

1 GARY S. WINUK
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FAIR POLITICAL PRACTICES COMMISSION

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6
7 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

8 **STATE OF CALIFORNIA**

9
10 In the Matter of) FPPC No. 09/702
11)
12 COMMITTEE FOR MEASURE G –) DEFAULT DECISION AND ORDER
LOOMIS and PAUL I. MINEER,)
13)
14 Respondents.) (Gov. Code §§ 11506 and 11520)
15)

16 Complainant, Gary S. Winuk, Chief of the Enforcement Division of the Fair Political Practices
17 Commission, hereby submits this Default Decision and Order for consideration at its next regularly
18 scheduled meeting.

19 Pursuant to the California Administrative Procedure Act,¹ Respondents Committee for Measure
20 G – Loomis and Paul I. Mineer have been served with all of the documents necessary to conduct an
21 administrative hearing regarding the above-captioned matter, including the following:

- 22 1. An Order Finding Probable Cause;
23 2. An Accusation;
24 3. A Notice of Defense (Two Copies);
25

26 ¹The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections
27 11370 through 11529 of the Government Code.

1 4. A Statement to Respondent; and

2 5. Copies of Sections 11506, 11507.5, 11507.6 and 11507.7 of the Government Code.

3 Government Code Section 11506 provides that failure of a respondent to file a Notice of Defense
4 within 15 days after being served with an Accusation shall constitute a waiver of respondent's right to a
5 hearing on the merits of the Accusation. The Statement to Respondent, served on Respondents
6 October 8, 2011 explicitly stated that a Notice of Defense must be filed in order to request a hearing.
7 Respondents failed to file a Notice of Defense within fifteen days of being served with the Accusation.

8 Government Code Section 11520 provides that, if the respondent fails to file a Notice of
9 Defense, the Commission may take action, by way of a default, based upon the respondent's express
10 admissions or upon other evidence, and that affidavits may be used as evidence without any notice to the
11 respondent.

12 Respondents Committee for Measure G – Loomis and Paul I. Mineer violated the Political
13 Reform Act as described in Exhibit 1, and accompanying declarations, which are attached hereto and
14 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
15 the law and evidence in this matter. This Default Decision and Order is submitted to the Commission to
16 obtain a final disposition of this matter.

17
18 Dated: _____

Gary S. Winuk, Chief of Enforcement
Fair Political Practices Commission

ORDER

The Commission issues this Default Decision and Order and imposes an administrative penalty of Six Thousand Dollars (\$6,000.00) upon Respondents Committee for Measure G – Loomis and Paul I. Mineer, payable to the “General Fund of the State of California.”

IT IS SO ORDERED, effective upon execution below by the Chair of the Fair Political Practices Commission at Sacramento, California.

Dated: _____

Ann Ravel, Chair

Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Committee for Measure G – Loomis (“Respondent Committee”) is a ballot measure committee formed to support Measure M in the 2006 election and Measure G in the 2008 election. Respondent Paul I. Mineer (“Respondent Mineer”) was at all times relevant to this matter the treasurer of Respondent Committee. Respondents were required by the Political Reform Act (the “Act”)¹ to file semi-annual campaign contribution statements

This matter arose out of a Campaign Disclosure Statements Non-filer Enforcement Referral sent to the Fair Political Practices Commission’s Enforcement Division (Enforcement Division) by the County of Placer County Clerk – Recorder – Registrar of Voters (“County Clerk”) for Respondents’ failure to file timely semi-annual campaign contribution statements for the reporting periods ending December 31, 2008, June 30, 2009, and December 31, 2009. The subsequent investigation by the Enforcement Division revealed that Respondents failed to file campaign statements as required by the Act.

For the purposes of this Default Decision and Order, Respondents’ violations of the Act are stated as follows:

- COUNT 1:** Respondents Committee for Measure G – Loomis and Paul I. Mineer, Treasurer, failed to file a semi-annual campaign statement (Form 460) for the July 1, 2008 through December 31, 2008 reporting period by the February 2, 2009 deadline in violation of Government Code section 84200, subdivision (a).
- COUNT 2:** Respondents Committee for Measure G – Loomis and Paul I. Mineer, Treasurer, failed to file a semi-annual campaign statement (Form 460) for the January 1, 2009 through June 30, 2009 reporting period by the July 31, 2009 deadline in violation of Government Code section 84200, subdivision (a).
- COUNT 3:** Respondents Committee for Measure G – Loomis and Paul I. Mineer, Treasurer, failed to file a semi-annual campaign statement (Form 460) for the July 1, 2009 through December 31, 2009 reporting period by the February 1, 2010 deadline in violation of Government Code section 84200, subdivision (a).

