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2 FAIR POLITICAL PRACTICES COMMISSION  
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7 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
8 STATE OF CALIFORNIA  
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10 In the Matter of ) FPPC NO. 93/345  
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12 COUNTY OF SACRAMENTO, ) STIPULATION,  
13 ) DECISION AND  
14 ) ORDER  
15 )  
16 Respondent. )  
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28 The complainant, Acting Executive Director of the Fair  
29 Political Practices Commission, ROBERT TRIBE and Respondent  
30 COUNTY OF SACRAMENTO hereby agree that this Stipulation will be  
31 submitted for consideration by the Fair Political Practices  
32 Commission at its next regularly scheduled meeting.

33 The parties agree to enter into this Stipulation to  
34 resolve all factual and legal issues raised in this matter and  
35 to reach a final disposition without the necessity of holding an  
36 administrative hearing to determine the liability of the  
37 Respondent.

38 Respondents understand and hereby knowingly and  
39 voluntarily waive any and all procedural rights under Cal. Gov.  
40 Code Sections 83115.5, 11503 and 2 Cal. Code of Regs. Section

1 18361, including but not limited to a determination of probable  
2 cause, the issuance and receipt of an accusation, and the right  
3 to appear personally in any administrative hearing held in this  
4 matter, to confront and cross-examine all witnesses testifying  
5 at the hearing, to subpoena witnesses to testify at the hearing  
6 and to have an impartial administrative law judge present at the  
7 hearing to act as a hearing officer.

8 Respondents further understand and hereby acknowledge that  
9 this Stipulation is not binding upon any other law enforcement  
10 agency and does not preclude the Commission from referring this  
11 matter to, cooperating with, or assisting any such other agency  
12 with regard to this or any other related matters.

13 It is further stipulated and agreed that Respondent has  
14 violated the Political Reform Act as described in Exhibit I,  
15 attached hereto and incorporated herein by reference, which is a  
16 true and accurate summary of the facts in this matter.

17 Respondent agrees to the issuance of the Decision and  
18 Order and imposition by the Commission of a fine in the amount  
19 of Ten Thousand Dollars (\$10,000.00). A cashier's check in said  
20 amount, payable to the "General Fund of the State of  
21 California," is to be submitted by respondent.

22 As part of this Stipulation, Respondent further agrees to  
23 file campaign statements disclosing all expenditures made by the  
24 county regarding Proposition 172 and Measure Q, which appeared  
25 on the November 2, 1993 ballot, as well as expenditures relating  
26 to Measure B which appeared on the November 8, 1994 ballot.

27 Such statements shall be filed with the Sacramento County Clerk

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and the FPPC no later than 10 days from the date of the issuance of this Order. Respondent understands that failure to comply with this Order may be punishable as contempt.

The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null and void. Respondent further stipulates and agrees that in the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, no member of the Commission shall be disqualified because of prior consideration of this Stipulation.

Dated: 6/20/96 Robert Tribe  
ROBERT TRIBE  
Acting Executive Director  
Fair Political Practices Commission  
Complainant

Dated: 6/13/96 \_\_\_\_\_  
SACRAMENTO COUNTY  
Respondent  
By Robert P. Thomas  
Title County Executive  
Robert P. Thomas

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Dated: 6/13/96

By: *J. Steven Burris*  
Name: J. Steven Burris  
Attorney for Respondent Sacramento  
County

\* \* \* \* \*

IT IS SO ORDERED, effective upon execution by the Chairman  
of the Fair Political Practices Commission at Sacramento,  
California.

Dated: 7/10/96

*Ravi Mehta*  
RAVI MEHTA  
Chairman  
Fair Political Practices Commission

**I.**  
**INTRODUCTION**

This stipulation involves ballot measures in the County of Sacramento for 1993 and 1994. The county failed to report expenditures relating to the ballot measures as required by the Political Reform Act.

For purposes of this stipulation, the violations of the Political Reform Act (the "Act") are as follows:

**COUNT 1:** Respondent failed to file a supplemental expenditure report for the period covering January 1, 1993 through September 18, 1993, which was due on September 23, 1993, in violation of Section 84203.5.

