registrar of Voters of the City and County of San Francisco. (Section 84215, subd. (a).)

Required Reporting of Independent Expenditures Made

An independent expenditure is defined by the Act as 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. (Section 82031.) Section 84203.5 provides that, in addition to any other campaign statement required by the Act, if a committee makes an independent expenditure totaling \$1,000 or more in a calendar year to support or oppose a candidate, a measure or qualification of a measurer, it shall file independent expenditure reports at the same time, covering the same

² Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day.

periods, and in the places where the committee would be required to file campaign statements, as if it were formed or existed primarily to support or oppose the candidate or measure or qualification of the measure.

Additionally, a committee that is required to file electronic reports pursuant to Section 84605 and that makes independent expenditures of \$1,000 or more during an election cycle in connection with a candidate for elective state office must file online or electronically a report with the Secretary of State within 24 hours the making of the independent expenditure. (Section 85500, subd. (a).) Election cycle refers to the period of time commencing 90 days before an election and ending on the day of the election. (Section 85204.)

A general purpose committee is required to file electronic reports pursuant to Section 84605 if it cumulatively receives or makes expenditures totaling \$50,000 or more to support or oppose any candidate for elective state office or state measure.

Treasurer Liability

Under Sections 81004, subdivision (b), and 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.

SUMMARY OF THE FACTS

At all relevant times, Respondent Committee was a state general purpose committee and Respondent Anderson was Respondent Committee's treasurer. The FTB's audit covered the January 1 through December 31, 2010, period, and during that period Respondent Committee received approximately \$223,556 in contributions and made approximately \$222,803 in expenditures.

On or about May 5, 2010, Respondent Committee received and deposited a \$31,000 contribution. On or about May 10, 2010, Respondent Committee received and deposited a \$25,000 contribution.

On or about May 6, May 13, May 18, and May 20, 2010, Respondent Committee made independent expenditures of \$28,328, \$14,500, \$22,090, and \$21,918, respectively, in support of Assembly candidate Katcho Achadjian in the June 8, 2010, primary election.

On or about May 27, 2010, Respondents filed a preelection statement for the January 1 through May 22, 2010, reporting period, in which they reported making four independent expenditures, totaling \$83,836, in support of Assembly candidate Katcho Achadjian.

///

Accordingly, Respondents committed two violation of the Act, as follows:

COUNT 1

Failure to Timely Report Making Independent Expenditures

Respondent Committee qualified as an electronic filer on May 10, 2010, by receiving \$50,000 or more in cumulative contributions. As a state general purpose committee that was required to file electronically, Respondents Committee, and its treasurer, had a duty to report to the Secretary of State within 24 hours any independent expenditure of \$1,000 or more made in support of a candidate for elective state office between May 10 and June 8, 2010.

Between May 10 and June 8, 2010, Respondent Committee made independent expenditures of \$14,500, \$22,090, and \$21,918, in support of Assembly candidate Katcho Achadjian. By not reporting each independent expenditure to the Secretary of State within 24 hours, Respondents violated Section 85500, subdivision (a).

COUNT 2

Failure to File a Supplemental Independent Expenditure Report

As a state general purpose committee that made independent expenditures of \$1,000 or more during the January 1 through May 22, 2010, reporting period, and its treasurer, Respondents had a duty to file a supplemental independent expenditure report with the Secretary of State by May 27, 2010, for the January 1 through May 22, 2010, reporting period.

By failing to file a supplemental independent expenditure report with the Secretary of State by May 27, 2010, for the January 1 through May 22, 2010, reporting period, Respondents violated Section 84203.5.

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total of \$10,000.

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): 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(s) 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 amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failing to timely and accurately report expenditures is a serious violation of the Act as it deprives the public of important information about a committee's financial activities.

Count 1: In July of 2006, the Commission approved a total fine of \$200,200, or \$1,400 per violation, for failing to timely report 143 independent expenditures, totaling \$25,600,000, made during the election cycle in connection with four state ballot measures. The respondents timely reported making the independent expenditures on their campaign statements, but failed to file independent expenditure reports with 24 hours of making each of the 143 independent expenditures. The respondents cooperated in the Enforcement Division's investigation and agreed to an early resolution of the matter. (*In the Matter of Arnold Schwarzenegger, Governor Schwarzenegger's California Recovery Team, and Thomas Hiltachk*, FPPC No. 06/183.)

In this matter, Respondents failed to timely report three independent expenditures, totaling \$58,508, to the Secretary of State within 24 hours. However, all three of the independent expenditures were reported on Respondent Committee's preelection statement prior the pertinent election, there is no evidence that the violation was intentional, and Respondents were fully cooperative in the FTB's audit and the Enforcement Division's investigation into this matter. Additionally, Respondents have no history of violating of the Act and have agreed to an early resolution of this matter. Therefore a \$2,500 fine is recommended for Count 1.

Count 2: In April 2014, the Commission approved a fine of \$3,000 for failing to timely file three supplemental independent expenditure reports for independent expenditures totaling \$11,455 made during three reporting periods. The respondents agreed to an early resolution of the matter. (*In the Matter of Citizens for a Clean and Honest Local Government and Brian Hews*, FPPC No. 13/071.)

In April 2011, the Commission approved a fine of \$3,000 for failing to timely file a supplemental independent expenditure report for independent expenditures totaling \$24,784.57. The respondent had no history of violating the Act, cooperated with the investigation into the matter, and agreed to an early resolution of the matter. (*In the Matter of Redwood City Chamber of Commerce*, FPPC No. 09/266.)

In this matter, Respondents failed to file a supplemental independent expenditure report prior to the pertinent election for independent expenditures totaling \$86,836. However, Respondents timely filed a preelection statement with the Secretary of State prior to the election that included all the independent expenditures Respondent Committee was required to report in the supplemental independent expenditure report, and therefore the information was available to the public prior to the pertinent election. Additionally, Respondents do not have a history of violating the Act, were fully cooperative in the FTB's audit and the Enforcement Division's investigation into this matter, and have agreed to an early resolution of this matter. Therefore a \$3,000 fine is recommended for Count 2.

PROPOSED SETTLEMENT

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the imposition of a \$5,500 penalty is recommended.

* * * * *