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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10 In the Matter of) FPPC No. 10/1090
11)
12 NEIGHBORS OPPOSING TEBBS, EASON &)
HANEY FOR FIRE BOARD 2010, and) STIPULATION, DECISION and
13 THOMAS J. FRANCL, TREASURER,) ORDER
14)
Respondents.)
15)
16)

17 Complainant, Roman G. Porter, Executive Director of the Fair Political Practices Commission,
18 and Respondents Neighbors Opposing Tebbs, Eason & Haney for Fire Board 2010, and Thomas J.
19 Francl, hereby agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
22 matter, and to reach a final disposition without the necessity of holding an administrative hearing to
23 determine the liability of Respondents.

24 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
25 rights set forth in Sections 83115.5, 11503, and 11523 of the Government Code, and in Sections 18361.1
26 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
27 the right to personally appear at any administrative hearing held in this matter, to be represented by an
28 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the

1 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
2 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

3 It is further stipulated and agreed that Respondents Neighbors Opposing Tebbs, Eason & Haney
4 for Fire Board 2010, and Thomas J. Francl, violated the Political Reform Act by expending campaign
5 funds for telephone calls that were similar in nature and aggregated 500 or more in number, without
6 disclosing the name of the organization that authorized or paid for the calls to the recipients of the calls,
7 in violation of Government Code Section 84310, subdivision (a) (Count 1). Exhibit 1 is attached hereto
8 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
9 of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing upon it an administrative penalty in the amount of
12 One Thousand Five Hundred Dollars (\$1,500). A cashier's check from Respondents in said amount,
13 made payable to the "General Fund of the State of California," is submitted with this Stipulation as full
14 payment of the administrative penalty, to be held by the State of California until the Commission issues
15 its decision and order regarding this matter. The parties agree that in the event the Commission refuses
16 to accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
18 connection with this Stipulation shall be reimbursed to Respondents.

19 Respondents further stipulate and agree that in the event the Commission rejects the Stipulation,
20 and a full evidentiary hearing before the Commission becomes necessary, neither any member of the
21 Commission, nor the Executive Director, shall be disqualified because of prior consideration of this
22 Stipulation.

23 Dated: _____

Roman G. Porter
Executive Director, Fair Political Practices Commission

24
25
26
27 Dated: _____

Thomas J. Francl, Treasurer, individually and on behalf of
Neighbors Opposing Tebbs, Eason & Haney for Fire Board
2010, Respondents

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Neighbors Opposing Tebbs, Eason &
3 Haney for Fire Board 2010, and Thomas J. Francl, Treasurer”, FPPC No. 10/1090, including all attached
4 exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
5 effective upon execution below by the Chair.

6
7 IT IS SO ORDERED.

8
9
10 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Neighbors Opposing Tebbs, Eason, & Haney for Fire Board 2010 (“Respondent Committee”) was a recipient committee primarily formed to oppose Bruce Tebbs, Tony Eason, and Bob Haney, in the November 2, 2010, Deer Springs Fire Protection District Board Member election. Respondent Thomas J. Francl (“Respondent Francl”) was Respondent Committee’s treasurer at all relevant times.

On October 15, 2010, Respondent Committee and Respondent Francl (“Respondents”) paid for and authorized 1,000 telephone calls that were similar in nature and that did not disclose the name of Respondent Committee to the recipients of the telephone calls.

Respondents’ violation of the Political Reform Act (the “Act”)¹ consists of the following:

Count 1: On or about October 15, 2010, Respondent Neighbors Opposing Tebbs, Eason, & Haney for Fire Board 2010, and its treasurer Respondent Thomas Francl, expended campaign funds on telephone calls that were similar in nature and 500 or more in number that did not disclose the name of the organization that authorized or paid for the telephone calls to the recipients of the telephone calls, in violation of Government Code section 84310, subdivision (a).

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed at the time of the violations.

Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.” (Section 81002, subd. (f).)

¹ The Political Reform Act is contained in Government Code Sections 81,000 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.