**Respondent:** County of Sacramento

**COUNT 2:** Respondent failed to file a supplemental expenditure report for the period covering September 19, 1993 through October 16, 1993, which was due on October 21, 1993, in violation of Section 84203.5.

**Respondent:** County of Sacramento

**COUNT 3:** Respondent failed to file a late independent expenditure report for independent expenditures made in violation of Section 84202.

**Respondent:** County of Sacramento

**COUNT 4:** Respondent failed to file a semiannual campaign report covering the period January 1, 1994 through June 30, 1994, which was due on July 31, 1994, in violation of Section 84200.

**Respondent:** County of Sacramento

**COUNT 5:** Respondent failed to file a supplemental expenditure report covering the period July 1, 1994 through September 30, 1994, which was due on October 20, 1994, in violation of Section 84203.5.

**Respondent:** County of Sacramento

**II.**  
**LEGAL SUMMARY**

Section 81002(a) provides that the purpose of campaign reporting under the Act is such that "receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that voters may be fully informed and improper practices may be inhibited."

## The Definition of Expenditure and Independent Expenditure

An "expenditure" is

a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes.

Section 82025.

A payment is "made for political purposes" if it is:

For the purpose of influencing or attempting to influence the action of the voters for or against the . . . passage of any measure.

Regulation 18225(a)(1).

"Expenditure" includes any monetary or non-monetary payment made by any person that is used for communications which "expressly advocate" the passage or defeat of a "clearly identified" ballot measure. Regulation 18225(b).

A measure that has qualified to be placed on the ballot is "clearly identified" if the communication states a proposition number, official title or popular name associated with the measure. Regulation 18225(b)(1).

A communication "expressly advocates" the passage or defeat of a measure if it refers to a clearly identified measure so that the communication, taken as a whole, unambiguously urges a particular result in an election. Regulation 18225(b)(2).

An "independent expenditure" is:

an expenditure made by any person in connection with a communication which expressly advocates . . . 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.

Section 82031.

### The Reporting Requirements

Section 82013(b) states in pertinent part that a "committee" means any person or combination of persons who directly or indirectly makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year.

Counts 1, 2, 5

Section 84203.5 requires that in addition to any campaign statements required, if a committee has made independent expenditures totaling \$500 or more in a calendar year to support or oppose 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 existing primarily to support or oppose the measure or qualification of the measure. No independent expenditure report need be filed to cover a period for which there has been no activity to report.

Count 3

Section 82036.5 defines late independent expenditures as any independent expenditure which totals in the aggregate one thousand dollars (\$1,000) or more and is made for or against any specific measure involved in an election before the date of the election but after the closing date of the last campaign statement required to be filed prior to the election by a committee participating in such election.

A committee which makes a late independent expenditure shall report the late independent expenditure by facsimile transmission, telegram, guaranteed overnight mail through the United States Postal Service or personal delivery within 24 hours of the time it is made. (Section 84202.)

Count 4

Section 84200 states that all committees pursuant to Section 82013(b) shall file campaign statements each year no later than July 31 for the period ending June 30, and no later than January 31 for the period ending December 31, if they have made contributions or independent expenditures during the six-month period before the closing date of the statements.

III.

SUMMARY OF THE CASE

COUNTS 1 - 3

PROPOSITION 172 AND MEASURE Q

The November 2, 1993, ballot included a statewide constitutional amendment, Proposition 172. Passage of the proposition would have enacted a permanent half-cent sales tax earmarked for public safety services. A local Sacramento County measure, Measure Q, also appeared on the November ballot. That measure, if approved, would have retained the existing sales tax in Sacramento County.

A memorandum regarding Proposition 172 and Measure Q, and authored by the County Executive, was included as an insert in County utility bills.

### The Insert

The insert was a two page memorandum on Sacramento County letterhead, dated September 7, 1993, from Bob Smith, County Executive, and addressed to Members of the Public. In pertinent part the insert stated:

What is Proposition 172?

Proposition 172 is a statewide ballot measure which will be decided in the November 2, 1993 general election. It is not a tax increase. If passed by the voters, it would extend California's 1/2-cent sales tax which was enacted in July 1991 and expires on December 31, 1993.

What is Measure Q?