¹The 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 (“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.

DEFAULT PROCEEDINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

When the Fair Political Practices Commission (the “Commission”) determines there is probable cause to believe the Act was violated, it may hold a hearing to determine if a violation occurred. (Section 83116.) Notice of the hearing, and the hearing itself, must be conducted in accordance with the Administrative Procedure Act (the “APA”).¹ (Section 83116.) A hearing to determine whether the Act was violated is initiated by the filing of an accusation, which shall be a concise written statement of the charges specifying the statutes and rules the respondent is alleged to have violated. (Section 11503.)

Included among the rights afforded a respondent under the APA, is the right to file the Notice of Defense with the Commission within 15 days after service of the accusation, by which the respondent may (1) request a hearing, (2) object to the accusation’s form or substance or to the adverse effects of complying with the accusation, (3) admit the accusation in whole or in part, or (4) present new matters by way of a defense. (Section 11506, subd. (a)(1)-(6).)

The APA provides that a respondent’s failure to file a Notice of Defense within 15 days after service of an accusation constitutes a waiver of the respondent’s right to a hearing. (Section 11506, subd. (c).) Moreover, when a respondent fails to file a Notice of Defense, the Commission may take action based on the respondent’s express admissions or upon other evidence, and affidavits may be used as evidence without any notice to the respondent. (Section 11520, subd. (a).)

PROCEDURAL REQUIREMENTS AND HISTORY

A. Initiation of the Administrative Action

Section 91000.5 provides that “[t]he service of the probable cause hearing notice, as required by Section 83115.5, upon the person alleged to have violated this title shall constitute the commencement of the administrative action.” (Section 91000.5, subd. (a).)

Section 83115.5 prohibits a finding of probable cause by the Commission unless the person alleged to have violated the Act is 1) notified of the violation by service of process or registered mail with return receipt requested; 2) provided with a summary of the evidence; and 3) informed of his right to be present in person and represented by counsel at any proceeding of the Commission held for the purpose of considering whether probable cause exists for believing the person violated the Act. Additionally, Section 83115.5 states that the required notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or if the registered mail receipt is not signed, the date returned by the post office.

Section 91000.5 provides that no administrative action pursuant to Chapter 3 of the Act, alleging a violation of any of the provisions of Act, shall be commenced more than five years after the date on which the violation occurred.

¹ The California Administrative Procedure Act, which governs administrative adjudications, is contained in Sections 11370 through 11529 of the Government Code.

Documents supporting the procedural history are included in the attached Certification of Records (“Certification”) filed herewith at Exhibit A, A-1 through A-12, and incorporated herein by reference.

In accordance with Sections 83115.5 and 91000.5, the Enforcement Division initiated the administrative action against Respondents in this matter by serving them with a packet containing a cover letter, a Report in Support of a Finding of Probable Cause (the “Report”), a memorandum regarding probable cause proceedings, selected sections of the California Government Code regarding probable cause proceedings for the Fair Political Practices Commission, and selected regulations of the Fair Political Practices Commission regarding probable cause proceedings. (Certification, Exhibit A-1.) Respondents were served by certified mail, return receipt requested.¹ The original return receipt addressed to Respondents was signed on August 31, 2010, and was returned to the Enforcement Division. (Certification, Exhibit A-2.) Therefore, the administrative action commenced on August 31, 2010, the date the registered mail receipt was signed, and the five year statute of limitations was effectively tolled on this date.

The information contained in the above-mentioned packet advised Respondents that they had 21 days in which to request a probable cause conference and/or to file a written response to the Report. Respondents neither requested a probable cause conference nor submitted a written response to the Report.

B. Ex Parte Request for a Finding of Probable Cause

Since Respondent failed to request a probable cause conference or submit a written response to the Report by the statutory deadline, the Enforcement Division submitted an Ex Parte Request for a Finding of Probable Cause and an Order that an Accusation be Prepared and Served to Executive Director Roman G. Porter on June 6, 2011. (Certification, Exhibit A-3.)

On June 6, 2011, Executive Director Roman G. Porter issued a Finding of Probable Cause and Order to Prepare and Serve an Accusation. (Certification, Exhibit A-4.)

