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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 MARK FOSTER

13
14 Respondent.

FPPC Case No. 18/349

STIPULATION, DECISION AND ORDER

15
16 INTRODUCTION

17 Mark Foster (the “Committee” or “Respondent”) qualified as an independent expenditure
18 committee that opposed Pasadena Measures CC and DD in the June 5, 2018 Primary Election. The
19 Committee made \$2,225 in independent expenditures in advance of the election, thereby meeting the
20 \$1,000 threshold, and qualifying as an independent expenditure committee with reporting and disclosure
21 obligations under the Political Reform Act (the “Act”).¹ The Committee failed to meet those obligations
22 by failing to timely file a 24-hour independent expenditure report, and failing to include the required
23 disclosures on a print advertisement.

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28 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and 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 2018. 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.² For this reason,
8 the Act is to be construed liberally to accomplish its purposes.³

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

14 Independent Expenditure Committee

15 Any person who makes independent expenditures totaling \$1,000 or more in a calendar year
16 qualifies as an independent expenditure committee.⁷ An “independent expenditure” is an expenditure by
17 any person in connection with a communication which expressly advocates the election or defeat of a
18 clearly identified candidate or the qualification, passage, or defeat of a clearly identified ballot measure,
19 or taken as a whole and in context, unambiguously urges a particular result in an election but which is not
20 made to or at the behest of the affected candidate or committee.⁸

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25 ² Section 81001, subd. (h).
26 ³ Section 81003.
27 ⁴ Section 81002, subd. (a).
28 ⁵ Sections 84200, *et seq.*
⁶ Section 81002, subd. (f).
⁷ Section 82013, subd. (b).
⁸ Section 82031.

1 Mandatory Filing of Campaign Statements

2 At the core of the Act’s campaign reporting system is the requirement that committees file
3 campaign statements and reports for certain reporting periods and by certain deadlines.⁹

4 The Act requires independent expenditure committees to file semiannual campaign statements
5 each year no later than July 31 for the period ending June 30, and no later than January 31 for the period
6 ending December 31, if they have made contributions or independent expenditures during the respective
7 six-month period.¹⁰

8 Duty to File 24-Hour Independent Expenditure Reports

9 When a committee makes a late independent expenditure, the committee must disclose the
10 expenditure in a 24-hour independent expenditure report filed in the places where it would be required
11 to file campaign statements as if it were formed or existing primarily to support or oppose the candidate
12 or measure for or against which it is making the late independent expenditure within 24 hours of making
13 the late independent expenditure.¹¹ A “late independent expenditure” means any independent
14 expenditure which totals in the aggregate \$1,000 or more and is made for or against any specific
15 candidate or measure involved in an election within 90 days before the date of the election or on the date
16 of the election.¹²

17 Advertisement Disclosure

18 An “advertisement” under the Act means any general or public communication that is authorized
19 and paid for by a committee for the purpose of supporting or opposing a candidate(s) for elective office
20 or a ballot measure(s).¹³

21 Under the Act, any advertisement paid for by an independent expenditure committee shall include
22 the words “Paid for by” followed by the name of the committee.¹⁴

23 The Act also sets out certain display requirements for these disclosures as displayed on print
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25 ⁹ Sections 84200, *et seq.*

26 ¹⁰ Section 84200, subd. (b).

27 ¹¹ Section 84204.

28 ¹² Section 82036.5.

¹³ Section 84501.

¹⁴ Section 84502, subd. (b).

1 advertisements. Print ad disclosures must appear in a printed or drawn box with a solid white background
2 on the bottom of at least one page, set apart from other printed matter, and must use text that is in
3 contrasting color.¹⁵ Disclosures on ads individually distributed, including flyers, must use text that is in
4 Arial font, at least 10-point in size.¹⁶

5 **SUMMARY OF THE FACTS**

6 Measures CC and DD appeared on the June 5, 2018 Primary Election ballot in Pasadena. Measure
7 CC sought to lift the city’s ban on marijuana dispensaries and Measure DD sought to establish taxes on
8 marijuana businesses. Both ballot measures were successful, with Measure CC receiving approximately
9 60.82 percent of the vote, and Measure DD receiving approximately 75.95 percent of the vote.

10 The Committee became an independent expenditure committee when it made an independent
11 expenditure in the amount of \$2,225 on or about May 30, 2018, thereby reaching the \$1,000 threshold
12 required of independent expenditure committees. Specifically, the Committee paid for the distribution of
13 flyers expressly advocating the opposition to Measures CC and DD prior to the election. The flyer’s
14 language included statements such as “On the June 5th ballot, we will be asked to decide whether we
15 want marijuana shops in our city” and “Vote NO on Measures CC and DD.” Therefore, the flyer’s
16 express advocacy for Measures CC and DD was clear; and, as a result, the related payments made by the
17 Committee were independent expenditures, thereby qualifying the Committee as an independent
18 expenditure committee.

19 The flyers failed to include the required disclosure providing that they were “Paid for by” the
20 Committee. Instead, the flyers listed the website address www.PasadenaVoteNo.com. However, the
21 website also failed to disclose the identity of the true responsible person. Instead, the website appeared to
22 be created by “Pasadena Vote No – Against Pot Shops in Pasadena” or “Pasadena Against Pot Shops,”
23 neither of which is a registered committee.

