

1 GALENA WEST
Chief of Enforcement
2 DAVE BAINBRIDGE
Assistant Chief of Enforcement
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 323-6424
5 Facsimile: (916) 322-1932

6 Attorney for Complainant

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

10
11 In the Matter of:

12 AL BAIROS and COMMITTEE TO RE-
13 ELECT AL D. BAIROS OID DIRECTOR
DISTRICT #4 2015

14 Respondents.

FPPC Case No. 15/1876

STIPULATION DECISION AND ORDER

15
16 **INTRODUCTION**

17 Respondent Al Bairos unsuccessfully ran for re-election to the Oakdale Irrigation District Board
18 (the “Board”) in 2015. Committee to Re-elect Al D. Bairos OID Director District #4 2015 (“Committee”)
19 was his candidate-controlled committee. The Political Reform Act (the “Act”)¹ requires committees to
20 file campaign statements and reports disclosing contributions received and expenditures made. Further, a
21 candidate-controlled committee must identify itself as the source of mass mailings it sends. Bairos and
22 the Committee violated the Act by failing to disclose the contributions and an expenditure, failing to
23 timely file campaign statements, and failing to identify the Committee as the source of a mass mailing.

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 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.

1 **SUMMARY OF THE LAW**

2 All statutory references and discussions of law pertain to the Act’s provisions as they existed in
3 2015.

4 **Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act**

5 When enacting the Political Reform Act, the people of California found and declared that
6 previous laws regulating political practices suffered from inadequate enforcement by state and local
7 authorities.² For this reason, the Act is to be construed liberally to accomplish its purposes.³ One purpose
8 of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns
9 are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴
10 To further this purpose, the Act includes a comprehensive campaign reporting system ⁵ and requires that
11 the source of an advertisement be disclosed on the advertisement. Another stated purpose of the Act is to
12 provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁶

13 **Committee Qualification**

14 In 2015, a candidate who received contributions totaling \$1,000 or more in a calendar year
15 qualified as a recipient committee.⁷ The candidate must file a Statement of Organization (Form 410)
16 within 10 days of qualifying as a committee.⁸ The committee’s campaign filing and advertising
17 disclosure obligations begin once it qualifies and continue until the committee terminates.

18 **Disclosure of Contributions and Expenditures**

19 A committee must disclose on campaign statements the total amount of all contributions received
20 and expenditures made. For contributions and expenditures of \$100 or more, the statements must provide
21 certain identifying information about the source of a contribution and the recipient of an expenditure.⁹
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24 _____
25 ² § 81001, subd. (h).

26 ³ § 81003.

27 ⁴ § 81002, subd. (a).

28 ⁵ §§ 84200, *et seq.*

⁶ § 81002, subd. (f).

⁷ Former § 82013, subd. (b).

⁸ § 84101

⁹ §84211, subs. (a)(b)(c)(f)(i) and (k).

1 Contributions include payments made by third parties on behalf of the candidate or committee.¹⁰ These
2 contributions are commonly known as non-monetary contributions.

3 **Semiannual Campaign Statements**

4 A committee must file semiannual campaign statements beginning in the period in which the
5 committee qualified and continuing until the committee terminates.¹¹ A committee must file a
6 semiannual statement by January 31 for the period ending December 31 of the previous year, and by July
7 31 for the period ending June 30, or the next business day if the deadline falls on a weekend or holiday.¹²

8 **Mass Mailing Disclosure**

9 A mass mailing supporting a candidate that is paid for by the committee controlled by that
10 candidate must display the phrase “paid for by” adjacent to the name and address of the committee.¹³ A
11 “mass mailing” is 200 substantially similar pieces of mail sent within one calendar month.¹⁴

12 **SUMMARY OF THE FACTS**

13 Bairos was appointed to the Board in 2006. He was elected for another term in 2011. Bairos ran
14 for re-election in the November 3, 2015 general election. For that election, Bairos filed a Candidate
15 Intention Statement on August 4, 2015. At the same time, he also filed a Campaign Short Form (Form
16 470) because he did not anticipate receiving contributions and making expenditures of \$1,000 or more
17 for the election.

