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

10
11 In the Matter of:

12 Timothy Park,

13 Respondent.

FPPC No. 13/243

14 STIPULATION, DECISION AND ORDER

15 **STIPULATION**

16 Complainant Fair Political Practices Commission and Respondent Timothy Park hereby agree
17 that this Stipulation will be submitted for consideration by the Fair Political Practices Commission at its
18 next regularly scheduled meeting.

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

22 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
23 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
24 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to the right to
25 appear personally at any administrative hearing held in this matter, to be represented by an attorney at
26 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
27 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
28 the hearing as a hearing officer, and to have the matter judicially reviewed.

1 As described in Exhibit 1, it is further stipulated and agreed that Respondent Timothy Park failed
2 to file a Pre-Election campaign statement for the reporting period January 1, 2013, through February 16,
3 2013, by February 28, 2013, in violation of Government Code section 84200.8, subdivision (b) (1 count).
4 Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth herein, is a
5 true and accurate summary of the facts in this matter.

6 Respondent agrees to the issuance of the Decision and Order, which is attached hereto, and
7 Respondent agrees to the Commission imposing upon him an administrative penalty in the amount of
8 \$2,000. A cashier's check or money order from Respondent totaling said amount, made payable to the
9 "General Fund of the State of California," is submitted with this Stipulation as full payment of the
10 administrative penalty and shall be held by the State of California until the Commission issues its
11 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
12 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
13 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
14 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
15 agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the
16 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
17 shall be disqualified because of prior consideration of this Stipulation.

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19 Dated: _____

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

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22 Dated: _____

Timothy Park, Respondent

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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Timothy Park,” FPPC No. 13/243,
3 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

7
8 Dated: _____

9 _____
Sean Eskovitz, Vice Chair
Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

In connection with the election for Cerritos City Council that was held on March 5, 2013, Respondent Timothy (Young) Park (“Respondent Park”) made independent expenditures totaling approximately \$2,275 for a newspaper advertisement and a mass mailer in opposition to one of the candidates during the Pre-Election reporting period January 1, 2013, through February 16, 2013.

Under the Political Reform Act (the “Act”)¹, when a person makes independent expenditures totaling \$1,000 or more in a calendar year, that person qualifies as an independent expenditure committee, which triggers certain filing requirements. As set forth in the count below, Respondent Park violated the Act by failing to file a Pre-Election campaign statement.

For purposes of this Stipulation, the proposed violation of the Act is stated as follows:

COUNT 1: Respondent Timothy Park failed to file a Pre-Election campaign statement for the reporting period January 1, 2013, through February 16, 2013, by February 28, 2013, in violation of Section 84200.8, subdivision (b).

SUMMARY OF THE LAW

Definition of Independent Expenditure Committee

Pursuant to Section 82013, subdivision (b), an independent expenditure committee is any person or combination of persons who directly or indirectly make independent expenditures totaling \$1,000 or more in a calendar year.

Definition of Independent Expenditure

Section 82031 defines an “independent expenditure” as an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or committee.

¹ The 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.

Duty to File a Pre-Election Campaign Statement

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

Section 84200.8, subdivision (b), for the period ending 17 days before the election, the Pre-Election Statement shall be filed no later than 17 days before the election.

SUMMARY OF THE FACTS

In 2013, James Kang was one of the candidates for Cerritos City Council. The election was held on March 5, 2013. Mr. Kang did not win.

In response to contact from the Enforcement Division, Respondent Park filed an Independent Expenditure Committee campaign statement, disclosing independent expenditures made to oppose Mr. Kang in the March 5, 2013 Cerritos City Council Election. These independent expenditures included a newspaper advertisement and letter sent during the Pre-Election reporting period January 1, 2013, through February 16, 2013, totaling \$2,275.

Count 1: Failure to File a Pre-Election Campaign Statement

In connection with the March 5, 2013 election, Respondent Park made independent expenditures totaling approximately \$2,275 in opposition to Mr. Kang. The independent expenditures covered the cost of a newspaper advertisement that was paid for on or about January 23, 2013, and a mass mailer that was paid for on or about January 22, 2013. These expenditures qualified Respondent Park as an Independent Expenditure Committee, and Respondent Park was required to file a Pre-Election campaign statement for the reporting period January 1, 2013, through February 16, 2013, by February 28, 2013. However, Respondent Park failed to do so.

By failing to file the required Pre-Election campaign statement for the reporting period January 1, 2013, through February 16, 2013, by February 28, 2013, Respondent Park violated Section 84200.8, subdivision (b).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of \$5,000.

In determining the appropriate penalty for a particular violation of the Act, the 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 Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

The public harm inherent in reporting violations is that the public is deprived of time-sensitive information regarding the sources and amounts of expenditures made in support or opposition of a candidate. In this matter, Respondent Park failed to disclose important financial information regarding the independent expenditures he made. However, Respondent Park cooperated in the investigation by filing an Independent Expenditure Committee campaign statement after contact from the Enforcement Division. Further, Respondent Park does not have a history of violating the Act.

Pre-election Campaign Statements: The typical administrative penalty for failing to timely file a pre-election campaign statement has been in the middle of the penalty range, depending on the circumstances. Failing to timely file a pre-election statement deprives the public of important information about Respondents' financial activities before an election. In this matter, Respondent failed to timely file one pre-election campaign statement disclosing approximately \$2,275 in independent expenditures made prior to the election. Recent fines approved by the Commission for this type of violation include:

In the Matter of Stonewall Democratic Club of Greater Sacramento, William Guy Crouch, and Christopher Welton, FPPC No. 12/103. Respondents, a general purpose committee, and its treasurers, failed to file a pre-election campaign statements in a timely manner for one count. The penalty per relevant count was \$2,000. Approved by the Commission on August 22, 2013.

In the Matter of Independent Coalition of Educators Sponsored by the California Association of Private Postsecondary Schools and Robert Johnson, Treasurer, FPPC No. 12/559. At the December 13, 2012 Commission meeting, the Commission approved a fine of \$2,000 per count for two counts of failure to file pre-election campaign statements, which accounted for approximately 75% of all contributions received during the audit period.

The imposition of a \$2,000 administrative penalty is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5 and consideration of the penalties imposed in recent cases, a penalty of \$2,000 is recommended.

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