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

11
12 In the Matter of:

FPPC No. 19/475

13 COLLEGE OF THE CANYONS
14 FOUNDATION,

STIPULATION, DECISION, AND ORDER

15 Respondent.
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18 **INTRODUCTION**

19 Respondent College of the Canyons Foundation (the “Foundation”) is a non-profit auxiliary
20 organization formed to generate philanthropic support for College of the Canyons. The Foundation is a
21 separate and distinct legal entity from the Santa Clarita Community College District and the Committee
22 for College of the Canyons – Yes on Measure E. The Foundation engaged in campaign activities as a
23 major donor committee under the Political Reform Act (the “Act”)¹. The Act requires major donor
24 committees to file campaign statements and reports to disclose their campaign activities. The Foundation
25 violated the Act by failing to timely file three 24-hour contribution reports and a major donor campaign
26 statement.

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28 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.

1 **SUMMARY OF THE LAW**

2 The violations in this case occurred in 2016, and all legal references and discussions of law pertain
3 to the Act’s provisions as they existed at that time.

4 Need for Liberal Construction and Vigorous Enforcement of the Act

5 When enacting the Act, the people of California found and declared that previous laws regulating
6 political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was
7 decreed that the Act “should be liberally construed to accomplish its purposes.”³ One purpose of the Act
8 is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and
9 truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another
10 purpose is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”⁵

11 Major Donor Committee

12 A person qualifies as a major donor committee when they make contributions totaling \$10,000 or
13 more in a calendar year to or at the behest of candidates or committees.⁶

14 24-Hour Contribution Reports

15 A late contribution is a contribution that totals in the aggregate \$1,000 or more that is made to or
16 received by a candidate, a controlled committee, or a primarily formed committee during the 90-day period
17 preceding the date of the election, or on the date of the election, at which the candidate or measure is to
18 be voted on.⁷ Each candidate or committee that makes or receives a late contribution must report it to their
19 filing officer within 24 hours of the time it is made or received.⁸ The 90-day period prior to the
20 June 7, 2016 Primary Election began on March 9, 2016.

21 Major Donor Campaign Statements

22 A major donor committee must file a campaign statement each year no later than July 31 for the
23 reporting period ending on June 30, and no later than January 31 of the following year for the reporting

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26 ² Section 81001, subd. (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subd. (a).

⁵ Section 81002, subd. (f).

⁶ Section 82013, subd. (c).

⁷ Section 82036, subd. (a).

⁸ Section 84203.

1 period ending on December 31, if it made contributions or independent expenditures during the six-month
2 period before the closing date of the statements.⁹

3 Multipurpose Organization

4 A multipurpose organization (MPO) is an organization described in Sections 501(c)(3) to
5 501(c)(10) of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the
6 Internal Revenue Code, among other types of organizations, that is operating for purposes other than
7 making contributions or expenditures.¹⁰

8 An MPO may qualify as a recipient committee if it (1) is a political committee registered with the
9 Federal Election Commission or a political committee registered with another state, and it makes
10 contributions of \$2,000 or more or expenditures of \$1,000 or more in California; (2) solicits and receives
11 payments from donors of \$2,000 or more for the purpose of making contributions or expenditures; (3)
12 accepts payments from donors in an amount of \$2,000 or more subject to a condition, agreement, or
13 understanding with the donor that all or a portion of the payments may be used for making contributions
14 or expenditures; (4) has existing funds from a donor and a subsequent agreement or understanding is
15 reached with the donor that all or a portion of the funds may be used for making contributions or
16 expenditures of \$2,000 or more; or (5) makes contributions or expenditures totaling more than \$50,000 in
17 a period of 12 months or more than \$100,000 in a period of four consecutive calendar years, unless it
18 makes contributions or expenditures with nondonor funds.¹¹

19 The term “nondonor funds” is defined to mean investment income, including capital gains, or
20 income earned from providing goods, services, or facilities, whether related or unrelated to the
21 multipurpose organization’s program, sale of assets, or other receipts that are not donations.¹²

22 When using nondonor funds to make contributions or expenditures, an MPO must maintain all
23 records necessary to establish its compliance with Section 84222.^{13, 14}

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25 ⁹ Section 84200, subd. (b).

26 ¹⁰ Section 84222, subd. (a).

27 ¹¹ Section 84222, subd. (c).

28 ¹² Section 84222, subd. (c)(5)(B).

¹³ Former Regulation 18422.1, subd. (f).

¹⁴ In October 23, 2019 the Commission adopted a new regulation governing recordkeeping requirements for MPOs, including those using nondonor funds for contributions or expenditures. (*See* Regulation 18422.1, operative November 22, 2019.) While not in effect during 2016, the records provided by the Foundation in connection with this matter comply with the recordkeeping requirements in their current form.