Measure Q is a local measure which will appear on the Sacramento County ballot in November. It is not a tax increase either. If approved by the voters, it would retain the existing sales tax rate within Sacramento County.

What happens if neither measure passes?

The sales tax rate would decrease by 1/2-cent on January 1, 1994. The County would lose \$50 million a year in revenue to support basic services. This revenue reduction, on top of large revenue losses already experienced, would result in major reductions to County services, especially law enforcement. To put a \$50 million reduction into perspective: The Sheriff reports that a targeted annual reduction of \$23 million to the Sheriff's Department more than exceeds the cost of the entire patrol division. The District Attorney reports that the contemplated cuts would eliminate major prosecution efforts - including those aimed at rape, child molest, domestic violence, and consumer protection. The reduction to Probation is large enough to eliminate adult field supervision of probationers.

Other than the negative impact to law enforcement as set forth in the paragraph above, the letter offered no other examples of effects on other county departments. The insert included no argument against the ballot measures.

### The Supervisors' Decision

The Sacramento County Board of Supervisors at its meeting on September 7, 1993, adopted a resolution endorsing Proposition 172 and Measure Q and approving the placing insert in county utility



bills. Supervisors Collin, Toby Johnson, Grantland Johnson, David Cox, and Muriel Johnson voted in favor of the resolution.

Sacramento County utility bills were mailed out to residents beginning some time in September 1993 in an eight week cycle, with approximately 30,000 bills being mailed out each week. The insert was sent to approximately 240,000 residents of Sacramento County.

The county's costs included:

Printing 1/	\$ 1,900
Zipsort 2/	\$ 1,500
Octel 3/	\$ 7,068
TOTAL	\$ 10,468

In addition to the expenditures set forth above, county employees spent time drafting the insert and answering telephone calls about the ballot measures.

The county made "expenditures," as defined by the Act, in excess of \$1,000, thereby qualifying it as a committee under Section 82013(b). Thus the county was required to report the costs of these mailers as independent expenditures and to file other campaign statements.

Count 1. Mailings from the county began sometime in September 1993 and continued up to the election. 30,000 mailings a week were sent. Therefore, the county was required to file a supplemental expenditure report for the period covering January 1, 1993 through September 18, 1993, due on September 23, 1993, but failed to do so.

Count 2. Likewise, the county failed to file a supplemental expenditure report for the period covering September 19, 1993 through October 16, 1993, due on October 21, 1993.

Count 3. The late independent expenditure period was from October 17, 1993, through November 8, 1993. During that period,

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1/ Printing was provided for by the Department of General Services.

2/ This private vendor was paid to stuff the insert into the utility bills.

3/ The county installed additional phone lines. Octel set up an automated voice response system to give callers a pre-recorded message regarding Proposition 172 and Measure Q.

the flier was mailed to approximately 60,000 county residents. The county failed to file a late independent expenditure report.

COUNTS 4 - 5  
MEASURE B

Sometime in late 1992 or early 1993, a group of individuals called People for Safer Parks ("PSP") and various interested citizens approached Sacramento County's Department of Parks and Recreation about ways to form a Benefit Assessment District ("BAD").

On August 9, 1994, the Sacramento County Board of Supervisors approved Resolution No. 94-0234, authorizing a \$118,492 contract to hire a consultant for the formation of a BAD. Supervisors David Cox, Illa Collin, Roger Dickinson, and Toby Johnson approved the expenditure.

The county hired BSI Engineering to do the "assessment engineering" with Sacramento County Department of Parks and Recreation on Measure B. A sub-consultant on the project, SAE Communications, was named under the county's contract to conduct a public education program.

The BSI's contract with SAE states that SAE would develop a public education program that would "focus on how to best inform County residents about the need for additional funding and the open space ballot measure." SAE was to develop a "comprehensive Public Education Plan designed to identify key issues that will need to be addressed for the successful formation of the assessment district." Included among SAE's duties was the creation of a brochure, video, preparation of articles for newsletters, a media relations strategy, and a briefing of key community leaders.

The Brochure

The BSI-SAE contract also called for the production of a "fact sheet." This fact sheet would "explain[] the scope of the project, benefits to voters, cost, parcels to be acquired, and benefit assessment district financing technique."