C. The Issuance and Service of the Accusation

Under the Act, if the Executive Director makes a finding of probable cause, an accusation shall be prepared pursuant to Section 11503 of the APA, and it shall be served on the persons who are the subject of the probable cause finding. (Regulation 18361.4, subd. (e).)

Section 11503 states:

A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall

¹ Where any communication is required by law to be mailed by registered mail to or by the state, or any officer or agency thereof, the mailing of such communication by certified mail is sufficient compliance with the requirements of the law. (Section 8311.)

set forth in ordinary and concise language the acts or omissions with which the respondent is charged, to the end that the respondent will be able to prepare his defense. It shall specify the statutes and rules which the respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such statutes and rules. The accusation shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

Section 11505, subdivision (a), requires that, upon the filing of the accusation, the agency shall 1) serve a copy thereof on the respondent as provided in Section 11505, subdivision (c); 2) include a post card or other form entitled Notice of Defense which, when signed by or on behalf of the respondent and returned to the agency, will acknowledge service of the accusation and constitute a notice of defense under Section 11506; 3) include (i) a statement that respondent may request a hearing by filing a notice of defense as provided in Section 11506 within 15 days after service upon the respondent of the accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing, and (ii) copies of Sections 11507.5, 11507.6, and 11507.7.

Section 11505, subdivision (b), sets forth the language required in the accompanying statement to the respondent.

Section 11505, subdivision (c), provides that the Accusation and accompanying information may be sent to the respondent by any means selected by the agency, but that no order adversely affecting the rights of the respondent shall be made by the agency in any case unless the respondent has been served personally or by registered mail as set forth in Section 11505.

On September 28, 2011, the Commission's Chief of Enforcement, Gary S. Winuk, issued an Accusation against Respondents in this matter. In accordance with Section 11505, the Accusation and accompanying information, consisting of a Statement to Respondent, two copies of a Notice of Defense Form, copies of Government Code Sections 11506, 11507.5, 11507.6 and 11507.7, and a cover letter dated October 4, 2011, were personally served on Respondent on October 8, 2011. (Certification, Exhibit A-5.)

The "Statement to Respondent" notified Respondents that they could request a hearing on the merits and warned that, unless a Notice of Defense was filed within 15 days of service of the Accusation, they would be deemed to have waived the right to a hearing. Respondents did not file a Notice of Defense within the statutory time period, which ended on October 24, 2011.

As a result, on June 25, 2012, the Enforcement Division sent a letter to Respondents advising them that this matter would be submitted for a Default Decision and Order at the Commission's public meeting scheduled for July 12, 2012. A copy of the Default Decision and Order and this Exhibit 1 were included with the letter. (Certification, Exhibit A-6.)

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are fully and truthfully disclosed to the public, so that voters may be better informed, and to inhibit improper practices. To that end, the Act sets forth a comprehensive campaign reporting system designed to accomplish this purpose.

Duty to File Campaign Statements

Committees are included among the entities subject to the Act's campaign reporting requirements. Section 82013 defines a committee as any person or combination of persons who directly or indirectly receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year. This type of committee is commonly referred to as a "recipient committee."

Section 84200, subdivision (a) requires all recipient committees to file semi-annual campaign statements (Form 460) each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.¹ Sections 84214 and Regulation 18404 require a recipient committee to file campaign statements until it terminates its obligations by filing a Statement of Termination (Form 410).

Treasurer Liability

Section 84100 provides that every committee shall have a treasurer. Regulation 18427, subdivision (a) sets forth the duties of a treasurer. One of these duties is to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds.

Sections 83116.5 and 91006 provide that a committee treasurer may be held jointly and severally liable, along with the committee, for any reporting violations of the Act.

SUMMARY OF THE FACTS

Documents supporting the factual history are included in the attached Certification of Records ("Certification") filed herewith at Exhibit A, A-1 through A-12, and incorporated herein by reference.

Respondent Committee was a ballot measure committee formed to support Measure M in the 2006 election and Measure G in the 2008 election. On January 25, 2008 Respondents filed a pre-election campaign statement with the County Clerk for the period between January 1, 2008

¹ Under Regulation 18116, whenever the Act requires that a statement or report (other than late contribution reports required by Section 84203, late independent expenditure reports required by Section 84204, or notice by the contributor of a late in-kind contribution required by Section 84203.3) be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. Relevant to this matter, January 31, 2009 was a Saturday, January 31, 2010 was a Sunday, and Jul 31, 2010 was a Saturday.

and January 19, 2008. On that statement, Respondent Committee reported receiving contributions totaling \$2,820, making no expenditures, and showing ending cash balance of \$11,456.28. Respondent Committee did not file any subsequent statements until May 29, 2012.

