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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of 38TH ASSEMBLY DISTRICT REPUBLICAN CENTRAL COMMITTEE, and MICHAEL HILDEBRAND, JR., TREASURER, Respondents.	FPPC No. 10/526 STIPULATION, DECISION and ORDER

Complainant, the Fair Political Practices Commission, and respondents 38th Assembly District Republican Central Committee, and Michael Hildebrand, Jr. (collectively "Respondents"), agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting.

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

Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1 through 18361.9 of Title 2 of the California Code of Regulations. 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 Respondents' 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.

It is further stipulated and agreed that Respondents violated the Political Reform Act by: failing to itemize 44 contributions of $100 or more, totaling $10,469, received during the July 1, 2010, through September 30, 2010, reporting period, in violation of Government Code sections 84200.5, subdivision (e), 84200.7, subdivision (b)(2), and 84211, subdivisions (c) and (f) (Count 1); and failing to report $5,348 in contributions received during the October 17, 2010, through December 31, 2010, reporting period, in violation of Government Code sections 84200, and 84211, subdivisions (a) and (d) (Count 2).

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

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Respondents agree to the issuance of the Decision and Order, which is attached hereto. Respondents also agree to the Commission imposing upon them an administrative penalty in the amount of $5,000. A cashier's check from Respondents in said amount, made payable to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the administrative penalty, to be held by the State of California until the Commission issues its decision and order regarding this matter. The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

Dated: _____

_____
Gary Winuk, Enforcement Chief,
On behalf of the
Fair Political Practices Commission

Dated: _____

_____
Michael Hildebrand, Jr., Respondent,
Individually and on behalf of
38th Assembly District Republican Central Committee

Dated: _____

_____
Brian Koegle, Treasurer,
On behalf of
38th Assembly District Republican Central Committee

DECISION AND ORDER

The foregoing Stipulation of the parties "In the Matter of 38th Assembly District Republican Central Committee, and Michael Hildebrand, Jr., Treasurer" FPPC No. 10/526, 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: _____

_____
Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Lawrence Westerlund ("Respondent Westerlund") is a Fresno City Councilmember. Respondent Friends of Larry Westerlund for City Council 2008 ("Respondent Committee") is his campaign committee. Under the Political Reform Act (the "Act")[1], all expenditures of campaign funds by a candidate or elected official must be related to a political, legislative, or governmental purpose. As set forth below, Respondents violated the Act by spending campaign funds to pay Respondent Westerlund's State Bar of California dues and Fresno County Bar Association dues, which were not related to a political, legislative, or governmental purpose.

For purposes of this Stipulation, the proposed violations of the Act are as follows:

COUNT 1: Respondents' payment of State Bar of California dues in 2010 and 2012 and Fresno County Bar Association dues in 2011 with campaign funds were not related to a political, legislative, or governmental purpose in violation of Section 89512.

SUMMARY OF THE LAW

All contributions deposited into a campaign account are deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 89510, subsection (a).) An expenditure to seek office, or associated with holding office, is within the lawful execution of the trust imposed by Section 89510 if it is reasonably related to a political, legislative, or governmental purpose. (Section 89512.) Expenditures that confer a substantial personal benefit on the candidate must be directly related to a political, legislative, or governmental purpose. (*Id.*) A "substantial personal benefit" means a direct personal benefit to the candidate with a value of more than $200. (Section 89511, subdivision (b)(3).) A decrease in expenses or liabilities of $200 or more for the candidate within six months of the time of the expenditure of campaign funds is considered a direct personal benefit. (Regulation §18960.)

SUMMARY OF THE FACTS

Respondent Westerlund has been a member of the Fresno City Council since 2005. He also is a licensed attorney in the State of California. Respondents semiannual campaign statement for the January 1, 2010 through June 30, 2010 period indicates at page 9 that he paid $500 to the State Bar of California. His semiannual campaign statement for the January 1, 2012 through June 30, 2012 period indicates at page 6 that he paid $500 to the State Bar of California.

[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.

Respondent Westerlund stated that these payments were for his state bar dues. Similarly, Respondents' semiannual campaign statement for the July 1, 2011 through December 31, 2011 period indicates at page 5 that Respondents paid $135 from the campaign account to the Fresno County Bar Association for "association dues."

Count 1
Personal Use of Campaign Funds

Payment of his State Bar dues decreased Respondent Westerlund's expenses by $500 in 2010 and 2012 thereby providing him a substantial personal benefit. So the dues must be directly related to a political, legislative, or governmental purpose. Fresno City Councilmembers are not required to be members of the State Bar. Respondent's duties as a City Councilman do not include that of legal counsel to the City of Fresno nor its City Council. The purpose for maintaining active State Bar membership is it allows the licensee to practice law. Respondent Westerlund was not practicing law in his capacity as a City Councilmember. While Respondent Westerlund's knowledge of the law and experience as an attorney may assist him in getting elected and make him more effective in serving as a City Councilman, his maintaining membership with the State Bar itself does not serve a direct political, legislative, or governmental purpose.

The Fresno County Bar Association dues were less than $200 so payment of them was not a substantial personal benefit to Respondent Westerlund. Regardless, the dues were not even reasonably related to a political, legislative, or governmental purpose. The Fresno County Bar Association is a professional organization for attorneys. As discussed above, Respondent Westerlund was not acting as an attorney in his role as a member of the City Council so paying his association dues was not a permissible use of campaign funds.

Respondents' payment of State Bar of California dues in 2010 and 2012, and Fresno County Bar Association dues in 2011 with campaign funds was not related to a political, legislative, or governmental purpose in violation of Section 89512.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars ($5,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission ("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 deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Recent cases decided by the Commission involving similar violations of the Act include:

- *In the Matter of Barbara Dore and Dore for Water Board, FPPC No. 09/192*: Respondent made seven payments totaling $2,539.60 from campaign funds for expenditures that were not related to a political purpose. Respondent used nearly an equal amount of personal funds for campaign purposes during the course of the campaign. In a default decision on October 8, 2009, the Commission approved a penalty of $3,500.

- *In the Matter of Ken Bukowski and Citizens to Elect Ken Bukowski, FPPC No. 06/029:* Respondents made 11 expenditures of campaign funds totaling $2,290 that were not related to a political purpose. In a default decision on October 8, 2009 the Commission approved a penalty of $5,000 and Respondents were ordered to pay back the $2,290.

- *Maria T. Santillan, Committee to Re-Elect Maria T. Santillan and Raul Beas, FPPC No. 02/222*: Respondent, the mayor of Lynwood, spent $310 of campaign funds to buy clothing for herself. On June 18, 2009, the Commission approved a penalty of $2,000 after respondent reimbursed her committee for the cost of the clothing.

The use of campaign funds by a candidate or elected official for personal expenses is a serious violation of the Act. Personal use of campaign funds by a candidate betrays the trust of contributors who give to a campaign. By using campaign funds to pay State Bar and county bar association dues, Respondents made use of campaign funds to pay personal expenses that were not related to Respondent Westerlund's position as a City Councilmember.

The amounts of the campaign funds at issue in this case are relatively low compared to other cases. Also, Respondents reported the expenditures in question on their campaign reports so there was no intent to conceal the payments or deceive the public. Further, Respondents do not have a history of violating the Act, cooperated with the Commission in settling this case, and Respondent Westerlund agreed to reimburse his campaign for the amount of the State Bar and Fresno County Bar Association dues.

PROPOSED PENALTY

After considering the factors of Regulation 18361.5, including Respondent's history of compliance, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of $1,000 is recommended.