

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 13/071
13)
14 CITIZENS FOR A CLEAN AND HONEST)
LOCAL GOVERNMENT and BRIAN HEWS) STIPULATION, DECISION and
15) ORDER
16 Respondents.)
17)

18 Complainant Gary S. Winuk, Enforcement Chief of the Fair Political Practices Commission, and
19 Respondents Citizens for a Clean and Honest Local Government and Brian Hews agree that this
20 Stipulation will be submitted for consideration by the Fair Political Practices Commission at its next
21 regularly scheduled meeting.

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

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

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 Citizens for a Clean and Honest Local
5 Government and Brian Hews violated the Political Reform Act by (1) failing to timely file supplemental
6 independent expenditure reports for the reporting periods from January 1, 2013 through January 19,
7 2013, from January 20, 2013 through February 16, 2013, and from February 17, 2013 through June 30,
8 2013, in violation of Section 84203.5 of the Government Code (1 count) and publishing advertisements
9 opposing the re-election of Carol Chen and Cheri Kelly, which failed to display a disclosure statement
10 properly identifying the name of the committee, in violation of Government Code Sections 84506 and
11 84506.5 (1 count). These counts are described in Exhibit 1, which is attached hereto and incorporated
12 by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in
13 this matter.

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

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27 Dated: _____

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

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Dated: _____

Respondent Brian Hews, Individually and
on behalf of Citizens for a Clean and Honest
Local Government, Respondent

EXHIBIT 1

INTRODUCTION

Respondent Citizens for a Clean and Honest Local Government (“Respondent Citizens”) qualified as an independent expenditure committee on or about January 11, 2013, when it first made expenditures exceeding \$1,000. Respondent Brian Hews (“Respondent Hews”) formed Respondent Citizens and directed its activity. He also owns and publishes the *Los Cerritos Community News* and *Norwalk Community News*, weekly publications that appear in both paper and electronic editions. In the months prior to the March 2013 election, Hews ran advertisements opposing the re-election of both Carol Chen and Sheri Kelley, with a market value of \$11,455, in the print and online versions of his publications. Chen and Kelly appeared on the on the ballot in the March 4, 2013 Cerritos and Norwalk elections; and both were ultimately re-elected to office. Respondents violated the Political Reform Act’s (the “Act”)¹ by failing to comply with campaign reporting and advertisement disclosure requirements.

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

COUNT 1: Respondents Citizens for a Clean and Honest Local Government and Brian Hews failed to file supplemental independent expenditure reports for the reporting periods from January 1, 2013 through January 19, 2013, from January 20, 2013 through February 16, 2013, and from February 17, 2013 through June 30, 2013, in violation of Section 84203.5 of the Government Code.

COUNT 2: Respondents Citizens for a Clean and Honest Local Government and Brian Hews published advertisements opposing the re-election of Carol Chen and Cheri Kelly, which failed to display a disclosure statement properly identifying the name of the committee, in violation of Government Code Sections 84506 and 84506.5.

SUMMARY OF THE LAW

Express purposes of the Act, as set forth in Sections 81002, subdivision (a) and 84506, are to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, and that the supporters of campaign advertisements 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 and advertisement disclosure requirements designed to accomplish these purposes.

Section 82013, subdivision (b) defines a “committee” as including any person or combination of persons who makes independent expenditures totaling \$1,000 or more in a calendar year. This type of committee is commonly referred to as an “independent expenditure” committee.

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 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.

Section 82031 defines an “independent expenditure” as including an expenditure made by any person in connection with a communication that expressly advocates the election or defeat of a clearly identified candidate but which is not made to or at the behest of the affected candidate or committee.

Duty to File Supplemental Independent Expenditure Reports

Section 84203.5 provides that, in addition to any other campaign statement required by the Act, if a committee makes an independent expenditure totaling \$1,000 or more in a calendar year to support or oppose a candidate, a measure or qualification of a measure, it shall file independent expenditure reports at the same time, covering the same periods, and in the places where the committee would be required to file campaign statements, as if it were formed or existed primarily to support or oppose the candidate or measure or qualification of the measure.

Advertisement

An “advertisement” means any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot measures. Government Code Section 84501.

Advertisement Disclosure

Section 84506 states that an advertisement supporting or opposing a candidate or ballot measure, that is paid for by an independent expenditure, shall include a disclosure statement that identifies the name of the committee making the independent expenditure. Further, Section 84506.5 requires that an advertisement supporting or opposing a candidate, paid for by an independent expenditure committee, include disclaimer language stating that it was not authorized by a candidate or a committee controlled by a candidate.

