

1 GALENA WEST
Enforcement Chief
2 DAVE BAINBRIDGE
Asst. Enforcement Chief
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:

12 CALIFORNIA REPUBLICAN
13 LEADERSHIP FUND

14 Respondent.
15

FPPC No. 13/409

16 STIPULATION, DECISION, AND ORDER
17

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondent California Republican Leadership Fund hereby agree that this Stipulation will be submitted
21 for consideration by the Fair Political Practices Commission (Commission) at its next regularly-scheduled
22 meeting.

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

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

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

4 It is further stipulated and agreed that Respondent violated the Political Reform Act by causing
5 other committees to make contributions in their names without identifying Respondent as the source of
6 the contributions in violation of Government Code section 83116.5 as described in Exhibit 1. Exhibit 1 is
7 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
8 accurate summary of the facts in this matter.

9 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
10 Respondent also agrees to the Commission imposing an administrative penalty in the total amount of
11 \$30,000. Respondent submitted with this Stipulation a cashier's check in said amount, made payable to
12 the "General Fund of the State of California," as full payment of the administrative penalty that shall be
13 held by the State of California until the Commission issues its Decision and Order regarding this matter.
14 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null
15 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is
16 rejected, all payments tendered by Respondent in connection with this Stipulation shall be reimbursed to
17 Respondent. Respondent further stipulates and agrees that in the event the Commission rejects the
18 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member
19 of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
20 Stipulation.

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23 Dated: _____
24 Galena West, Chief, on behalf of the Enforcement
25 Division Fair Political Practices Commission

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27 Dated: _____
28 Charles H. Bell on behalf of California Republican
Leadership Fund

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of California Republican Leadership Fund,”
3 FPPC No. 13/409, including all attached exhibits, is hereby accepted as the final decision and order of the
4 Fair Political Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Joann Remke, Chair

9 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent California Republican Leadership Fund (“Fund”) is a state general purpose committee. The Fund was created to conduct fundraising for Republican county central committees (“central committees”). In this case, the Fund violated the Political Reform Act (the “Act”)¹ by negligently causing six central committees to make numerous contributions to candidates for the state legislature on behalf of the Fund in the names of the central committees. Under the Act a campaign contribution must be made in the legal name of the contributor. If a committee makes a contribution on behalf of another committee, the actual contributor must be identified. If one committee causes another committee to violate a provision of the Act, the committee causing the violation is liable under the Act.

SUMMARY OF THE LAW

Any person who negligently causes any other person to violate any provision of the Act is liable if the person causing the violation has filing obligations under the Act.² No campaign contribution can be made by a person in a name other than the legal name of the actual contributor.³ If a person makes a contribution on behalf of another person, the identity of the actual contributor must be disclosed to the recipient of the contribution.⁴

SUMMARY OF THE FACTS

Request for Advice

The Fund, through its attorney, sent a letter dated May 24, 2011 to the Fair Political Practices Commission (“Commission”) requesting formal written advice from the Commission regarding structuring joint fundraising events for central committees. The request was made on behalf of the Fund. The letter requesting advice is referred to herein as the “Request for Advice.”

The Request for Advice sought an opinion from the Commission’s Legal Division on whether central committees could enter into joint fundraising agreements with the Fund whereby the Fund raised money through political contributions and distributed it to the participating central committees in the manner outlined in a joint fundraising and operating agreement (a “fundraising agreement”). If so, the Request for Advice asked whether the Fund would be a recipient committee and whether it would be making contributions to the central committees.

¹ The Political Reform Act 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 §83116.5.

³ §84301.

⁴ §84302.

The Request for Advice stated that the purpose of the Fund was to “act as a joint fundraising agent to facilitate donor contributions to participating organizations via a single contribution check.” The Fund would organize fundraisers and solicit contributions. The Fund would receive the contributions then “distribute” to the central committees their share of the contribution as outlined in a fundraising agreement. Further, the Fund would “employ fundraising consultants to assist in its fundraising solicitation activities and compliance consultants to maintain records, prepare transmittal information for participation organizations on their state campaign reports...”

Advice Letter

The Commission’s Legal Division issued Advice Letter #A-11-102 dated July 20, 2011 (“Advice Letter”) in response to the Fund’s Request for Advice. The Advice Letter provided three conclusions: First, it confirmed the joint fundraising structure of the Fund, as outlined in the Request for Advice, complied with the Act. Second, it stated the Fund would qualify as a recipient committee under the Act and therefore be required to file periodic campaign statements and reports. Third, it concluded the money transferred from the Fund would not be considered “contributions” from the Fund to participating county central committees but rather would be contributions from the original contributors delivered via the Fund acting as an intermediary.

