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

10 In the Matter of:

FPPC Case No. 17/0088

11 COALITION TO PRESERVE LA,
SPONSORED BY AIDS HEALTHCARE
12 FOUNDATION, YES ON S, MICHAEL
WEINSTEIN, PETER REIS, AND
13 GERARD KENSLEA.

STIPULATION, DECISION AND ORDER

14 Respondents.

15
16 **INTRODUCTION**

17 Respondent Coalition to Preserve LA, Sponsored by AIDS Healthcare Foundation, Yes on S
18 (“Committee”), was a primarily formed ballot measure committee sponsored by the nonprofit AIDS
19 Healthcare Foundation. The Committee was formed to support the passage of Measure S in the City of
20 Los Angeles for a special election held on March 7, 2017. The Committee had three principal officers:
21 Michael Weinstein (“Weinstein”), Peter Reis (“Reis”), and Gerard Kenslea (“Kenslea”). The Committee,
22 Weinstein, Reis, and Kenslea violated the Political Reform Act¹ (“Act”) by failing to include the
23 necessary “Paid for by” language or disclose the name of the Committee on a billboard advertisement in
24 support of a local ballot measure.

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27 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections
28 81000 through 91014. All statutory references are to this code. 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 this source.

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 2017. 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 Political Reform Act, the people of California found and declared that
7 previous laws regulating political practices suffered from inadequate enforcement by state and local
8 authorities.² Thus, it was decreed that the Act “should be liberally construed to accomplish its
9 purposes.”³

10 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
11 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
12 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive advertisement disclosure
13 system.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
14 be “vigorously enforced.”⁶

15 **Advertisement Disclosure**

16 An “advertisement” under the Act means any general or public advertisement which is authored
17 and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective
18 office or a ballot measure(s).⁷ Under the Act, an advertisement includes oversized print media, such as a
19 billboard.⁸

20 The Act requires that any committee supporting a ballot measure print or broadcast its name as
21 part of any advertisement.⁹ The disclosure must include the words “paid for by” followed by the name of
22 the committee or person who paid for the advertisement.¹⁰ On a billboard, the “paid for by” identification
23

24 _____
25 ² Section 81001, subdivision (h).

³ Section 81003.

26 ⁴ Section 81002, subdivision (a).

⁵ Sections 84501, *et seq.*

27 ⁶ Section 81002, subdivision (f).

⁷ Section 84501.

⁸ Regulation 18450.1, subdivision (a)(6).

28 ⁹ Section 84504, subdivision (c).

¹⁰ Regulation 18450.4, subdivision (b)(1).

1 must be at least five percent of the height of the advertisement, printed in a color contrasting with the
2 sign background.¹¹ If the disclosure is more than one line, each line of the disclosure must be at least five
3 percent of the total height of the advertisement.

4 **Joint and Several Liability of Committee and Principal Officers**

5 It is the duty of a committee treasurer and the principal officers to ensure that the committee
6 complies with the Act’s requirements.¹² In particular, it is the duty of the committee’s principal officer to
7 authorize the content of communications made by the committee, authorize expenditures made by the
8 committee, and determine the committee’s campaign strategy.¹³ A treasurer and principal officers may be
9 held jointly and severally liable with the committee for violations committed by the committee.¹⁴

10 **SUMMARY OF THE FACTS**

11 On January 27, 2017 and February 28, 2017, the Enforcement Division received complaints
12 alleging that a billboard supporting the passage of Measure S in Los Angeles did not have the proper
13 advertisement disclosure. The sign was invoiced on January 12, 2017 and was placed sometime between
14 then and January 27, 2017. At that time, the billboard did not include any disclosure. On February 8,
15 2017, the Committee arranged to install a banner over the original billboard in order to correct the lack of
16 disclosure after receiving notice of the complaint in this case.

17 The added disclaimer included all of the required information, however, it was not compliant with
18 the size requirement. Each line of the disclosure was required to be at least 5% of the total height of the
19 billboard. Instead, each line was approximately 3.5% of the total height of the sign.

