



FAIR POLITICAL PRACTICES COMMISSION

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August 25, 2015

Diane M. Fishburn  
Olson Hagel & Fishburn LLP  
o/b/o Conservation Action Fund and Joseph Caves

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**Warning Letter Re: FPPC Case No. 14/257: Conservation Action Fund and Joseph Caves**

Dear Ms. Fishburn:

The Enforcement Division of the Fair Political Practices Commission (the “Commission”) enforces the provisions of the Political Reform Act<sup>1</sup> (the “Act”). This letter is in response to a Franchise Tax Board (“FTB”) audit of Conservation Action Fund for the period January 1, 2009 through December 31, 2010.

The Enforcement Division has completed its investigation of the facts in this case. Specifically, we found that Conservation Action Fund exceeded the \$50,000 threshold for online or electronic filing on or about December 27, 2004. As an electronic filer, Conservation Action Fund and Joseph Caves, the treasurer, were required to disclose each contribution of \$1,000 or more received between August 4 and November 2, 2010 in an online election cycle report within 24 hours of receipt. Conservation Action Fund received a \$200,000 contribution from The Nature Conservancy on September 23, 2010. But Conservation Action Fund and Caves failed to disclose the \$200,000 contribution in an online election cycle report within 24 hours of receipt.

The Act provides that primarily formed ballot measure committees who qualify as electronic filers must file reports online or electronically disclosing receipt of any contributions of \$1,000 or more received during an election cycle.<sup>2</sup> “Election cycle” means the period of time

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<sup>1</sup> The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

<sup>2</sup> § 85309, subd. (b).

beginning 90 days prior to an election and ending on the date of the election.<sup>3</sup> Election cycle reports must disclose the same contributor information required by Section 84203 subdivision (a), and must be filed within 24 hours of receipt of the contribution.<sup>4</sup>

Your clients' actions violated the Act because Conservation Action Fund and Caves failed to file an online election cycle report due September 24, 2010, disclosing receipt of a \$200,000 contribution during the 90-day election cycle in violation of Section 85309, subdivision (b).

But the evidence revealed several mitigating factors. The 2009-2010 election cycle was the first cycle in which new regulations applied to primarily formed committees. These regulations were a significant departure from prior regulations. During the time in question, Conservation Action Fund's focus was Proposition 21 on the November 2010 ballot, but it had interest in several other measures, and as the year progressed and the campaigns evolved, Caves made on-going determinations where to provide support. Under the circumstances, Caves mistakenly, but reasonably, determined that Conservation Action Fund was a general purpose committee. Lastly, the contribution in question was disclosed in Conservation Action Fund's first pre-election report on October 5, 2010, only 11 days after the election cycle report was due and well before the election. So any public harm was minimal.

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 Enforcement Division case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide your clients with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If your clients wish to avail themselves of these proceedings by requesting that their 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 Enforcement Division 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 Commission's website ten (10) days from the date of this letter.

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<sup>3</sup> § 85204.

<sup>4</sup> § 85309, subd. (b); See also § 84203, subd. (a).

If your clients need forms or manuals, or guidance regarding their obligations, please advise them to call the Commission's Toll-Free Advice Line at 1-866-275-3772 or visit our website at [www.fppc.ca.gov](http://www.fppc.ca.gov).

Please feel free to contact me at [REDACTED] with any questions you may have regarding this letter.

Sincerely,

[REDACTED]

Angela J. Brereton  
Senior Commission Counsel  
Enforcement Division