

1 GALENA WEST  
Chief of Enforcement  
2 CHRISTOPHER BURTON  
Commission Counsel  
3 Fair Political Practices Commission  
1102 Q Street, Suite 3000  
4 Sacramento, CA 95811  
Telephone: (916) 322-5660

5 Attorneys for Complainant  
6 Fair Political Practices Commission, Enforcement Division

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

10  
11 In the Matter of:

12 YES ON PROP. 57, CALIFORNIANS  
AND GOVERNOR BROWN FOR  
13 PUBLIC SAFETY AND  
REHABILITATION,

14 Respondents.

FPPC Case No. 16/19684

15 STIPULATION, DECISION AND ORDER

16 INTRODUCTION

17 Yes on Prop. 57, Californians and Governor Brown for Public Safety and Rehabilitation (the  
18 “Committee”) was a primarily formed ballot measure committee created to support California  
19 Proposition 57, which was on the ballot in the November 8, 2016 General Election.

20 The Committee violated the advertising disclosure provisions of the Political Reform Act (the  
21 “Act”)<sup>1</sup> by failing to identify one of its top two contributors of \$50,000 or more on its website disclaimer,  
22 and failing to print the website disclaimer text in a sufficient contrasting color.

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27 <sup>1</sup> The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the  
28 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.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred in  
3 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they  
4 existed at that time.

5 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

6 When enacting the Act, the people of California found and declared that previous laws regulating  
7 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> To that end, the  
8 Act is to be construed liberally to accomplish its purposes.<sup>3</sup>

9 Advertisement Disclosure

10 An “advertisement” under the Act means any general or public advertisement which is authorized  
11 and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective  
12 office or a ballot measure(s).<sup>4</sup> This includes a communication on a website.<sup>5</sup>

13 In 2016, the Act required any advertisement for or against a ballot measure to include a disclosure  
14 statement identifying the committee’s top two contributors of \$50,000 or more.<sup>6</sup> In addition, the  
15 disclosure statement on electronic media advertisements must be presented in a clear and conspicuous  
16 manner.<sup>7</sup> In particular, as to text or graphic electronic media advertisements, the advertising disclosure  
17 information must appear with a reasonable degree of color contrast between the background and the text  
18 of the statement as to be legible.<sup>8</sup>

19 **SUMMARY OF THE FACTS**

20 The Committee qualified on February 24, 2016, and terminated as of December 31, 2017. In  
21 2016, the Committee received a total of \$10,723,494.23 in contributions and made \$11,684,389.71 in  
22 expenditures. Proposition 57 was a successful measure, receiving approximately 64.46 percent of the  
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25 <sup>2</sup> Section 81001, subd. (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 84501.

28 <sup>5</sup> Regulation 18450.3, subd. (a)(2)(A).

<sup>6</sup> Former Section 84503, subd. (a); Regulation 18450.4, subd. (b)(1).

<sup>7</sup> Regulation 18450.4, subd. (b)(3).

<sup>8</sup> Regulation 18450.4, subd. (b)(3)(G)(1).

1 vote.

2 The Committee maintained a website at vote4prop57.com. As early as August 21, 2016, the  
3 website had a disclaimer at the bottom of its home page, contained in a lined box, that stated it was “Paid  
4 for by” the Committee, with “major funding by Governor Brown’s Ballot Measure Committee.” The  
5 disclaimer was printed in blue text on a darker blue background, which rendered the disclaimer difficult  
6 to read.

7 As presented above, the website disclaimer only listed one top contributor of \$50,000 or more,  
8 Governor Brown’s Ballot Measure Committee. However, as of June 30, 2016, the Committee had nine  
9 different contributors of \$50,000 or more, according to its campaign reporting. As of July 13, 2016, the  
10 Committee’s top two contributors of \$50,000 or more were Governor Brown’s Ballot Measure  
11 Committee and the California Democratic Party. The top two contributors remained the same through the  
12 end of 2016.

13 The Enforcement Division contacted the Committee in early October 2016 regarding the  
14 insufficient website disclaimer. In response, as of October 13, 2016, the Committee changed the website  
15 disclaimer to include both Governor Brown’s Ballot Measure Committee and the California Democratic  
16 Party as the top two contributors of \$50,000 or more. Further, the text color was changed to white against  
17 a dark blue background, providing sufficient contrast so as to be legible to readers.

## 18 VIOLATION

### 19 Count 1: Insufficient Disclosure Statement on Advertisement

20 The Committee failed to identify one of the Committee’s top two contributors of \$50,000 or  
21 more, and failed to present the text in a clear and conspicuous manner, in an advertisement disclosure  
22 statement, in violation of Section 84503 and Regulation 18450.4, subdivisions (b)(1) and (b)(3)(G)(1).

