

1 GALENA WEST
Enforcement Chief
2 TOREN A. LEWIS
Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of:

FPPC No. 16/19686

12 YES ON PROP 61, CALIFORNIANS FOR
13 LOWER DRUG PRICES, WITH MAJOR
14 FUNDING BY AIDS HEALTHCARE
15 FOUNDATION AND CALIFORNIA NURSES
ASSOCIATION PAC,

STIPULATION, DECISION, AND ORDER

16 Respondent.
17

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondent Yes on Prop 61, Californians for Lower Drug Prices, With Major Funding by AIDS Healthcare
21 Foundation and California Nurses Association PAC (Respondent) hereby agree that this Stipulation will
22 be submitted for consideration by the Fair Political Practices Commission (Commission) at its next
23 regularly-scheduled meeting.

24 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
25 matter and to reach a final disposition without the necessity of holding an additional administrative hearing
26 to determine the liability of Respondent.

27 Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural
28 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of

1 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to
2 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
3 Respondent's own expense, to confront and cross-examine all witnesses testifying at the hearing, to
4 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
5 the hearing as a hearing officer, and to have the matter judicially reviewed.

6 It is further stipulated and agreed that Respondent violated the Political Reform Act by failing to
7 disclose one of its two highest donors of \$50,000 or more on advertisements in violation of Government
8 Code sections 84503, subdivision (a) and 84504, subdivision (c) as described in Exhibit 1. Exhibit 1 is
9 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
10 accurate summary of the facts in this matter.

11 Respondent agrees to the issuance of the Decision and Order, which is attached hereto.
12 Respondent also agrees to the Commission imposing an administrative penalty in the amount of Two
13 Thousand Five Hundred Dollars (\$2,500). Respondent submitted with this Stipulation a cashier's check
14 in said amount, made payable to the "General Fund of the State of California," as full payment of the
15 administrative penalty that shall be held by the State of California until the Commission issues its Decision
16 and Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
17 Stipulation, the checks shall become null and void, and within fifteen (15) business days after the
18 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondent in
19 connection with this Stipulation shall be reimbursed to Respondent. Respondent further stipulates and
20 agrees that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
21 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
22 shall be disqualified because of prior consideration of this Stipulation.

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25 Dated: _____
26 Galena West, Chief, on behalf of the Enforcement
27 Division of the Fair Political Practices Commission
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Dated: _____
Bradley W. Hertz, Assistant Treasurer, on behalf of Yes
on Prop 61, Californians for Lower Drug Prices, With
Major Funding by AIDS Healthcare Foundation and
California Nurses Association PAC

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Yes on Prop 61, Californians for Lower
Drug Prices, With Major Funding by AIDS Healthcare Foundation and California Nurses Association
PAC,” FPPC No. 16/19686, including all attached exhibits, is hereby accepted as the final decision and
order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Yes on Prop 61, Californians for Lower Drug Prices, With Major Funding by AIDS Healthcare Foundation and California Nurses Association PAC (ID #1376791; hereinafter “Committee”) is a recipient committee formed to support Proposition 61, a state ballot proposition on the November 8, 2016 ballot.

The Committee published two videos on YouTube that did not include one of the Committee’s top contributors of \$50,000 or more, California Nurses Association PAC, in violation of the advertisement disclosure provisions of the Political Reform Act (the “Act”).¹

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2016.

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

When enacting the Political Reform Act, the people of the State of California found and declared the previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, the Act must be liberally construed to achieve its purpose.³

Advertisement Disclosure

An “advertisement” under the Act means any general or public advertisement which is authorized and paid for by a person or committee for the purpose of supporting or opposing a candidate for elective office or a ballot measure(s).⁴

Any committee that supports or opposes a ballot measure must print or broadcast its name as part of the advertisement.⁵ In addition, the Act requires any advertisement for or against a ballot measure must include a disclosure statement identifying the committee’s contributors of \$50,000 or more.⁶ If the committee has more than two contributors of \$50,000 or more, the committee must disclose only its highest and second highest contributors, in that order.⁷

¹ The Political Reform Act is contained in Government Code Sections 8100 through 81014. 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.