Identification Requirements for Telephone Calls that are Similar in Nature and Aggregate 500 or More in Number

Pursuant to Section 84310, subdivision (a), a committee “may not expend campaign funds, directly or indirectly, to pay for telephone calls that are similar in nature and aggregate 500 or more in number, made by an individual, or individuals, or by electronic means and that advocate support of, or opposition to, a candidate, ballot measure, or both, unless during the course of each call the name of the organization that authorized or paid for the call is disclosed to the recipient of the call.”

Under Regulation 18440, subdivision (c)(1), a committee pays for a call whether it pays directly for the call or pays another person to make the call on its behalf.

Treasurer Liability

Under Section 81004, subdivision (b), Section 84100 and Regulation 18427, subdivision (a), a committee’s treasurer has the duty to ensure compliance with all requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. Pursuant to Sections 83116.5 and 91006, the treasurer of a committee may be held jointly and severally liable, along with the committee, for the committee’s violations.

SUMMARY OF THE FACTS

In early October of 2010, Respondent Francl, on behalf of Respondent Committee, asked Thomas Donnelly, a sitting member of the Deer Springs Fire Protection District Board, to arrange for calls to be made in support of Jean F. Slaughter, Robert E. Osby, and Bret A. Sealey, who were running for the Deer Springs Fire Protection District Board in the November 2, 2010, election. On or about October 15, 2010, Frank Donnelly arranged and paid \$370 for 1,000 identical and automated telephone calls to be made to voters in the Deer Springs Fire Protection District with a message from him asking voters to vote for Jean F. Slaughter, Robert E. Osby, and Bret A. Sealey in the November 2, 2010, Deer Springs Fire Protection District Board Member election. On or about October 15, 2010, Respondent Francl, on behalf of Respondent Committee, reimbursed Frank Donnelly \$370 for the cost of the telephone calls.

The telephone calls were made between October 15, 2010, and October 22, 2010, and the telephone calls did not disclose to its recipients that Respondent Committee had authorized and paid for the telephone calls.

Accordingly, Respondents committed one violation of the Act, as follows:

Count 1

Failure to Disclose the Name of the Organization that Authorized or Paid for 500 or more Similar Telephone Calls

On or about October 15, 2010, Respondent Neighbors Opposing Tebbs, Eason, & Haney for Fire Board 2010, and its treasurer Respondent Thomas Francl, expended campaign funds on

telephone calls that were similar in nature and 500 or more in number that did not disclose the name of the organization that authorized or paid for the telephone calls to the recipients of the telephone calls, in violation of Government Code section 84310, subdivision (a).

CONCLUSION

This matter involves 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 Enforcement Division of the Fair Political Practices Commission (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 Enforcement Division 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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Failure to include the proper caller identification in Robocalls is a serious violation of the Act because it deprives the public of important information regarding the sponsor of the telephone calls. In this matter, 1,000 telephone calls were made without proper disclosure, and therefore recipients of the Robocalls were denied information regarding the true source of the call.

The violation was likely due to Respondent Franci's negligence and lack of experience with the Act, rather than deliberate acts to deceive the public. Also, the Robocalls were positive ads supporting candidates rather than negative ads. Additionally, Respondent Franci demonstrated good faith in cooperating with the Enforcement Division's investigation of this matter and Respondents do not have a history of action by the Enforcement Division.

Section 84310 has no history of fines. Recent penalties approved by the Commission concerning violations of Section 84305, subdivision (a), disclosure requirements for mass mailing, a section of the Act that has a very similar purpose to Section 84310, include:

- *In the Matter of Chico Democrats 08 and Michael Worley*, FPPC No. 09/537. This case involved one count of a violation of Section 84305, subdivision (a). A penalty of \$2,500 was approved by the Commission on January 28, 2011, due to respondents' action of intentional identification of a fictitious committee on a mass mailer, which misled the public regarding the sponsor of the mailing. Respondents had no prior history of violating the Act and cooperated with the Enforcement Division's investigation.

In this matter, Respondents' actions were less egregious because Respondents did not intentionally mislead the public regarding the sponsor of the Robocalls, and therefore an

imposition of an administrative penalty in the amount of \$1,500 for Count 1 is recommended. This is in the low range of penalties recommended for violations of Section 84305, subdivision (a).

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a penalty of \$1,500 is recommended.

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