SUMMARY OF THE FACTS

Respondent Citizens for a Clean and Honest Local Government qualified as an independent expenditure committee on or about January 11, 2013, when it first made expenditures exceeding \$1,000. Respondent Brian Hews formed Respondent Citizens and directed its activity. He also owns and publishes the *Los Cerritos Community News* and *Norwalk Community News*, weekly publications that appear in both paper and electronic editions.

In the months prior to the March 2013 election, Hews ran advertisements opposing the re-election of both Carol Chen and Sheri Kelley, in the print and online versions of his publications. Chen and Kelly appeared on the on the ballot in the March 4, 2013 Cerritos and Norwalk elections; and both were ultimately re-elected to office. The advertisements had a market value of \$11,455. These advertisements did not contain the proper disclosure; seven lacked any disclosure language, twelve identified the committee but did not include a statement indicating that they were not authorized by a candidate or a committee controlled by a candidate, and two contained erroneous disclosure language.

In addition, Respondents triggered filing requirements for five supplemental independent expenditure reports. However, none of the required supplemental independent expenditure reports were filed with the Cerritos and Norwalk City Clerks' Offices.

COUNT 1

Failure to File Supplemental Independent Expenditure Reports

As an independent expenditure committee, Respondents had an obligation to file supplemental independent expenditure reports. The supplemental independent expenditure reporting periods for the March 5, 2013 election were from January 1, 2013 through January 19, 2013, with a January 24, 2013, due date; from January 20, 2013 through February 16, 2013, with a February 21, 2013, due date; and from February 17, 2013 through June 30, 2013, with a July 31, 2013 due date. During these reporting periods, Respondents made independent expenditures with a total value of \$11,455, which expressly advocated the defeat of Carol Chen and Cheri Kelly. Respondents, however, failed to disclose the expenditures on properly filed supplemental independent expenditure reports by the applicable due dates.

By failing to disclose \$11,455 in independent expenditures on properly filed supplemental independent expenditure reports, Respondents Citizens for a Clean and Honest Local Government and Brian Hews violated Section 84203.5 of the Government Code.

COUNT 2

Failure to Include Disclosure Statement in Advertisements

Respondents Citizens for a Clean and Honest Local Government and Brian Hews published twenty one advertisements opposing the re-election of Carol Chen and Cheri Kelly, which failed to properly identify the committee.

By failing to display a disclosure statement properly identifying the name of the committee, Respondents Citizens for a Clean and Honest Local Government and Brian Hews violated Sections 84506 and 84506.5 of the Government Code.

CONCLUSION

This matter consists of two counts, which carry a maximum possible 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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: 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 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 amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

The public harm inherent in these types of violations, where pertinent information is not disclosed by the committee, is that the public is deprived of a means to discover the nature of the committee's campaign expenses and the committee responsible for the political advertisements

Other similar cases involving violations of Section 84203.5 that has been recently approved by the Commission include:

In the Matter of the Sacramento County Democratic Central Committee and William Guy Crouch case, FPPC Case No. 09/740. In this case, the violation was self reported. The commission approved settlement of this case in August of 2010, and the agreed upon penalty for this violation was \$1,000 per violation.

In the Matter of the Redwood City Chamber of Commerce, FPPC No. 09/266. In this case, a Redwood City based business association raised funds and sent out two separate mass mailings at a total of cost of \$18,643.36 and also spent \$4,906.75 to produce a brochure, all in opposition to a local ballot measure. Respondent failed to file a supplemental independent expenditure report. The commission approved settlement of this case on April 11, 2011, and the agreed upon penalty for this violation was \$3,000.

Failure to file campaign statements is a serious violation of the Act because it deprives the public of important information about a committee's financial activities. Since none of the required statements were filed before the election, there was no information whatsoever regarding the expenditures made by the committee available to the public prior to the date of the election.

Regarding Count 2, there are no recent cases for comparison for violations of 84506 and 84506.5. However, there is a recent stipulation, for a case with a similar fact pattern, involving the violation of a related advertisement provision, governing disclosure statements on television advertisements.

In the Matter of Yes on Proposition A, FPPC No. 12/301. Respondent, a primarily formed ballot measure committee, failed to provide written disclosure for a period of at least five seconds with a reasonable degree of color contrast between the background and text of the disclosure statement on a television advertisement, in violation of Government Code Section 84503. The commission approved settlement of this case on July 7, 2012, and the agreed upon penalty for this violation was \$2,500.

The failure to provide proper disclosure for an advertisement is a serious violation of the Act because it deprives the public of important information regarding the funding of the advertisement. In this matter, Respondents failed to include proper disclosure on multiple advertisements.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the Respondent's pattern of behavior, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Three Thousand Dollars (\$3,000) Count One and Two Thousand Dollars (\$2,000) for Count Two, for a total of Five Thousand Dollars (\$5,000) is recommended.

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