18 In September of 2015, Bairos hired Signature Signs to produce campaign signs for him. The signs
19 cost \$1,799.20. The signs were paid for by three separate checks; one from Bairos for \$800, one from his
20 wife, Marci Bairos, for \$249.20 and one from John Brichetto, a local rancher, for \$750.

21 As a result of the signs, Bairos was required to form the Committee. Bairos opened a campaign
22 bank account on September 26, 2015. But he did not file a Statement of Organization for the Committee
23 until October 28, 2015. The Statement of Organization identified September 26, 2015 as the qualifying
24 date for the Committee.

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26 ¹⁰ §82015, subd. (a).

¹¹ §84200, subd. (a).

¹² § 84200, subd. (a); Reg. 18116, subd. (a).

¹³ §84305, subd. (a) and Reg. 18435, subd. (d).

¹⁴ §82041.5 and Reg. 18435, subd. (a).

1 On October 29, 2015, the Committee filed its first campaign statement. The statement purported
2 to cover the period from September 26, 2015 through October 29, 2015. The second pre-election
3 statement for that election was due on October 22, 2015 so the Committee filed the statement a week
4 late. The statement reported contributions totaling \$4,700 and expenditures totaling \$4,611.21. All of the
5 reported contributions came from Bairos. The statement did not disclose Brichetto and Marci Bairos had
6 made non-monetary contributions to the Committee by paying for a portion of the cost for the campaign
7 signs purchased from Signature Signs discussed above. Nor did it disclose the expenditure made by the
8 Committee for those signs.

9 The bulk of the expenditures reported on the pre-election campaign statement were for a mass
10 mailing the Committee sent to voters. The Committee sent approximately 991 mailers at a total cost of
11 \$3,574.43. The mailers included pictures of Bairos and his family as well as a summary of the Board's
12 recent accomplishments. The mailers were sent on or about October 2, 2015. The mailers did not include
13 the phrase "paid for by," nor did they include the name and address of the Committee.

14 Bairos lost the election. The Committee then failed to timely file a semi-annual statement for the
15 statement period ending on December 31, 2015. The Committee remained open but did not file semi-
16 annual statements for 2016 either. In conjunction with this settlement, the Committee filed a statement
17 disclosing all activity up until December 31, 2015, and terminated. The statement reported that for the
18 election the Committee received contributions totaling \$6,604 and made expenditures of the same
19 amount. Other than the \$750 contribution from Brichetto, all other contributions came from Bairos and
20 his wife.

21 VIOLATIONS

22 Count 1: Failure to timely disclose contributions and an expenditure

23 Bairos and the Committee failed to timely disclose on a campaign statement nonmonetary
24 contributions from John Brichetto and Marci Bairos totaling \$990.20, and an expenditure of \$1,799.20 to
25 Signature Signs in violation of section 84211, subdivisions (a)(b)(c)(f)(i) and (k).

26 Count 2: Failure to timely file campaign statement

27 Bairos and the Committee failed to timely a semi-annual statement for the period ending
28 December 31, 2015 in violation of sections 84200, subdivision (a).

1 Count 3: Failure to include proper disclaimer on mass mailing

2 Bairos and the Committee failed to include proper disclosure on a mass mailing in violation of
3 sections 84305, subdivision (a), and regulation 18435, subdivision (d).

4 **PROPOSED PENALTY**

5 This matter consists of three counts of violating the Act, which carries a maximum administrative
6 penalty of \$5,000 per count and \$15,000 total.

7 In determining the appropriate penalty for a particular violation of the Act, the Commission
8 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
9 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
10 circumstances of the violation in context of the factors set forth in regulation 18361.5, subdivision (d): 1)
11 the seriousness of the violations; 2) the presence or lack of intent to conceal, deceive or mislead the
12 voting public; 3) whether the violation was deliberate, negligent, or inadvertent; 4) whether the
13 respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern
14 of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided
15 amendments to provide full disclosure.