The Fund’s Request for Advice did not include a sample or proposed fundraising agreement so the Commission’s Legal Division was not made aware of the provisions of the fundraising agreements when it issued the Advice Letter.

Fundraising Agreements

Subsequently, and pursuant to Commission Advice, the Fund registered as a recipient committee and began fundraising efforts for the 2012 statewide election. The Fund recruited central committees to enter into fundraising agreements. There were multiple fundraising agreements but all of them contained the same substantive provisions.

For fundraisers held by the Fund, each contribution the Fund received was allocated to a central committee based on a formula established in the fundraising agreement. The Fund then deposited the money in bank accounts in the names of the central committees. For each contribution a central committee was to receive, the first \$32,500 was allocated for a candidate support account called a “restricted use” account. Any remaining money went into another account not used for candidate support called an “all purpose” account. The Fund designated the contributions for either Senate or Assembly candidates depending on the fundraising event. Each of these components was permissible under the Advice Letter.

Spending Decisions

The Request for Advice and the Advice Letter did not discuss who would make decisions regarding the expenditure of money raised by the Fund. But the subsequently-adopted fundraising agreements provided that a decision on how to spend money raised by the Fund would be made by a three-person council (referred to herein as an “expenditure council.”). Per the terms of the fundraising agreement, for money allocated for spending on Senate candidates, the Senate

expenditure council consisted of the chair of the participating central committee, a designee of the Senate Republican Leader, and a designee of the Senate Republican Caucus Chair. For spending on Assembly candidates, the fundraising agreement provided the Assembly expenditure council would consist of the chair of the participating central committee, a designee of the Assembly Republican Leader, and a designee of the Assembly Republican Caucus Chair. According to the fundraising agreements, an expenditure council had to approve any expenditure by a majority vote. The Republican leader of the Senate and Assembly is the party leader for the respective house. The caucus chairs are high-ranking Republican members of their respective houses selected by the party leader.

When a central committee entered into a fundraising agreement it agreed to allow an outside campaign reporting vendor chosen by the Fund to control the money allocated to the central committee through the Fund. The Fund retained Political Financial Solutions, Inc. (“PFS”) to prepare campaign reports for all participating central committees.

When a central committee agreed to participate, PFS opened bank accounts in the name of the central committee. The money from contributions received through the Fund allocated to a participating central committee was deposited in either the Senate or Assembly accounts of that central committee, depending on whether the fundraiser that generated the money was a Senate or Assembly fundraiser. PFS maintained the books for all of the central committee accounts opened to receive money through the Fund. PFS, in addition to doing all the accounting, made all deposits into the accounts and was the only authorized signer for checks drawn from the central committee accounts.

In practice, the expenditure councils did not regularly meet to decide on expenditures as provided in the fundraising agreement though typically there was consensus among participants relative to the races for the upcoming election cycle that would be “targeted races” and, therefore, would receive the majority of the funding generated by the Fund. Pursuant to this general consensus of “targeted races,” the Republican party leadership, specifically the Senate Republican Leader and the Assembly Republican Leader contacted PFS to direct timing and specific amounts of contributions to candidates in these targeted races. For individual expenditures, the typical process was for the political directors of the Senate and Assembly Republican Caucus to make a recommendation to the corresponding Senate or Assembly Republican Leader on how best to spend money raised by the Fund. If leadership approved the recommendation, the political director would direct PFS to issue a check to the recipient, which in most cases was a state legislative candidate’s campaign committee. PFS would then notify the central committee from whose account the contribution would be drawn, and issue a check.

Central Committees

Based on the Advice Letter and assurances from the Fund, the central committees were led to believe the Fund’s structure complied with the Act and all contributions were properly reported. But in practice, the Fund’s activities did not match what was described in the Request for Advice and Advice Letter. Specifically, after a discussion with the central committees as to a particular election cycle’s targeted races and spending goals of the Fund for those races, money raised by the Fund was not technically “distributed” to the central committees. The Fund retained control of the

money. The Republican leadership, acting as agents for the Fund, determined how the money would be spent and then checks were issued at leaderships' direction. The central committees had no access to the bank accounts the Fund set up and could not authorize expenditures from the accounts. In practice, spending decisions were not voted on by the expenditure councils as required in the fundraising agreements, and in most instances the central committee chairs did not routinely participate in individual expenditure decisions. Instead, the decisions were made by party leadership. Party leadership made decisions relative to timing and specific amounts to be contributed to candidates in the identified targeted races.