1 Community College Foundations

2 While not governed by the Act nor within the Commission’s jurisdiction, the Enforcement
3 Division and the Foundation have agreed to the inclusion of the following brief summary of the law
4 governing Community College Auxiliary Foundations for the limited purpose of providing additional
5 context to the Foundation’s activities in connection with the 2016 campaign activities and this stipulated
6 agreement between the parties.

7 An auxiliary organization for a Community College is one whose goals and purposes support the
8 mission of a community college district or one or more of its colleges.¹⁵ Auxiliary organizations may take
9 a number of forms, including fund-raising nonprofit foundations, student organizations, and entities
10 providing commercial services for the benefit of a district or one of its colleges.¹⁶ Auxiliary organizations
11 may be established and operated under the auspices of a community college district board to support the
12 District’s mission.¹⁷ Auxiliary organizations may contribute their own funds to a political action
13 committee established to advocate voter approval of a bond measure placed on the ballot by a community
14 college district.¹⁸

15 California courts have recognized auxiliary organizations as private entities rather than as public
16 agencies or as part of the public community college bodies they seek to assist.¹⁹ Since an auxiliary
17 organization is not a public entity, its use of its own funds from private sources is not subject to the
18 prohibition against the use of “public funds” for political purposes.

19 **SUMMARY OF THE FACTS**

20 This case was opened in response to a sworn complaint alleging that the Foundation had not filed
21 campaign statements to report its contributions to the Committee for College of the Canyons – Yes on
22 Measure E (the “Yes on E Committee”) (ID# 1384666), a primarily formed ballot measure committee in
23 support of a measure on the June 7, 2016 ballot that permitted the Santa Clarita Community College
24 District (the “District”) to issue \$230 million of general obligation bonds.

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27 ¹⁵ See 88 Ops.Cal.Atty.Gen. 46 (2005); 84 Ops.Cal.Atty.Gen. 41, 45-46 (2001); and 82 Ops.Cal.Atty.Gen. 102, 104-
105 (1999).

¹⁶ See Government Code Sections 72670, 72674, 76060.

¹⁷ See Government Code Section 72673.

¹⁸ See 88 Ops.Cal.Atty.Gen. 46 (2005)

¹⁹ See *California State University, Fresno Assn., Inc. v. Superior Court* (2001) 90 Cal.App.4th 810, 826, 829.

1 The Foundation is a California corporation, organized under state law as a “nonprofit public benefit
2 corporation” for charitable and public purposes.²⁰ It is organized and operated exclusively for charitable
3 purposes within the meaning of Internal Revenue Code section 501(c)(3). The specific purpose of the
4 Foundation is to support and enhance the educational mission of the District through programs, facilities,
5 and resources not otherwise available to the District. The Foundation has existed since 1987. It receives
6 gifts from individuals, corporations, and foundations. Foundations are ubiquitous at the 116 community
7 colleges throughout the State and receive charitable gifts to endow scholarships and support educational
8 programs and capital improvements within the districts they support. The Foundation performs this
9 function as an “auxiliary organization.”²¹

10 The Foundation is governed by a Board of volunteer community leaders. The Foundation has one
11 administrative employee, and other Foundation business is handled by four District employees, as
12 permitted by state law governing the relationship between Community College Districts and Auxiliary
13 Organizations.²² None of these individuals are compensated for services involving the planning,
14 organizing, or directing any activity regulated or required by the Political Reform Act.²³

15 A California community college district is explicitly authorized by State law to establish an
16 auxiliary organization to provide supportive services and specialized programs for the general benefit of
17 its college or colleges.²⁴ In 1987, the Board of Governors for the California Community College System
18 approved Implementing Regulations which served as the authority to establish a 501(c)(3) Auxiliary
19 Organization to support the mission of a Community College. The District and the Foundation have agreed
20 that, among other activities, the Foundation may expend funds for public relations or other purposes that
21 advance and augment the District appropriations for the operation of the District. In furtherance of this
22 authority, the state Attorney General has opined that an auxiliary organization may independently
23 determine to contribute its own funds from private sources to support a district bond measure.²⁵

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26 ²⁰ Corp. Code section 5111.

27 ²¹ Educ. Code sections 72671-72682.

28 ²² Cal. Code Regs., tit. 5, section 59257, subd. (j)(6).

²³ See Section 83116.5.

²⁴ Educ. Code sections 72670 and 72670.5.

²⁵ See *Auxiliary Organizations Promoting Bond Measure Voter Approval*, 88 Ops.Cal.Atty.Gen. 46 (2005).

