



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 23, 2010

Steven Lucas
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
o/b/o California Chamber of Commerce

REDACTED

RE: FPPC No. 10/258; the California Chamber of Commerce; Allan Zarembeg, Chief Executive Officer

Dear Mr. Lucas:

The Fair Political Practices Commission (the "Commission") enforces the provisions of the Political Reform Act (the "Act") found in Government Code Section 81000, and following. As you may be aware, the Commission was investigating whether your client was in violation of the Act's disclosure and reporting requirements in connection with an advertisement against gubernatorial candidate Jerry Brown.

After the Commission's August 12, 2010 commission meeting, we have decided to close this case without further action for reasons described in the enclosed letter.

If you have any questions, please feel free to contact us at 916-322-5660.

Sincerely,

REDACTED

Gary Winuk
Chief, Enforcement Division

Enclosure



FAIR POLITICAL PRACTICES COMMISSION

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August 19, 2010

Mr. John Burton
REDACTED

Re: FPPC File No. 10/258; California Chamber of Commerce; Meg Whitman; Meg Whitman for Governor 2010; and Thomas Hiltachk, Treasurer

Dear Mr. Burton:

In response to the sworn complaint you submitted regarding the above-referenced persons, please be advised that the Enforcement Division is closing this matter without instituting an enforcement action at this time.

The Fair Political Practices Commission ("FPPC") enforces the provisions of the Political Reform Act ("Act") found in Government Code section 81000,¹ and following. Your allegation that the Chairperson of the campaign of Brown's chief rival, Meg Whitman, is Pete Wilson, who is an influential member of CCA's board of directors, and that Peter Wilson's role with the CCA by participating in the decision to fund the television ad by the CCA, constitutes coordination between CCA and Meg Whitman's campaign.

The allegation that Pete Wilson's role with CCA and with the Whitman campaign constitutes coordination regarding his role in approving the advertisement is unfounded. The decision regarding the advertisement that is the subject of this complaint was approved by CCA's executive committee and not the board of directors.

Thank you for taking the time to bring this matter to our attention. If you have any questions regarding this decision, please contact the Enforcement Division at (916) 322-5660.

Sincerely,
REDACTED ✓

✓ Gary S. Winuk
Chief, Enforcement Division

GSW/tr

cc: California Chamber of Commerce; Meg Whitman; Meg Whitman for Governor 2010; and Thomas Hiltachk, Treasurer

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.



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August 19, 2010

Mr. Jamie Court
Consumer Watchdog

REDACTED

Re: FPPC File No. 10/258; California Chamber of Commerce

Dear Mr. Court:

In response to the sworn complaint you submitted regarding the above-referenced persons, please be advised that the Enforcement Division is closing this matter without instituting an enforcement action at this time.

The Fair Political Practices Commission (the "Commission") enforces the provisions of the Political Reform Act ("Act") found in Government Code section 81000,¹ and following. Your complaint alleged that the California Chamber of Commerce ("CCA") published an advertisement against gubernatorial candidate Jerry Brown that constituted express advocacy and that CCA should have followed the Act's disclosure rules. The complaint also included the allegation that the Chairperson of the campaign of Brown's chief rival, Meg Whitman, is Pete Wilson, who is an influential member of CCA's board of directors, and that Peter Wilson's role with the CCA and with the Whitman campaign constitutes coordination.

When a campaign advertisement "expressly advocates" the election or defeat of a candidate or measure, the Act requires disclosure of the person(s) paying for it. Regulation 18225(b)(2) states that a communication "expressly advocates" in two cases: (1) when it employs explicit words of advocacy (e.g. "magic words" such as "vote for," "vote against," etc.) or (2) when taken as a whole, the message unambiguously urges a particular result in an election. In 2003, the Commission voted to suspend enforcement of the second half of this definition pending clarification from the U.S. Supreme Court of the constitutional sufficiency of its language.²

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.

² *The Governor Gray Davis Committee v. American Taxpayer Alliance*, 102 Cal.App.4th 449 (2002)

Mr. Jamie Court
August 19, 2010
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At the Commission's August 12, 2010 meeting, the Commission reconsidered the meaning of express advocacy. It decided to continue with its 2003 decision to suspend enforcement of the second half of Regulation 18225(b)(2) and currently will only enforce those violations that include the "magic words" until the November 2010 election. The Commission plans to take further action over the next few months on Regulation 18225(b)(2), in light of recent United States Supreme Court cases. Our analysis of future similar ads may change depending upon the Commission's action on Regulation 18225(b)(2).

Your allegation that CCA published an advertisement against Jerry Brown that constituted express advocacy and that CCA should have followed the Act's disclosure rules was not a violation of the Act. In order for the expenditures for the advertisement to be reported as independent expenditures, the advertisement must "expressly advocate" the election or defeat of a clearly identified candidate. (Section 82031.) The advertisement submitted with the complaint failed to contain express advocacy.

The allegation that Pete Wilson is an influential member of CCA's board of directors and that his role with the CCA and with the Whitman campaign constitutes coordination regarding his role in approving the advertisement is unfounded. The decision regarding the advertisement that is the subject of this complaint was approved by CCA's executive committee and not the board of directors.

Thank you for taking the time to bring this matter to our attention. If you have any questions regarding this decision, please contact the Enforcement Division at (916) 322-5660.

Sincerely,

REDACTED

Gary S. Winuk
Chief, Enforcement Division

GSW/tr

cc. California Chamber of Commerce