County central committees that entered into fundraising agreements with the Fund resulting in contributions to state legislative candidates in the 2012 or 2014 elections included Alameda, Riverside, Sacramento, San Luis Obispo, Stanislaus, and Tulare. Contributions attributed to Alameda totaled \$64,000 to 2 candidates. Contributions attributed to Riverside totaled \$267,200 to ten candidates. Contributions attributed to Sacramento totaled \$443,453 to five candidates. Contributions attributed to San Luis Obispo totaled \$5,521,546 to 34 candidates. Contributions attributed to Stanislaus totaled \$824,906 to six candidates. Contributions attributed to Tulare totaled \$2,076,998 to thirteen candidates.

All contributions raised through a joint fundraiser were reflected on the Fund's campaign statements. The central committees' statements reported receiving the contributions from the original contributors, with the Fund identified as an intermediary on the contribution. A contribution made from a central committee account to a state candidate was reported as an expenditure by the central committee on its campaign statement. The state candidates reported receiving the contributions from the central committee from whose account the contribution came. It does not appear the candidates were aware the Fund, and not the central committees, were responsible for the contributions.

VIOLATIONS

Counts 1 – 6: Causing Central Committees to Violate the Act

For the 2012 and 2014 statewide elections, six Republican central committees made contributions to state legislative candidates in their names without disclosing that the Fund was the true source of those contributions since it solicited the contributions, maintained control of the money, and made all decisions regarding contributions. As a result, the Fund negligently caused the central committee to make contributions without identifying the Fund as the true source of the contributions in violation of section 83116.5.

CONCLUSION

This matter consists of six counts of violating the Act, which carries a maximum administrative penalty of \$5,000 per count and \$30,000 total.

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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers prior similar cases in determining the appropriate penalty for a violation of the Act. A recent case involving a prosecution for causing another person to violate a provision of the Act is *In the Matter of Lewis and Company, Inc.*, FPPC No. 06/155 (default decision adopted by the Commission on August 12, 2010). In that case, a political consulting firm caused a committee to send out two sets of mass mailings with inaccurate disclosure statements. The consulting firm planned, organized and directed the design, printing, and posting of the mass mailings, and the evidence showed the committee relied on the consulting firm to ensure compliance with the Act. The Commission imposed a penalty against the consulting firm of \$3,500 per count for two counts of causing the committee to violate the Act. The Commission did not pursue a separate action against the committee in that case.

The facts of this case are unique because it involves a fundraising model not previously employed in California. By charging the Fund with causing the central committees' violations rather than charging the central committees, the Commission seeks to address the culpability of the Fund for the central committees' violations, without unfairly punishing the central committees. While the central committees technically committed violations of the Act by reporting to have made the contributions at issue without identifying the Fund as the true source of the contributions, the central committees reasonably relied on assurances from the Fund that the fundraising structure complied with the Act. The Fund received guidance from the Commission on how to operate legally, which it shared with the central committees. But in practice, the Fund operated outside of the legal parameters set out in the Commission's Advice Letter. However, it does not appear the members of the participating central committees were aware the Fund deviated from the Advice Letter. The Fund is operated by political and legal professionals who should have known the Fund's operations went beyond what the Advice Letter contemplated. But holding the central committees, which are made up largely of volunteer citizens with varying degrees of political experience, to similar standard is not justified. For these reason, the Fund, not the central committees, is the culpable party in this case.

Had the Fund distributed the contributions it received to the central committees rather than retaining control of the money and making decisions regarding the expenditures, neither the central committees nor the Fund would have violated the Act. The Fund could have suggested how the central committees spent the money, and the central committees could have worked in concert with each other, and party leadership, to decide what contributions the central committees would make. But because the Fund maintained possession and control of the money, and exercised authority over how the money was spent, the Fund did not actually distribute the money it raised to the central committees and was the true source of the contributions made in the name of the central committees

The Fund acknowledges that by retaining ultimate control and authority over the money it raised on behalf of the central committees it negligently caused the central committees to inaccurately identify themselves, and not the Fund, as the source of contributions, in violation of the Act. The Fund has revised its procedures to ensure it operates in accordance with the Advice Letter and in a manner consistent with the provisions of the Act.

This case is different from most other cases where the true contributor is not properly disclosed because the identity of the contributor was not completely concealed. Both the Fund and central committees did disclose the original source of all money received by the Fund and the ultimate recipient. In this way, the public harm was less than in cases where the identity of a contributor is concealed. But since the Fund caused contributions to be made in the names of the central committees rather than its own, one of the most serious violations of the Act, a substantial penalty is justified.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, and the penalties imposed in prior cases, we propose a penalty of \$5,000 per count for a total penalty of \$30,000.