16 The Commission has found disclosure to be essential, especially before an election. In this case,
17 the Enforcement Division did not find evidence of intent to conceal or deceive. The violations appear to
18 have been negligence resulting from a lack of diligence in learning the requirements of the Act. Bairos
19 failed to consult with Commission staff for guidance before Enforcement Division contact but this does
20 not seem to be part of a larger pattern of activity.

21 The Commission also considers penalties in prior cases involving similar violations. Cases with
22 similar violations include the following:

23 Count 1

- 24 • *In the Matter of Our Water Now – H2Own ‘Yes on Measure W,’ Richard Piercy, and*
25 *Adolph Collaso*, FPPC Case No. 16/19934. The committee failed to timely report a total
26 of \$175 in un-itemized contributions under \$100 and a contribution of \$200 received on
27 its pre-election campaign statement covering the reporting period of July 1 to September
28 24, 2016, and failed to timely report an expenditure of \$1,500 paid for radio

1 advertisements on its pre-election campaign statement covering the reporting period of
2 September 25 to October 22, 2016. The Commission imposed a penalty of \$2,000 for the
3 violations at its meeting on June 29, 2017.

4 Count 2

- 5 • *In the Matter of Nancy Bui-Thompson and Nancy Bui-Thompson for SMUD 2012*, FPPC
6 No. 15/1586. The candidate and committee failed to timely file two semi-annual campaign
7 statements for which they were charged one count of violating the Act. During one of
8 those statement periods, the committee had \$0 in contributions and expenditures totaling
9 \$3,048. For the second statement period, the committee had \$8,850 in contributions and
10 \$8,106 in expenditures. The Commission imposed a penalty of \$1,500 for this count at its
11 meeting on November 17, 2016.

12 Count 3

- 13 • *In the Matter of Roger Gaylord III and Roger Gaylord for Folsom City Council 2014*,
14 FPPC No. 15/097. The candidate and committee sent out 8,245 mailers that did not
15 include “paid for by” and the committee name and address. Gaylord did not attempt to
16 conceal his association with the mailers, having posted a picture of himself holding one of
17 the mailers on social media. Gaylord won the election. The Commission imposed a
18 penalty of \$1,500 for the violation at its meeting on February 16, 2017.

19 Regarding count 1, the amounts of the undisclosed contributions and expenditure by the
20 Committee were similar to the comparable case and the undisclosed activity occurred during a pre-
21 election period so the public was denied information it should have received prior to the election about
22 who contributed to the Bairos campaign.

23 Regarding count 2, the campaign statement at issue was due after the election and did not reflect
24 much activity. But because the statement was not timely filed, the public did not have any information
25 regarding the activities of the Committee. While the Committee did not have any activity after the
26 semiannual statement period ending on December 31, 2015, it failed to terminate and therefore was
27 technically required to continue filing campaign statements, which it did not do. However, for purposes
28 of settlement those additional periods are not being charged because there was no activity and the

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

4 5. Respondents agree to the issuance of the decision and order set forth below. Also,
5 Respondents agree to the Commission imposing an administrative penalty in the amount of \$4,000. One
6 or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the
7 State of California—is/are submitted with this stipulation as full payment of the administrative penalty
8 described above, and same shall be held by the State of California until the Commission issues its
9 decision and order regarding this matter.

10 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
11 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
12 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
13 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
14 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
15 Director, shall be disqualified because of prior consideration of this Stipulation.

16 7. The parties to this agreement may execute their respective signature pages separately. A
17 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
18 or as a PDF email attachment is as effective and binding as the original

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20 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

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24 Dated: _____

Al Bairos, individually and on behalf of Committee to
Re-elect Al D. Bairos OID Director District #4 2015

1 The foregoing stipulation of the parties “In the Matter of Al Bairos and Committee to Re-elect Al D.
2 Bairos OID Director District #4 2015,” FPPC Case No. 15/1876 is hereby accepted as the final decision
3 and order of the Fair Political Practices Commission, effective upon execution below by

4 _____.

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6 IT IS SO ORDERED.

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8 Dated: _____

9 _____
Fair Political Practices Commission