24 The Committee also failed to meet its campaign filing obligations once it qualified as an
25 independent expenditure committee. Since the Committee made independent expenditures during the
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28 ¹⁵ Section 84504.2, subd. (a)(1).

¹⁶ Section 84504.2, subd. (a)(2).

1 reporting period of January 1, 2018 to June 30, 2018, it was required to file a semiannual campaign
2 statement covering that period. Further, the Committee was required to file a 24-hour independent
3 expenditure report within 24 hours of making the aforementioned late independent expenditure.
4 However, the Committee did not timely file either of these documents. After contact from the
5 Enforcement Division, on January 28, 2019, the Committee filed the missing campaign statement and 24-
6 hour report disclosing the single \$2,225 independent expenditure.

7 **VIOLATIONS**

8 Count 1: Failure to Timely File 24-Hour Independent Expenditure Report

9 The Committee failed to timely file a 24-hour independent expenditure report for a late
10 independent expenditure in the amount of \$2,225 made on May 30, 2018, in violation of Section 84204.

11 Count 2: Failure to Comply With Disclosure Requirements for Political Advertisements

12 The Committee failed to print the language “Paid for by” and disclose the name of the Committee
13 on a print advertisement, in violation of Section 84502.

14 **PROPOSED PENALTY**

15 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
16 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁷

17 In determining the appropriate penalty for a particular violation of the Act, the Commission
18 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
19 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
20 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
21 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
22 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
23 record of violations.¹⁸

24 In this case, the Enforcement Division found no evidence that the Committee intended to conceal,
25 deceive, or mislead the public. Further, the Committee does not have a prior history of violating the Act.

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¹⁷ Section 83116, subd. (c).

¹⁸ Regulation 18361.5, subd. (d).

1 However, in contrast, the violations arising from the Committee’s distribution of the flyer are serious
2 given the elevated level of public confusion caused by the Committee’s identification of a group other
3 than the true sender on the website that the flyer referred to.

4 The Commission also considers penalties in prior cases involving similar violations. Recent
5 similar cases involving a committee’s failure to timely file a 24-hour independent expenditure report
6 include the following:

7 • *In the Matter of Save Avalon Now, A Committee Supporting Mayor Marshall, Council*
8 *Candidates Montano and Hernandez, Opposing Council Candidates MacGugan-Cassidy, Olsen and*
9 *Fertig 2016; Mike Sheehan; and Lysa Ray; FPPC No. 16/19829.* Respondents, a primarily formed
10 committee, and its principal officer and treasurer, failed to timely file three 24-hour independent
11 expenditure reports for a total of \$3,208.90 in late expenditures, in violation of Section 84204. The
12 pertinent late independent expenditures were not otherwise disclosed on another statement or report filed
13 prior to the subject election. In September 2018, the Commission approved a fine of \$1,500 on one count.

14 As to Count 1, the Committee is deserving of a penalty higher than that approved in the *Save*
15 *Avalon Now* case. Although each case involved a similar amount of financial activity, here, the violation
16 is aggravated by the fact that the Committee also failed to timely file its semiannual campaign statement
17 for the period ending June 30, 2018, which captured the pertinent late independent expenditure.

18 Recent similar cases involving a failure to comply with the Act’s advertising disclosure
19 requirements include the following:

20 • *In the Matter of Preserve Tracy / “No on Measure M” and Dana Richards; FPPC No. 18/1104.*
21 Respondents, a primarily formed ballot measure committee and its treasurer, failed to include the proper
22 disclosures on two yard sign and one website advertisement, in violation of Sections 84502, 84504.2,
23 subdivision (b), and 84107. The committee paid for one yard sign ad that failed to include the necessary
24 “Paid for by” or committee name disclosures. Respondents quickly modified the sign by adding
25 corrective stickers; however, the added disclosure was too small and did not print the full name of the
26 committee. The committee paid for a second yard sign advertisement that failed to print the full name of
27 the committee. Finally, the committee maintained a website that failed to include the required “Paid for
28 by” phrase. In February 2019, the Commission approved a fine of \$2,500 on one count.

As to Count 2, a penalty lower than in the comparable case is warranted given the lower number of non-complying advertisements.

Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Timely File 24-Hour Independent Expenditure Report	\$2,000
2	Failure to Comply With Disclosure Requirements for Political Advertisements	\$2,000
	TOTAL:	\$4,000

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent, Mark Foster, hereby agree as follows:

- Respondent violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
- This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondent pursuant to Section 83116.
- Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent’s own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
- Respondent agrees to the issuance of the decision and order set forth below. Also, Respondent agrees to the Commission imposing against him an administrative penalty in the amount of

1 \$4,000. One or more payments totaling this amount, to be paid to the General Fund of the State of
2 California, is/are submitted with this stipulation as full payment of the administrative penalty described
3 above, and they will be held by the State of California until the Commission issues its decision and order
4 regarding this matter.

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

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

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15 Dated: _____
16 Galena West, Chief of Enforcement
17 Fair Political Practices Commission

18 Dated: _____
19 Mark Foster

1 The foregoing stipulation of the parties "In the Matter of Mark Foster," FPPC Case No. 18/349 is hereby
2 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
3 execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____
8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
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