20 **VIOLATIONS**

21 **Count 1**

22 Failure to Comply with Advertising Disclosure Requirements

23 The Committee, Weinstein, Reis, and Kenslea failed to print the language “Paid for by” and
24 disclose the name of the Committee on a billboard, in violation of Section 84504, subdivision (c) and
25 Regulation 18450.4, subdivision (b)(1).

26
27 ¹¹ Regulation 18450.4, subdivision (b)(3)(D).

¹² Sections 81004, 84100, 84104, and Regulation 18427.

¹³ Section 82047.6; Regulation 18402.1, subdivision (b).

¹⁴ Sections 83116.5 and 91006.

1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
3 count.¹⁵

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.¹⁶ Here, the actions of the Committee appear to be the result of negligence, but there
11 is no evidence of deliberate omission or attempts to conceal. The Committee has no prior enforcement
12 history.

13 Additionally, the Commission considers penalties in prior cases with comparable violations. *In*
14 *the Matter of Committee to Improve Hermosa Schools – Yes on S, Michael Collins, and John Friberg,*
15 FPPC No. 16/0568 (The Commission approved a stipulated decision on February 15, 2018.) The
16 committee failed to include the necessary “paid for by” language or disclose the name of the committee
17 on 400 yard signs. The committee self-reported the violation five days after the signs were printed and
18 later distributed and the committee cooperated with the Enforcement Division’s investigation. The
19 Commission imposed a penalty of \$2,500.

20 This case is analogous because both cases involve the same type of advertising disclosure and
21 both cases have mitigating and aggravating factors. In *Committee to Improve Hermosa Schools*, the
22 committee self-reported the violation to the Enforcement Division days after the signs were ordered.
23 However, in aggravation, the committee failed to report approximately \$23,000 in subvendor payments
24 on campaign statements. If they had reported these subvendor payments, there would have been
25 additional disclosure that this committee had paid for yard signs. Here, the Committee acted to correct
26

27 _____
¹⁵ See Section 83116, subdivision (c).

28 _____
¹⁶ Regulation 18361.5, subdivision (d).

1 the lack of disclosure by ordering a banner to add the required disclosure. However, in aggravation, this
2 disclosure was insufficient as it did not meet the five percent height requirement.

3 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
4 penalty of \$2,500 is recommended.

5 CONCLUSION

6 Complainant, the Enforcement Division of the Fair Political Practices Commission, and the
7 Committee, Weinstein, Reis, and Kenslea hereby agree as follows:

8 1. Respondents violated the Act as described in the foregoing pages, which are a true and
9 accurate summary of the facts in this matter.

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

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

15 4. Respondents have consulted with their attorney, Fredric D. Woocher of Strumwasser &
16 Woocher LLP, and understands, and hereby knowingly and voluntarily waives, all procedural rights set
17 forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is
18 not limited to the right to appear personally at any administrative hearing held in this matter, to be
19 represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses
20 testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
21 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
22 reviewed.

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

1 6. If the Commission declines to approve this stipulation—then this stipulation shall become
2 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
3 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
4 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
5 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
6 Director, shall be disqualified because of prior consideration of this Stipulation.

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

10
11 Dated: _____
12 Galena West, Chief of Enforcement
13 Fair Political Practices Commission

14 Dated: _____
15 Michael Weinstein, individually and on behalf of Coalition
16 to Preserve LA, Sponsored by AIDS Healthcare Foundation,
17 Yes on S.

18 Dated: _____
19 Peter Reis, individually and on behalf of Coalition to
20 Preserve LA, Sponsored by AIDS Healthcare Foundation,
21 Yes on S.

22 Dated: _____
23 Gerard Kenslea, individually and on behalf of Coalition to
24 Preserve LA, Sponsored by AIDS Healthcare Foundation,
25 Yes on S.

1 The foregoing stipulation of the parties “In the Matter of Coalition to Preserve LA, Sponsored by
2 AIDS Healthcare Foundation, Yes on S, Michael Weinstein, Peter Reis, and Gerard Kenslea,” FPPC
3 Case No. 17/0088 is hereby accepted as the final decision and order of the Fair Political Practices
4 Commission, effective upon execution below by the Chair.

5
6 IT IS SO ORDERED.

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8 Dated: _____

_____ Alice T. Germond, Chair
Fair Political Practices Commission