## 23 PROPOSED PENALTY

24 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per  
25 count. Thus, the maximum penalty that may be imposed is \$5,000.<sup>9</sup>

26 In determining the appropriate penalty for a particular violation of the Act, the Commission  
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28 <sup>9</sup> Section 83116, subd. (c).

1 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the  
2 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
3 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or  
4 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
5 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
6 record of violations.<sup>10</sup> The Commission also considers penalties in prior cases involving similar  
7 violations.

8 In this case, the Enforcement Division did not discover any evidence displaying an intention by  
9 the Committee to conceal, deceive, or mislead the public. Further, the Committee promptly corrected the  
10 pertinent advertising disclosure errors after being contacted by the Enforcement Division. However,  
11 given the size of the Committee and the political significance of the supported state ballot measure, the  
12 impact of the violation described herein is more serious in nature.

13 Recent comparable cases in which a penalty was charged for violating the Act's advertising  
14 disclosure rules include the following:

15 • *In the Matter of Yes on 56-Save Lives California, a Coalition of Doctors, Dentists, Health Plans,*  
16 *Labor, Hospitals, Law Enforcement, and Non-Profit Health Advocate Organizations*; FPPC No.  
17 16/19678. Respondent, a state primarily formed ballot measure committee, failed to timely amend an  
18 electronic YouTube advertisement to reflect one of the committee's top two contributors of \$50,000 or  
19 more, in violation of Section 84503 and Regulation 18450.5. Following contact from the Enforcement  
20 Division, and approximately two weeks prior to the pertinent election, the respondent corrected the  
21 insufficient disclosure. In January 2017, the Commission approved a fine of \$2,500 on one count.

22 The violation here is deserving of a penalty comparable to that awarded in *Yes on 56* because it  
23 involves similar advertising disclosure violations.

24 In mitigation, the Committee corrected the disclosure errors right after they were contacted by the  
25 Enforcement Division, and prior to the pertinent election.

26 Based on the foregoing, a penalty in the amount of \$2,500 is recommended for Count 1.  
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28 <sup>10</sup> Regulation 18361.5, subd. (d).

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
3 Respondent, Yes on Prop. 57, Californians and Governor Brown for Public Safety and Rehabilitation,  
4 hereby agree as follows:

5 1. Respondent violated the Act as described in the foregoing pages, which are a true and  
6 accurate summary of the facts in this matter.

7 2. This stipulation will be submitted for consideration by the Fair Political Practices  
8 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

9 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
10 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
11 liability of Respondent pursuant to Section 83116.

12 4. Respondent has consulted with its attorney, James C. Harrison, Remcho, Johansen &  
13 Purcell, LLP, and understands, and hereby knowingly and voluntarily waives, all procedural rights set  
14 forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is  
15 not limited to the right to appear personally at any administrative hearing held in this matter, to be  
16 represented by an attorney at Respondent’s own expense, to confront and cross-examine all witnesses  
17 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
18 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
19 reviewed.

20 5. Respondent agrees to the issuance of the decision and order set forth below. Also,  
21 Respondent agrees to the Commission imposing against them an administrative penalty in the amount of  
22 \$2,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General  
23 Fund of the State of California—is/are submitted with this stipulation as full payment of the  
24 administrative penalty described above, and same shall be held by the State of California until the  
25 Commission issues its decision and order regarding this matter.

26 6. If the Commission declines to approve this stipulation—then this stipulation shall become  
27 null and void, and within fifteen business days after the Commission meeting at which the stipulation is  
28 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to

1 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
2 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
3 Director, shall be disqualified because of prior consideration of this Stipulation.

4 7. The parties to this agreement may execute their respective signature pages separately. A  
5 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax  
6 or as a PDF email attachment is as effective and binding as the original.

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8 Dated: \_\_\_\_\_  
9 Galena West, Chief of Enforcement  
10 Fair Political Practices Commission

11 Dated: \_\_\_\_\_  
12 \_\_\_\_\_, on behalf of Yes on Prop. 57,  
13 Californians and Governor Brown for Public Safety and  
14 Rehabilitation

1 The foregoing stipulation of the parties “In the Matter of Yes on Prop. 57, Californians and Governor  
2 Brown for Public Safety and Rehabilitation,” FPPC Case No. 16/19684 is hereby accepted as the final  
3 decision and order of the Fair Political Practices Commission, effective upon execution below by the  
4 Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_  
9 Alice T. Germond, Chair  
10 Fair Political Practices Commission  
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