The "fact sheet" took the form of a brochure. The brochure for "Measure B Parks, Security and Improvements Funding" consisted of a 10-point inquiry. The following is sample language from the brochure:

1. Parks, Security and Improvements Funding: Is it Right for Sacramento?

Safer neighborhood parks... hiring security personnel to patrol the American River Parkway and other parks . . .  
correcting health and safety problems at parks and swimming pools . . . new playgrounds and sports fields ...

accessibility for the disabled . . . keeping kids busy . . . hiring youth to remove and prevent graffiti and renovate parks . . . preserving open space before it disappears. These are a few of the improvements and services to be funded in at proposal that will appear on the November 8, 1994 ballot."

## 2. How Would We Pay For These Services?

Property owners would be assessed a fee to pay for specific projects and services. The assessment would total \$10 per year for a single family homeowner. A typical shopping center on 3 acres would pay \$146.25 per year and industrial properties on 1.5 acres would pay \$56.25 per year. A typical apartment owner would be billed \$6.50 per apartment per year.

\* \* \*

## 6. How Will The New Facilities And Sites Be Maintained?

This measure includes funds to maintain and operate park and open space lands; and provide security personnel and park rangers. Renovation of facilities will make parks easier to maintain and children's playground equipment, sports fields and pools safer. This will reduce future maintenance costs.

The brochure contains photographs of children playing in well-maintained parks, of a smiling veteran holding a dedication plaque, a security officer on a bicycle assisting a bicyclist, and a maintenance worker painting a bridge.

The brochure does not include any arguments against the ballot measure.

The County Counsel's Office advised that the county should "expect" a FPCC investigation on the Measure B materials. A memorandum, dated August 22, 1994, from then Deputy County Counsel Robert Ryan to Gene Andal, Director of Department of Parks & Recreation, addressed issues relating to the Measure B brochure and video (hereinafter the "August 22 Memorandum"). In pertinent part the memo states:

Pursuant to your request, I have reviewed materials prepared for inclusion in an informational brochure and video tape for the proposed County-wide parks assessment. . . . It is my understanding that these materials have been prepared by a consultant for the express purpose of avoiding challenges that the County is engaging in partisan campaigning. . . .

[T]his office cannot guarantee that a trier of fact will not determine that any information of this nature supplied in relation to an assessment put to the voters crosses the line

from information dissemination to partisan campaigning. The proposed video is a particular concern. While the video has not been seen, it is difficult to imagine a video presentation which is exclusively informational about the ballot measure . . . .

Because of the nature of this particular ballot question, an assessment on property to fund parks, you can expect complaints to be lodged with the Fair Political Practices Commission (FPPC). You can further expect that, on the basis of such complaints, the FPPC will conduct an investigation not only regarding the expenditure of public funds to disseminate the attached information, but of all public expenditures in connection with this ballot measure. An adverse determination by the FPPC could subject the County to substantial fines.

The memo indicates that Bob Smith and Supervisors Dickinson, Collin, Muriel Johnson, Cox, and Toby Johnson each were sent a copy.

The county made "expenditures," as defined by the Act, in excess of \$1,000, thereby qualifying it as a committee under Section 82013(b). Thus, the county was required to report these costs as independent expenditures and to file other campaign statements.

Count 4. From March 1 through June 30, 1994, the county received \$24,000 in services in relation to the public education campaign. Therefore, the county was required to file campaign statement for the period January 1, 1994, - June 30, 1994. The county failed to do so.

Count 5. From July 1 through - September 30, 1994, the county received \$24,000 in services in relation to the public education campaign. Therefore, a supplemental independent expenditure report for the period covered was due on October 5, 1994. The county failed to file any such report.

The totality of the circumstances, at various times and places, when taken together, shows that the county made expenditures which urged passage of Proposition 172 and Measure Q in 1993, and Measure B in 1994.

#### IV.

#### FACTORS IN MITIGATION

Respondents have no enforcement history with the FPPC.

v.

CONCLUSION

This matter consists of five counts against respondent which carry a maximum possible total penalty of \$10,000. The failure of respondent to comply with the requirements of the Political Reform Act justifies imposition of the agreed upon penalty of \$10,000.

93345/exhibit2