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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of) FPPC No. 10/652
12)
13 KAI STINCHCOMBE, AND VOTE FOR) STIPULATION, DECISION and
KAI – ASSEMBLY 2010) ORDER
14)
15 Respondents.)
16)

17 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
18 Respondents Kai Stinchcombe, and Vote for Kai – Assembly 2010, hereby agree that this Stipulation
19 will be submitted for consideration by the Fair Political Practices Commission at its next regularly
20 scheduled meeting.

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

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28

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

4 It is further stipulated and agreed that Respondents Kai Stinchcombe, and Vote for Kai –
5 Assembly 2010 violated the Political Reform Act by failing to timely file semi-annual campaign
6 statements in violation of Government Code Section 84200, subdivision (a) (2 counts). All counts are
7 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
8 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
10 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
11 of Four Thousand Dollars (\$4,000). A cashier's check from Respondents in said amount, made payable
12 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
13 administrative penalty, to be held by the State of California until the Commission issues its Decision and
14 Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
15 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
16 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
17 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
18 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
19 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
20 disqualified because of prior consideration of this Stipulation.

21
22 Dated: _____

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

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24 Dated: _____

Kai Stinchcombe, individually and on behalf of Vote for
Kai – Assembly 2010, Respondents

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Kai Stinchcombe, and Vote for Kai – Assembly 2010, FPPC No. 10/652,” 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 Chairman.

IT IS SO ORDERED.

Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Kai Stinchcombe (Respondent Stinchcombe) was a candidate for California State Assembly District 21 in the June 8, 2010 primary election, however he withdrew as a candidate in approximately December 2009. Respondent Vote for Kai – Assembly 2010 (Respondent Committee) was Respondent Stinchcombe’s candidate controlled committee. At all relevant times, Respondent Stinchcombe was treasurer of Respondent Committee.

This matter arose out of several non-filer referrals sent to the Fair Political Practices Commission’s Enforcement Division (Enforcement Division) by the California Secretary of State’s Office, for Respondents failure to file campaign statements related to the June 8, 2010 primary election.

Under the Political Reform Act (the “Act”)¹, Respondents were required to file, and did file, a statement of intention, a statement of organization, and a semi-annual campaign statement for the reporting period ending June 30, 2009. However, Respondents were also required to file semi-annual campaign statements for the reporting periods ending December 31, 2009, June 30, 2010, and December 31, 2010. In this matter, Respondents failed to file these campaign statements.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

COUNT 1: Respondents Kai Stinchcombe and Vote for Kai – Assembly 2010, failed to file a semi-annual campaign statement for the reporting period of July 1 through December 31, 2009, by the February 1, 2010 due date, in violation of Government Code Section 84200, subdivision (a).

COUNT 2: Respondents Kai Stinchcombe and Vote for Kai – Assembly 2010, failed to file semi-annual campaign statements for the reporting periods of January 1 through June 30, 2010, and July 1 through December 31, 2010, by the required due dates, in violation of Government Code Section 84200, subdivision (a).

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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.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that contributions and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act therefore establishes a campaign reporting system designed to accomplish this purpose of disclosure.

The following reflects the Act as it was in effect at the time of the relevant violations.

Duty to File Semi-Annual Campaign Statements

Section 84200, subdivision (a) requires all candidates and committees pursuant to Section 82013, subdivision (a), to file semi-annual campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31.² All filing obligations continue until the recipient committee is terminated by filing a statement of termination with the Secretary of State and a copy with the local filing officer receiving the committee's original campaign statements. (Section 84214; Regulation 18404.)

Treasurer and Candidate Liability

Under Sections 81004, subdivision (b), 84100, and 84213, and Regulation 18427, subdivisions (a), (b) and (c), it is the duty of a committee's treasurer and candidate 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. A committee's treasurer and candidate may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee under Sections 83116.5 and 91006.

SUMMARY OF THE FACTS

Respondent Kai Stinchcombe (Respondent Stinchcombe) was a candidate for California State Assembly District 21 in the June 8, 2010 primary election, however he withdrew as a candidate in approximately December 2009. Respondent Vote for Kai – Assembly 2010 (Respondent Committee) was Respondent Stinchcombe's candidate controlled committee.

Respondent Stinchcombe filed a statement of intention to run for State Assembly District on May 4, 2009. Respondent Committee also filed a statement of organization on May 4, 2009, which identified Michael Riemenschneider as treasurer for Respondent Committee. However,

² 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.

Respondent Stinchcombe indicated in his June 15, 2011, written statement to the Enforcement Division:

I (Kai) was the sole person responsible for preparing the campaign filings. Michael Riemenschneider, a close friend of mine, was [originally] listed as the campaign treasurer. We had planned for him to play a larger role, but for logistical reasons [he] typically did not have access to the key documents associated with the campaign, and at some point I should have filed an amendment to the 410, or otherwise made it formally clear that he was not acting as the campaign's treasurer any longer.

Thus, at all relevant times, Respondent Stinchcombe was treasurer of Respondent Committee. Respondent Stinchcombe filed an amended statement of organization on August 8, 2011, to reflect this.

