



FAIR POLITICAL PRACTICES COMMISSION

128 J Street • Suite 620 • Sacramento, CA 95814-2329

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January 10, 2013

Mr. John Hardin

Taxpayers Against Wasteful PUSD Spending

REDACTED

Re: Warning Letter

FPPC No. 12/985, John Hardin; and Taxpayers Against Wasteful PUSD Spending

Dear Mr. Hardin:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code section 81000, et seq. This letter is in response to a sworn complaint filed against you that alleged you failed to file campaign disclosure reports in connection with your opposition to the Porterville Unified School District's Measure J School Bond. We are closing this matter with a warning letter.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that you failed to include the proper identification disclosure and failed to properly file campaign disclosure reports when you made a number of independent expenditures in the form of advertisements, yard signs, radio ads, and robocalls opposing Measure J.

When an individual spends \$1,000 or more in the making of independent expenditures, that person will qualify as a "committee" under the Act. (Section 82013(c).) You qualified as an independent expenditure committee when you made independent expenditures opposing Measure J that aggregated over \$1,000. Once you qualified as a committee, you triggered filing obligations under the Act.

¹ The Political Reform Act is contained in Government Code sections 81000 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.

If a candidate or committee, including an independent expenditure committee, has made independent expenditures totaling \$1,000 in a calendar year to support or oppose a candidate, a measure, or the qualification of a measure, it shall file independent expenditure reports at the same time, covering the same periods, and in the same places where the candidate or committee would be required to file campaign statements as if it were formed or existing primarily to support or oppose the candidate or measure. (Section 84203.5.) The form used for disclosing the expenditures is the Supplemental Independent Expenditure Report, Form 465. Therefore, any independent expenditures of \$1,000 or more made by September 30, 2012, triggered an obligation to file the Form 465 no later than October 5, 2012. Additionally, any expenditures made during October 1, 2012 and October 20, 2012, triggered a filing obligation due by October 25, 2012.

Furthermore, the Act requires committees that make a late independent expenditure, as defined by Section 82036.5, totaling \$1,000 or more for the support or opposition of a single candidate or single measure shall report the late independent expenditure within 24 hours of the time it is made. (Section 84204.) The expenditures are reported on the 24-hour Independent Expenditure Report, Form 496. For the November election, the late period covered October 21, 2012 through November 5, 2012. Therefore, any expenditure of \$1,000 or more made during this time frame was required to be reported on the Form 496 within 24 hours of making the expenditure.

Finally, the Act requires committees to include certain information in the committee's name. For committees that are primarily formed to support or oppose a ballot measure, the Act provides that the committee name shall include the statement whether it supports or opposes the measure. (Section 84107.) The FPPC has advised that Section 84107 applies to independent expenditure committees when the principal activity is to support or oppose a ballot measure. (*Bagatelos* Advice Letter, I-94-162. Copy enclosed.) Accordingly, since the principal activity of your committee was to oppose Measure J, your committee name should have included the statement, "a committee opposing Measure J." Likewise, the Act also requires any committee which supports or opposes a ballot measure, shall print or broadcast its name as part of any advertisement or other paid public statement. (Sections 84305 and 84504.) While the Act does not restrict how a committee is named, it does require certain language to be included in the committee name. Since you were the sole source of funds for the expenditures, and the expenditures were for the opposition to Measure J, your committee's name should have included your name, and a statement that you opposed Measure J. For example, an acceptable committee name would have been John Hardin, Taxpayers Against Wasteful PUSD Spending, a committee opposing Measure J.

Your actions violated the Act because you failed to file the proper forms in a timely manner, and failed to include your name along with a statement indicating you were opposing Measure J in the committee's name. However, because you consulted with the Tulare County Office of Elections regarding your filing obligations, you filed campaign

forms disclosing your activity prior to the election for the public to view, you had some form of committee name on your mailings and advertisements, and the fact that you do not have an enforcement history, we are closing this matter with a warning letter.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

The FPPC publishes forms and manuals to facilitate compliance with the provisions of the Act. If you need forms or a manual, or guidance regarding your obligations, please call the FPPC's Technical Assistance Division at 1-866-275-3772. Please also visit our website at www.fppc.ca.gov.

Please feel free to contact Teri Rindahl at 916.327.2018 with any questions you may have regarding this letter.

Sincerely

REDACTED

Gary S. Winuk
Chief, Enforcement Division

GSW/tr

cc. Richard Morris