Respondent Committee failed to file the semi-annual campaign statement for the January 1, 2008 through June 30, 2008 reporting period by the July 31, 2008 deadline. The County Clerk sent Respondent Mineer Notice of Non-filing letters dated October 15, 2008 and November 24, 2008 informing Respondent Mineer that it had not received the required statement. (Certification, Exhibit A-7.) According to the letters, the County Clerk also made multiple telephone calls to Respondent Mineer to remind him of his obligation to file the statement. Despite the notices and telephone calls, Respondents did not file the semi-annual campaign statement and the County Clerk referred the matter to the FPPC. As a result, the FPPC issued Respondents a warning letter dated January 22, 2009 advising Respondents that they had violated the Act by failing to file the semi-annual campaign statement. (Certification, Exhibit A-8.)

Respondent Committee failed to file the semi-annual campaign statement for the July 1, 2008 through December 31, 2008 reporting period by the February 2, 2009 deadline. The County Clerk sent Respondent Mineer Notice of Non-filing letters dated March 12, 2009 and March 25, 2009 informing Respondent Mineer that it had not received the required statement. (Certification, Exhibit A-9.) According to the letters, the County Clerk also made multiple telephone calls to Respondent Mineer, both before and after the deadline, to remind him of his obligation to file the statement. Despite the notices and telephone calls, Respondents did not file the semi-annual campaign statement.

Respondent Committee failed to file the semi-annual campaign statement for the January 1, 2009 through June 30, 2009 reporting period by the July 31, 2009 deadline. The County Clerk sent Respondent Mineer Notice of Non-filing letters dated August 27, 2009 and September 10, 2009 informing Respondent Mineer that it had not received the required statement. (Certification, Exhibit A-10.) According to the letters, the County Clerk also made multiple telephone calls to Respondent Mineer, both before and after the deadline, to remind him of his obligation to file the statement. Despite the notices and telephone calls, Respondents did not file the semi-annual campaign statement.

Respondent Committee failed to file the semi-annual campaign statement for the July 1, 2009 through December 31, 2009 reporting period by the February 1, 2010 deadline. The County Clerk sent Respondent Mineer Notice of Non-filing letters dated February 24, 2010 and March 8, 2010 informing Respondent Mineer that it had not received the required statement. (Certification, Exhibit A-11.) According to the letters, the County Clerk also made multiple telephone calls to Respondent Mineer, both before and after the deadline, to remind him of his obligation to file the statement. Despite the notices and telephone calls, Respondents did not file the semi-annual campaign statement.

The County Clerk referred the matter to the FPPC in July of 2010. (Certification, Exhibit A-12.) The FPPC Enforcement Division initiated administrative action against Respondents on August 31, 2010. The FPPC Enforcement Division attempted to resolve the case without significant administrative action. On numerous occasions, Respondent Mineer told Enforcement

Division staff during telephone conversations that he would file the missing statements but he did not. He eventually became uncooperative and stopped communicating with staff despite his prior assurances that he would file the necessary statements and resolve the matter.

On May 29, 2012, Respondents filed a semi-annual campaign statement for the period between January 20, 2008 and June 30, 2008. That statement showed total contributions for the period in the amount of \$7,150, total expenditures in the amount of \$18,964.35, and an ending cash balance of \$41.94. Also on May 29, 2012, Respondents filed a semi-annual campaign statement for the July 1, 2008 through December 31, 2008 reporting period. The statement showed no contributions and no expenditures for that reporting period and an ending cash balance of \$41.94. Lastly, Respondents also filed a final campaign statement and termination statement indicating that the committee was terminated effective January 30, 2009. The campaign statement indicated no contributions for the period between January 1, 2009 and January 30, 2009, and one distribution in the form of a civic contribution in the amount of \$41.94. All of these filings occurred well after Respondents' October 24, 2011 deadline to file a Notice of Defense in response to the Accusation and accompanying documents served on Respondents on October 8, 2011. To date, Respondents have not filed any other campaign statements.

