FAIR POLITICAL PRACTICES COMMISSION
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August 31, 2009

Susan Yalom, Administrator
James A. Day, Administrator
The PARC Fund

REDACTED

Margaret J. Tracy, President
James Day, Treasurer
Preserve Area Ridgelands Committee (PARC)

REDACTED

RE: **Warning Letter**
FPPC Case No. 050782

Dear Ms. Tracy, Ms. Yalom, and Mr. Day:

The Fair Political Practices Commission (FPPC) enforces the provisions of the Political Reform Act (the Act) found in Government Code Section 81000, and following. The Act requires candidates and committee treasurers to file statements of organization, Form 410, and file regular disclosure statements, Form 460. As you are aware, our office received a complaint regarding The PARC Fund and Preserve Area Ridgelands Committee ("PARC") concerning the fact that neither was, nor is, registered as a political committee despite the fact that both made contributions to a ballot measure committee.

Our investigation has discovered the following facts. On April 25, 2000, October 30, 2000, and April 5, 2005, PARC contributed $3,000, $1,000, and $5,000 respectively to Friends of Livermore Committee, a ballot measure recipient committee registered as such with the Secretary of State. On August 18, 2005, the PARC Fund contributed $5,000 to Friends of Livermore Committee. There is some evidence that PARC and the PARC Fund may not have intended to make actual contributions, defined in Section 82015 as payments for political purpose, but instead intended to have the money used by Friends of Livermore Committee for purely informational purposes. However, payments made at the behest of a recipient committee are, de facto, made for political purposes and are, therefore, contributions to the committee unless full and adequate consideration is received from the committee for making the payment, which was apparently not the case in this situation. (Section 82015(b)(1).)

Our investigation further revealed that PARC received its funds from membership dues while the PARC Fund received its funds from individual donations. Although the two funds were separate, PARC Fund and PARC shared the same 8-member board of trustees. When the same group of individuals who direct and control the expenditures of two entities direct campaign contributions to be made by the two entities, the total amount of the contributions is regarded as having been made by both the entities. (Regulations 18215.5(c) and 18428, currently; previously, see *In re Lumsdon* (1976) 2 FPPC Ops. 140 and *In re Kahn* (1976) 2 FPPC Ops. 151.)

The rule in Regulation 18215(b)(1), commonly referred to as the "one bite of the apple" rule, was established by the FPPC for organizations where the organizations' members or donors are presumed to have no reason to suspect their payments will be used for political purposes because the organization has not made contributions or expenditures in the past. Once the organization has made its first political contributions or expenditures totaling $1,000 or more, the presumption that donors to such organizations do not have reason to know that subsequent payments would be used to make contributions or expenditures no longer applies. If contributions or expenditures of $1,000 or more are again made by the organization during the current year or any of the four following years, the organization becomes a recipient committee, and *any* donations or membership fees it receives or uses for political purposes after the "one bite" contribution of $1,000 or more, are deemed to have been made for political purposes, and the sources of any funds used by the organizations to make those contributions would be subject to disclosure on a reasonably apportioned basis.

With its second contribution in the calendar year 2000, PARC was required to register as a recipient committee and file the required disclosure forms. In 2005, the PARC Fund's contribution should have been aggregated with PARC's and the two entities were required to disclose themselves as affiliated. The repeated failure of PARC and the PARC Fund to follow these requirements became violations of the Act. (Section 84200). 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 future conduct or newly discovered information. PARC and the PARC Fund must immediately file the required statements with the appropriate filing officers, the Secretary of State for the original Form 410 and the City of Livermore for copies of the Form 410 and the original of all Forms 460. Failure to comply with the provisions of the Act in the future may result in an enforcement action against PARC and the PARC Fund, including monetary penalties of up to $5,000 for each violation.

If you have questions regarding this matter, please contact Adrianne Korchmaros at (916) 322-8241.

Sincerely,

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Gary S. Winuk, Chief
Enforcement Division

GSW: ak