1 The District placed Measure E on the June 8, 2016 ballot. According to the District, Measure E
2 was placed on the ballot to expand the facilities needed by the District, which is one of the fastest growing
3 community college districts in California and was, at that time, restricting student enrollment and access
4 due to space limitations. On March 22, 2016, the Foundation Board of Directors voted to adopt a resolution
5 in support of Measure E and to financially support the campaign. The Board’s decision was implemented
6 by Foundation representatives according to the usual process for issuing Foundation checks, discussed
7 further below.

8 As permitted by the Education Code, the Foundation made three contributions during the 90-day
9 period preceding the date of the election to the Yes on E Committee in 2016. However, the Foundation
10 did not timely file 24-hour contribution reports for them, as required under the Act:

Contribution Date	Due Date	Amount
March 22, 2016	March 23, 2016	\$50,000
April 26, 2016	April 27, 2016	\$50,000
May 18, 2016	May 19, 2016	\$50,000
	Total:	\$150,000

15 The funds used to contribute to the Yes on E Committee were ultimately drawn from a Foundation
16 account called “Funds for the Future.” All three contributions were issued by the Los Angeles County
17 Office of Education (“LACOE”), which acts as fiscal agent for the District and its auxiliary organization,
18 the Foundation. The Foundation is not a fiscally independent organization. LACOE does not delineate
19 between the funds of the various organizations that are affiliated with the District and uses a single tax
20 identification number to designate checks for the District and its auxiliary organization. The District and
21 the Foundation have responsibility for separating the funds and they do so through fund accounting
22 processes. This is a common accounting method, and many Districts and Foundations use the same
23 process. In fact, this is the recommended accounting method to delineate district and auxiliary funds
24 recommended to local Community College Districts by the State Chancellor’s office. As a result of these
25 detailed processes, the checks issued to the Yes on E committee show the District as the payor when in
26 fact the funds ultimately and properly came from the Foundation’s Funds for the Future account.
27 Respondent has provided the Enforcement Division with accounting documents which demonstrate the
28 contributions were attributed to and paid from the Foundation’s Funds for the Future account.

1 The check requests were processed pursuant to the Foundation's existing policy and procedure
2 that address permissible use of funds held in Funds for the Future and required a multi-layer review
3 process and ratification by the Foundation's Board of Directors.²⁶ The Enforcement Division found that
4 the Foundation permissibly made the contributions using available private nondonor funds. Those
5 nondonor funds exclusively came from Bottling Group LLC operating as Pepsi Beverages Company and
6 Barnes & Noble College Booksellers, LLC, who each made payments to the Foundation as a part of
7 contracts to operate on District campuses. At each relevant time, there was a sufficient balance of
8 nondonor funds from those contracts to cover the contributions made to the Yes on E Committee. The
9 Enforcement Division is satisfied based on evidence provided that the funds used for these contributions
10 did not include any public funds.

11 On April 24, 2019, the Foundation late-filed the major donor campaign statement for the period
12 covering January 1, 2016 through June 30, 2016 after receiving notice from the Enforcement Division,
13 disclosing the three late contributions that it made to the Yes on E Committee in 2016. The Yes on E
14 Committee had disclosed the three late contributions in its 24-hour reports and campaign statements prior
15 to the June 7, 2016 Primary Election, so the public had some disclosure regarding the Foundation's
16 campaign activities.

17 VIOLATIONS

18 Count 1: Failure to Timely File 24-Hour Contribution Reports

19 The Foundation failed to timely file 24-hour contribution reports for three \$50,000 contributions
20 made on March 22, 2016; April 26, 2016; and May 18, 2016, in violation of Government Code Section
21 84203.

22 Count 2: Failure to Timely File a Major Donor Campaign Statement

23 The Foundation failed to timely file a major donor campaign statement for the reporting period
24 covering January 1, 2016 through June 30, 2016 by August 1, 2016, in violation of Government Code
25 Section 84200, subdivision (b).

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28 ²⁶ The applicable policy and procedure are found in the Foundation's Policy Manual in Section 100, Documents 127
and AP 127. The manual is a public document available from the Foundation.

1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed is \$10,000. This case does not qualify for the
4 Commission’s Tier Two streamline program because the Foundation reported \$150,000 in campaign
5 activities in the major donor campaign statement.