On July 31, 2009, Respondents filed a semi-annual campaign statement for Respondent Committee for the reporting period of January 1 through June 30, 2009. Respondent Committee reported receiving \$73,013.01 in contributions, and making no expenditures during this period.

In August 2009, Respondent Stinchcombe stopped soliciting campaign contributions for his own campaign to endorse a friend's newly established campaign for the same seat. He ultimately began announcing his withdrawal from the race in December 2009.

The investigation in this matter showed that Respondents failed to file any semi-annual campaign statements after July 31, 2009, which was the result of negligent, rather than intentional, conduct. As a condition of this settlement, Respondents filed the required semi-annual campaign statements on March 16, 2012, reporting as follows:

Reporting Period	Contributions Received	Expenditures Made
01/01 – 06/30/2009 (Amended)	75,027.47	1,462.93
07/01 – 12/31/2009	5,501.43	55,874.73
01/01 – 06/30/2010	1.43	5,460.06

Respondent Committee reported having no campaign activity during the reporting period ending December 31, 2010. Thus, the campaign reports show that Respondent Committee received a total of \$80,530.33 in contributions, and made a total of \$62,797.72 in expenditures during the above named reporting periods.

Some of Respondent Committee's surplus funds have already been refunded to contributors, which represents some of the expenditures in the 2010 semi-annual campaign statements. Respondent Committee still has funds in its bank account, and Respondents intend to terminate Respondent Committee after resolving this case and properly disposing of all surplus funds.

Accordingly, Respondents committed two violations of the Act, as follows:

COUNTS 1 – 2

(Failure to Timely File Semi-Annual Campaign Statements)

As a candidate for California State Assembly District 21 in the June 8, 2010 primary election, and his candidate controlled committee, Respondents had a duty to file semi-annual campaign statements for the reporting periods of July 1 through December 31, 2009 (on or before February 1, 2010), the January 1 through June 30, 2010 (on or before August 2, 2010), and the July 1 through December 31, 2010 (on or before February 1, 2011). Respondent failed to file these required semi-annual campaign statements by the due dates. By failing to timely file the semi-annual campaign statements, Respondent violated Section 84200, subdivision (a).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count for a total of Ten Thousand Dollars (\$10,000).

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):

1. The seriousness of the violations;
2. The presence or lack of intent to deceive the voting public;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the Respondent demonstrated good faith in consulting with Commission staff;
5. Whether there was a pattern of violations; and
6. Whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

The failure to file campaign statements is a serious violation of the Act because it deprives the public of important information about a candidate's contributors and financial activities. In this matter, Respondents failed to file three required campaign statements related to the June 8, 2010 primary election, and thus, Respondents failed to disclose approximately 7% of the contributions received, and failed to disclose any expenditures made by Respondents.

In mitigation, however, Respondents timely reported nearly all of the contributions received in the semi-annual campaign statement filed on July 31, 2009. Additionally, Respondent Stinchcombe withdrew from the race many months before the election, and Respondents have had little to no campaign activity since that time. Further, Respondents began refunding contributions after Respondent Stinchcombe withdrew from the race, and

Respondents' failure to file semi-annual campaign statements appears to be negligent, not intentional.

Respondents have no prior history of violating the Act, and have been cooperative with the Enforcement Division during its investigation. Additionally, as a result of this investigation, Respondent Stinchcombe has consulted the Commission's Political Reform Consultants to assist him in completing and filing the overdue campaign statements, and properly disposing of the remaining funds in Respondent Committee's account. Respondent Stinchcombe intends to terminate Respondent Committee once this case has resolved and all of Respondent Committee's funds have been properly disposed.

Recent penalties approved by the Commission concerning violations of Section 84200, subdivision (a), include:

- ***In the Matter of Saundra Davis and Committee to Elect Saundra Davis, FPPC No. 06/372.*** This case involved one count of failure to timely file a semi-annual campaign statement. The campaign statement not filed would have included 50% of all contributions received (\$5,610) as well as 64% of all expenditures made (\$7,015) for the entire campaign. A \$2,000 penalty was approved by the Commission on September 17, 2010.
- ***In the Matter of Charles R. Brehmer, Brehmer for Judge and Jon W. Parnell, FPPC No. 10/591.*** This case involved one count of failure to timely file two semi-annual campaign statements in calendar year 2009. All contributions were timely reported, and the expenditures not reported timely were relatively low when compared to the total amount spent by the campaign. In addition, Respondent Brehmer was a first time candidate and had limited experience with the Act. A \$2,000 penalty was approved by the Commission on September 22, 2011.

Because Respondents failed to timely file semi-annual campaign statements in this matter, imposition of an administrative penalty in the amount of Two Thousand Dollars (\$2,000) per count for Counts 1 – 2 is recommended. This is in the mid-range of penalties but below the maximum penalty recommended for violations of Section 84200, subdivision (a).

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of Four Thousand Dollars (\$4,000) is recommended.

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