



FAIR POLITICAL PRACTICES COMMISSION
STATE OF CALIFORNIA
OFFICE OF THE CLERK

November 28, 2012

Kenneth J. Dyda, individually, and o/b/o Save Our City III

REDACTED

Re: **Warning Letter - FPPC No. 11/002, Save Our City III, et al.**

Dear Mr. Dyda and Save Our City III:

On November 6, 2012, we sent you a warning letter concerning the above named case in response to a referral from the Los Angeles County District Attorney's office, which received a complaint against you alleging violations of the Act's campaign reporting provisions. In response to the November 6, 2012 warning letter, you provided information regarding the lawn signs violation detailed in the November 6, 2012 warning letter.

In response to this further information, we are **rescinding** our November 6, 2012 warning letter to you, and are hereby issuing the following warning letter instead, with changes made to Sections C and E.

A. Allegation Regarding Failure to Amend Ballot Measure Committee Name

Our investigation revealed that Save Our City III was a primarily formed ballot measure committee at the time it filed its statement of organization on June 23, 2010. However, you failed to amend its name in accordance with the Act.

The Act provides that a recipient committee is a primarily formed committee when it is formed or exists primarily to support or oppose a single measure. (Sections 82013, subd. (a), and 82047.5, subd. (b).) Additionally, within 30 days of the designation of the numerical order of propositions appearing on the ballot, any committee which is primarily formed to support or oppose a ballot measure, shall, if opposing the measure, include the statement, "a committee against Proposition _____," in any reference to the committee required by law. (Section 84107.)

Your actions violated the Act because the evidence shows that Save Our City III was a primarily formed ballot measure committee at the time it filed its statement of organization on June 23, 2010. However at the time of the filing, the measure which Save Our City III opposed had not yet received a letter designation. Our investigation showed that the measure was given the letter designation "P" on August 20, 2010. Thus, you were required, and failed, to amend

Save Our City III's statement of organization no later than September 19, 2010, adding "a committee opposed to Measure P" to Save Our City III's name.

However, upon review of the evidence available, it appears there are mitigating circumstances. You have no prior history of violating the Act. Additionally, all campaign statements were timely filed, and in each pre-election and semi-annual campaign statement, Save Our City III is identified as opposing Measure P. Lastly, Save Our City III was properly terminated on May 20, 2011. Thus, the public harm from failing to amend the statement of organization was minimal.

B. Allegations Regarding Robocalls Opposing Measure P

The complaint also alleged that Save Our City III failed to disclose the name of Save Our City III in automated pre-recorded telephone calls ("robocalls") which it produced in opposition to Measure P, and also failed to disclose all expenditures related to Save Our City III's robocalls opposing Measure P in its campaign statements. Our investigation revealed that Save Our City III produced and paid for four robocalls in opposition to Measure P. These calls were recorded by Jon Cartwright, Ken Dyda, Ann Shaw, and Stefen Wolowicz, and each of these calls included a statement that Save Our City III paid for and/or sponsored the call. Additionally, the expenditures made for these calls were properly reported in Save Our City III's campaign statements. Our investigation revealed that Douglas Stern did not record any robocalls regarding Measure P.

Further, four other robocalls opposing Measure P, recorded by Susan Brooks, Brian Campbell, Thomas Long, and Anthony Misetich, were made. However, our investigation revealed that the expenditures for these calls were independent expenditures pursuant to Section 82031, and thus, Save Our City III was not required to disclose the expenditures for those calls on its campaign statements, and Save Our City III's name was not required to be disclosed during the robocalls. Therefore, there are no violations of the Act regarding the robocalls allegations.

C. Allegation Regarding Lawn Signs

The complaint alleged that Save Our City III failed to disclose the name of Save Our City III on lawn signs which it produced in opposition to Measure P.

Article 5 (Sections 84501 – 84511) of the Act provides that a primarily formed committee opposing a single measure must disclose the committee's name in certain advertisements. The definition of advertisement includes lawn signs in quantities of 200 or more. (Section 84501, and Regulation 18450.1, subd. (a)(5).)

The evidence shows that that Save Our City III purchased lawn signs in a quantity of 200 or more with a message opposing Measure P on August 16, 2010. These signs failed to disclose the name of Save Our City III. However, the error was discovered before these lawn signs were distributed, and Save Our City III obtained adhesive labels printed with the name of Save Our

City III and affixed the labels to the lawn signs. Thus, none were distributed without Save Our City III's name.

Additionally, Save Our City III ordered a second printing of the lawn signs on September 27, 2010, which included full disclosure. Thus, all the lawn signs distributed by Save Our City III included the proper disclosure in advance of the election. Additionally, the expenditures for the lawn signs were properly disclosed in Save Our City III's campaign statements. Therefore, there are no violations of the Act regarding the lawn signs.

D. Allegations Regarding Campaign Literature

The complaint also alleged that Save Our City III failed to disclose the name of Save Our City III on campaign literature which it produced in opposition to Measure P.

Article 5 (Sections 84501 – 84511) of the Act provides that a primarily formed committee opposing a single measure must disclose the committee's name in certain advertisements. The definition of advertisement includes direct mailings, posters, and door hangers in quantities of 200 or more. (Regulation 18450.1, subd. (a)(5).)

The evidence shows that that Save Our City III did not purchase direct mailings, posters, and/or door hangers in a quantity of 200 or more with a message opposing Measure P. Some flyers were made by Mr. Dyda, which he handed out at an estimated 5 – 10 "coffee meetings," for which approximately 10-12 people attended. Thus, an estimated 50 – 120 handouts were made, well below the 200 piece threshold. Therefore, there are no violations of the Act regarding the campaign literature allegations.

E. Warning

Regarding only the violation for failure to amend Save Our City III's name (as detailed in Section A above), this letter serves as a written warning. You are advised that your failure to comply with the provisions of the Political Reform Act in the future could result in an enforcement action. Additionally, the information in this case will be retained, and may be used against you should an enforcement action later become necessary based on future conduct and/or newly discovered information. Please be advised that your failure to comply with the provisions of the Act in the future may 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 your 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.

Please feel free to contact me at 916-322-5660 with any questions you may have regarding this letter.

Sincerely,

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Angela J. Brereton
Senior Commission Counsel
Enforcement Division