² § 81001, subd. (h).

³ § 81003.

⁴ § 84501.

⁵ § 84504, subd. (c).

⁶ § 84503, subd. (a).

⁷ § 84503, subd. (b).

Disclosure statements in electronic video advertisements must be both written and spoken at either the beginning or end of the communication, except only a written disclosure statement is required on a 60 second commercial if the written disclosure appears for 10 seconds.⁸ Further, Regulation 18450.5 requires committees that pay for and publish a video campaign advertisement to update the disclosure statement on the advertisement within 5 days of a change in the committee's disclosure requirement, such as a new contributor of \$50,000 or more.⁹

SUMMARY OF THE FACTS

On or about May 31, 2016 and June 6, 2016, respectively, the Committee published two YouTube ads in support of Proposition 61: "Take No Axion," and "Greed is Not Good." Both videos contained a ten-second disclosure statement at the end of the video which read: "PAID FOR BY CALIFORNIANS FOR LOWER DRUG PRICES, WITH MAJOR FUNDING BY AIDS HEALTHCARE FOUNDATION, FPPC ID #1376791."

On or about July 6, 2016, California Nurses Association PAC made a contribution of \$50,000 to the Committee, but the Committee subsequently failed to update the disclosure statements in its videos to reflect this change within five days of the \$50,000 contribution. On October 12, 2016, the Enforcement Division of the Fair Political Practices Division contacted the Committee, who admitted that it failed to update the disclosure statement in two of its videos to include its second contributor of \$50,000 (California Nurses Association PAC). Soon thereafter, the Committee amended the disclosure statement on its videos to include its two highest contributors of \$50,000 or more.

VIOLATION

Count 1: Failure to Comply with Advertising Disclosure Requirements

The Committee failed to identify one of the Committee's two contributors of \$50,000 or more in two electronic video advertisements in violation of Sections 84503, subdivision (a) and 84504, subdivision (c).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).¹⁰

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Commission considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5 subdivision (d): (1) The seriousness of the violation; (2) The presence or absence of any intent to deceive the voting public; (3) Whether the violation was deliberate,

⁸ Regulation 18450.4, subd. (b)(3)(G)(3.).

⁹ Regulation 18450.5.

¹⁰ Gov. Code Section 83 116, subd. (c).

negligent or inadvertent; (4) Whether the Committee demonstrated good faith by consulting the Commission staff; (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of the violation, voluntarily provided amendments to provide full disclosure.

Recent penalties approved by the Commission for failure to include proper disclosure statements on campaign advertisements include:

- *In the Matter of Yes on Prop. 47, Californians for Safe Neighborhoods and Schools, Sponsored by Vote Safe, A Project of the Advocacy Fund*; FPPC No. 14/204. Respondent Yes on Prop. 47 published two videos on YouTube in support of Proposition 47 that did not include a disclosure statement with the committee's name and the committee's two top donors of \$50,000 or more. After being contacted by the Enforcement Division, the committee added a disclosure statement to its advertisement. The Commission approved a \$2,500 fine against Yes on Prop 47 at its November 20, 2014 meeting.

In this case, the Committee authorized and paid for two campaign videos that, despite containing disclosure statements, failed to include one of the committee's two contributors of \$50,000 or more. The Committee originally posted the advertisements before it received the contribution from the California Nurses Association PAC but it failed to change the disclosure on the advertisements within five days of receiving the \$50,000 contribution. To the Committee's credit, it corrected the disclosures upon being contacted by the Enforcement Division.

PROPOSED PENALTY

Thus, in consideration of the factors of Regulation 18361.5, and the penalties imposed in prior cases, it is respectfully requested that a penalty of \$2,500 be imposed against the Committee.