

1 GALENA WEST
Acting Chief of Enforcement
2 MILAD DALJU
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

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

10
11 In the Matter of) FPPC No. 14/1205
12)
13)
14 THE ESCONDIDO COUNTRY CLUB) STIPULATION, DECISION AND ORDER
HOMEOWNERS ORGANIZATION)
PAC,)
15)
16 Respondent.)

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondent Escondido Country Club Homeowners Organization PAC agree that this Stipulation will
20 be submitted for consideration by the Fair Political Practices Commission (Commission) at its next
21 regularly scheduled 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 the Escondido Country Club Homeowners Association PAC, pursuant to
25 Section 83116 of the Government Code.

26 The Escondido Country Club Homeowners Organization PAC understands, and hereby
27 knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503
28

1 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the
2 California Code of Regulations. This includes, but is not limited to, the right to personally appear at any
3 administrative hearing held in this matter, to be represented by an attorney at its own expense, to
4 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at
5 the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer,
6 and to have the matter judicially reviewed. It is further stipulated and agreed that the Escondido
7 Country Club Homeowners Organization PAC violated Government Code section 84200.5, subdivision
8 (b), by failing to file a preelection statement with the Escondido City Clerk by October 6, 2014, for the
9 July 1 through September 30, 2014, reporting period, and by October 23, 2014, for the October 1
10 through October 18, 2014, reporting period (1 count). Each count is described in Exhibit 1, which is
11 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
12 accurate summary of the facts in this matter.

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

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17 Dated: _____

Galena West, Acting Chief of Enforcement, on behalf of the
Enforcement Division of the Fair Political Practices Commission

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19
20 Dated: _____

John A. Hall, Treasurer, on behalf of the Escondido Country Club
Homeowners Organization PAC, Respondent

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of the Escondido Country Club
3 Homeowners Organization PAC” FPPC No. 14/1205, including all attached exhibits, is hereby
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
5 execution below by the Chair.

6 IT IS SO ORDERED.

7
8 Dated: _____

9 Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

The Escondido Country Club Homeowners Organization PAC (Homeowners Organization) qualified as a recipient committee on or about July 15, 2014. The Homeowners Organization was formed primarily to oppose Proposition H, a measure on the November 4, 2014, ballot in the City of Escondido. After qualifying as a recipient committee, the Homeowners Organization failed to timely file two preelection statements, in violation of Political Reform Act of 1974 (the Act).¹

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.

Qualifying as a Committee

Any person or combination of persons who receives contributions of \$1,000 or more during a calendar year qualifies as a recipient committee.² A recipient committee that is formed or exists primarily to support or oppose a single ballot measure is defined as a primarily formed committee.³

Duty to File Preelection Statements

Committees primarily formed to support or oppose a local ballot measure in the City of Escondido in the November 4, 2014, election, were required to file a preelection statement with the Escondido City Clerk by October 6 for the July 1 through September 30, 2014, reporting period, and by October 23, 2014, for the October 1 through October 18, 2014, reporting period.⁴

SUMMARY OF THE FACTS

On or about June 2, 2014, the Homeowners Organization started soliciting and receiving contributions for the purpose of opposing Proposition H and, in response, formed the ballot measure committee Keep it Green Escondido to manage their campaign in opposition to Prop. H. The Homeowners Organization continued soliciting and receiving contributions for the purpose of opposing Prop. H, but transferred all contributions it received to Keep it Green Escondido.

¹ The Political Reform Act of 1974 is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 82013, subd. (a).

³ Section 82047.5, subd. (b).

⁴ Sections 84200.5, subd. (b), 84200.7, subd. (b)(1)-(2), and 84215, subd. (d).

On or about July 15, 2014, the amount of contributions that the Homeowners Organization received surpassed \$1,000. Between June 2 and December 31, 2014, the Homeowners Organization received contributions totaling approximately \$16,000, all of which it transferred to Keep it Green Escondido, who timely reported all contributions it received from the Homeowners Organization to the Escondido City Clerk.

On or about January 12, 2015, after Prop. H was defeated and after being contacted by the Fair Political Practices Commission's (the Commission) Enforcement Division (the Enforcement Division) regarding this matter, the Homeowners Organization filed a preelection statement for the July 1 through September 30, 2014, reporting period, a preelection statement for the October 1 through October 18, 2014, reporting period, and a terminating semiannual statement for the October 19 through December 31, 2014, reporting period, with the Escondido City Clerk.

VIOLATION

Count 1: Failure to timely file two preelection statements

The Homeowners Organization failed to file a preelection statement with the Escondido City Clerk by October 6, 2014, for the July 1 through September 30, 2014, reporting period, and by October 23, 2014, for the October 1 through October 18, 2014, reporting period, in violation of Section 84200.5, subdivision (b).

CONCLUSION

This matter consists of a single count of violating the Act, which carries a maximum administrative penalty of \$5,000.

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) 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.

Recent penalties imposed by the Commission for failing to timely file preelection statements include:

- *In the Matter of San Mateo County Democratic Central Committee and Xavier Martinez*, FPPC No. 15/0079. In April 2015, the Commission imposed a \$2,500 penalty on a central committee for failing to timely file two preelection statements. The central committee received contributions totaling approximately \$72,000 and made expenditures totaling approximately \$13,000 during the two reporting periods. The central committee was a

sophisticated filer and had been fined in the past for failing to timely file a campaign report

- *In the Matter of Black Women Organized for Political Action State PAC and Beryl M. Crumpton, Treasurer*, FPPC No. 13/549. In November 2014, the Commission imposed a \$2,000 penalty on a state general purpose committee for failing to timely file a preelection statement. The committee did not receive any contributions and made expenditures totaling approximately \$1,000 during the reporting period. The committee was a sophisticated filer and had been fined in the past for failing to timely file campaign statements.

In this matter, the seriousness of the violation is aggravated by the fact that donor information for contributions totaling approximately \$16,000 was not disclosed to the public until after the pertinent election.

However, the seriousness of the violation is mitigated by the following facts: The Homeowners Organization is an unsophisticated filer who was not required to file campaign statements prior to the preelection statements addressed in this matter; there is no pattern of violations; the Enforcement Division found no evidence that the violation was deliberate; all contributions made by the Homeowners Organization to Keep it Green Escondido were timely reported by Keep it Green Escondido; and the Homeowners Organization cooperated with the Enforcement Division regarding this matter.

PROPOSED PENALTY

After considering the factors listed in Regulation §18361.5, prior similar cases, and other relevant factors, a total penalty of \$2,500 is recommended.

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