6 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
7 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
8 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers
9 the facts and circumstances of the violation in the context of the following factors set forth in Regulation
10 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused by the
11 specific violation; (2) The level of experience of the violator with the requirements of the Act;
12 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
13 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
14 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
15 other governmental agency in a manner not constituting complete defense under Government Code
16 Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has
17 a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the violator, upon
18 learning of a reporting violation, voluntarily filed amendments to provide full disclosure.²⁷

19 The public harm caused by these violations is serious, as they resulted in a lack of transparency
20 for the public into the Foundation’s campaign activities. However, the Yes on E Committee filed 24-hour
21 contribution reports and pre-election campaign statements prior to the election to disclose the three
22 \$50,000 contributions, so the public received some disclosure regarding the Foundation’s campaign
23 activities. It seems the violations were isolated, as the Foundation does not have prior experience with the
24 requirements of the Act and does not have a prior record of violating the Act. There is no evidence of an
25 intention to conceal, deceive, or mislead the public, as the Foundation filed campaign statements and
26 reports as soon as it learned from the Enforcement Division that it had qualified as a major donor
27 committee in 2016 and was required to disclose its campaign activities. The Foundation also fully

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²⁷ Regulation 18361.5, subd. (e).

1 cooperated with the Enforcement Division in the investigation. Additionally, the violations seem to have
2 been negligent, as the Foundation did not receive required notices from the Yes on Measure E Committee
3 about the obligation to file major donor campaign statements. The Enforcement Division did not find that
4 the Foundation consulted the Commission staff or any other governmental agency regarding the Act's
5 campaign filing requirements.

6 The Commission also considers penalties in prior cases with comparable violations. Recent cases
7 with a similar violation include the following:

8 Count 1

9 *In the Matter of Burbank Hospitality Association*; FPPC No. 18/113. (The Commission approved
10 a stipulated agreement on June 21, 2018.) Respondent made a \$50,000 contribution to a primarily formed
11 ballot measure committee during the 90-day period prior to the November 8, 2016 General Election and
12 qualified as a major donor committee. Respondent was required to file a 24-hour contribution report for
13 that late contribution but failed to timely do so. The recipient of the late contribution reported the late
14 contribution prior to the election. The Commission approved a penalty of \$2,500 for failure to timely file
15 a 24-hour contribution report.

16 Unlike *Burbank Hospitality*, the Foundation failed to timely file three 24-hour contribution reports
17 for three late contributions of \$50,000, totaling \$150,000. Like *Burbank Hospitality*, the recipient of the
18 late contributions also reported the late contributions on 24-hour contribution reports and pre-election
19 campaign statements prior to the election, so the public received some notice of the late contributions.
20 Based on these facts, a higher penalty is recommended in this case.

21 Count 2

22 *In the Matter of KCRW Foundation*; FPPC No. 18/352. (The Commission approved a stipulated
23 agreement on November 15, 2018.) Respondent made a \$125,000 contribution to a primarily formed ballot
24 measure committee and qualified as a major donor committee. Respondent was obligated to file a major
25 donor campaign statement for the contribution but did so only after receiving notice of a complaint filed
26 with the Enforcement Division. The Commission approve a penalty of \$2,500 for failure to timely file a
27 major donor campaign statement. Due to similar facts, a similar penalty is recommended in this case.

28 Based on the foregoing, the following penalty is recommended:

Count #	Violation	Penalty
1	Failure to Timely File 24-Hour Contribution Reports	\$3,000
2	Failure to Timely File a Major Donor Campaign Statement	\$2,500
	Total:	\$5,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent College of the Canyons Foundation hereby agree as follows:

1. The Respondent violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.

2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of the Respondent pursuant to Section 83116.

4. The Respondent has consulted with its attorney, Lacey Keys, and understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at the Respondent’s own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5. The Respondent agrees to the issuance of the decision and order set forth below. Also, the Respondent agrees to the Commission imposing against it an administrative penalty in the amount of \$5,500. One or more credit/debit card payments, cashier’s checks, or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding the matter.

6. If the Commission declines to approve this stipulation—then this stipulation shall become null and void, and within fifteen business days after the Commission meeting at which the stipulation is

1 rejected, all payments tendered by the Respondent in connection with this stipulation shall be reimbursed
2 to the Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
3 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
4 Director, shall be disqualified because of prior consideration of this Stipulation.

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

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9 Dated: _____
10 Angela J. Brereton, Chief of Enforcement
11 Fair Political Practices Commission

12 Dated: _____
13 Michelle Rey, Executive Director, on behalf of
14 Respondent College of the Canyons Foundation

1 The foregoing stipulation of the parties “In the Matter of College of the Canyons Foundation,”
2 FPPC No. 19/475, is hereby accepted as the final decision and order of the Fair Political Practices
3 Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____

_____ Richard C. Miadich, Chair
8 Fair Political Practices Commission
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