Accordingly, Respondent committed three violations of the Act, as follows:

COUNT 1

Failure to File Semi-Annual Campaign Statement

As a recipient committee, Respondents had an obligation to file, with the County Clerk, a semi-annual campaign statement for the July 1, 2008 through December 31, 2008 reporting period by the February 2, 2009 deadline. Respondents failed to file the required semi-annual campaign statement. By failing to file the semi-annual campaign statement by February 2, 2009, Respondents violated Section 84200, subdivision (a).

COUNT 2

Failure to File Semi-Annual Campaign Statement

As a recipient committee, Respondents had an obligation to file, with the County Clerk, a semi-annual campaign statement for the January 1, 2009 through June 30, 2009 reporting period by the July 31, 2009 deadline. Respondents failed to file the required semi-annual campaign statement. By failing to file the semi-annual campaign statement by July 31, 2009, Respondents violated Section 84200, subdivision (a).

COUNT 3

Failure to File Semi-Annual Campaign Statement

As a recipient committee, Respondents had an obligation to file, with the County Clerk, a semi-annual campaign statement for the July 1, 2009 through December 31, 2009 reporting

period by the February 2, 2010 deadline. Respondents failed to file the required semi-annual campaign statement. By failing to file the semi-annual campaign statement by February 1, 2010, Respondents violated Section 84200, subdivision (a).

CONCLUSION

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

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division 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 respondent(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

In this matter, Respondents failed to file campaign statement as required by the Act. Failure to file a campaign statement is a serious violation of the Act. The public harm inherent in such a violation is that the public is deprived of important and timely information from Respondents regarding the payments Respondents received and amounts expended in connection with supporting a ballot measure.

Respondents were well aware of their filing obligations. Respondents filed campaign statements for a measure they supported in the previous election. Respondents received a warning letter from the FPPC in January of 2009 for their failure to file a semi-annual campaign statement for the first half of 2008. The letter reminded Respondents of their obligations under the Act and warned Respondents that future violations would result in fines. Also, on multiple occasions the City Clerk reminded Respondents of their filing obligations prior to the deadline and made numerous requests to Respondents after the filing deadline before finally referring the matter to the FPPC.

After initiating this action, FPPC Enforcement Division staff had numerous contacts with Respondent Mineer during which he said he would file the required campaign statements. Despite these assurances, he failed to file the statements. Eventually, he stopped communicating with the FPPC.

In mitigation, Respondent Committee participated in very little campaign activity during the period at issue in this case. According to Respondents semi-annual campaign statement filed on May 29, 2012, for the period between July 1, 2008 and December 31, 2008, and termination statement filed on May 29, 2012, Respondent Committee did not receive any contributions during the time period at issue in this case, and only retained cash in the amount of \$41.94. It disposed of the cash by way of a civic donation in January of 2009.

Other similar cases regarding failure to file semi-annual campaign statements recently approved by the Commission include:

In the Matter of Kai Stinchcombe, and Vote for Kai - Assembly 2010, FPPC No. 10/0652. This case involved two counts of failure to timely file semi-annual campaign statements. Contributions during the reporting periods at issue were relatively low when compared to the total amount of contributions. The candidate withdrew from the race many months before the election and the campaign had very little activity after the candidate withdrew. There was no evidence that the violations were deliberate. On May 17, 2012, the Commission approved a penalty of \$2,000 per count for the failure to file campaign statements.

In the Matter of Yolo County Democratic Central Committee Local Account et al., FPPC No. 08/357. This case involved seven counts of various campaign statements not timely filed. Included in this were five counts of failure to timely file semi-annual campaign statements. Most of the reporting periods contained amounts that were relatively low when compared to the committee's contributions received and expenditures made per election. There was no evidence found that this activity was deliberate. On January 28, 2011, the Commission approved a penalty of \$2,000 per count for the failure to file campaign statements.

In this case, Respondents' actions were similar to the cases above in that the amount of activity and contributions was relatively low during the period in which the parties failed to file the campaign statements. But Respondents were well aware of their filing obligations and the consequences of failing to file the statements, having received a prior warning letter from the FPPC. Also, Respondents received numerous reminders of their obligation to file campaign statements from the County Clerk, and were given numerous opportunities by the FPPC Enforcement Division to file the statements before it sought and obtained the Accusation. Despite all of these chances, Respondents failed to file the required campaign statements.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the presence or absence of good faith, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Six Thousand Dollars (\$6,000) is recommended.