

1 GARY S. WINUK
Chief of Enforcement
2 NEAL P. BUCKNELL
Senior Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

7
8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**
9 **STATE OF CALIFORNIA**

10
11 In the Matter of:

12 KERN COUNTY YOUNG
REPUBLICANS VOTING GUIDE,
13 KERN COUNTY YOUNG
REPUBLICANS PAC, and BRYAN
14 WILLIAMS,

15 Respondents.

FPPC No. 10/1095

STIPULATION, DECISION AND ORDER

16
17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents Kern County Young Republicans Voting Guide, Kern County Young Republicans PAC,
20 and Bryan Williams agree that this Stipulation will be submitted for consideration by the Fair Political
21 Practices Commission at its next regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to, the
28 right to appear personally at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents committed five violations of the Political
5 Reform Act. These violations are described in Exhibit 1, which is a true and accurate summary of the
6 facts in this matter. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth
7 herein.

8 Respondents agree to the issuance of the Decision and Order, which is attached hereto, and
9 Respondents agree to the Commission imposing upon them an administrative penalty in the amount of
10 \$11,000, of which Respondent Bryan Williams is jointly and severally liable for the full amount,
11 Respondent Kern County Young Republicans Voting Guide is jointly and severally liable for \$4,500, and
12 Respondent Kern County Young Republicans PAC is jointly and severally liable for \$6,500. One or
13 more checks or money orders totaling said amount—to be paid to the General Fund of the State of
14 California—is/are submitted with this Stipulation as full payment of the administrative penalty described
15 above, and same shall be held by the State of California until the Commission issues its Decision and
16 Order regarding this matter. The parties agree that in the event the Commission refuses to accept this
17 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
18 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
19 this Stipulation shall be reimbursed. Respondents further stipulate and agree that in the event the
20 Commission rejects the Stipulation and a full evidentiary hearing before the Commission

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1 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
2 disqualified because of prior consideration of this Stipulation.

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4 Dated: _____

5 Gary S. Winuk, Chief of Enforcement
6 Fair Political Practices Commission

7 Dated: _____

8 Bryan Williams, Individually and on Behalf of
9 Kern County Young Republicans Voting Guide
10 and Kern County Young Republicans PAC,
11 Respondents

12 **DECISION AND ORDER**

13 The foregoing Stipulation of the parties “In the Matter of Kern County Young Republicans
14 Voting Guide, Kern County Young Republicans PAC, and Bryan Williams,” FPPC No. 10/1095,
15 including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political
16 Practices Commission, effective upon execution below by the Chairman.

17 IT IS SO ORDERED.

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19 Dated: _____

20 Ann Ravel, Chair
21 Fair Political Practices Commission

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EXHIBIT 1

INTRODUCTION

Respondent Kern County Young Republicans Voting Guide (“Respondent Voting Guide”) is a slate mailer organization. Respondent Kern County Young Republicans PAC (“Respondent PAC”) is a state general purpose recipient committee sponsored by the Kern County Young Republicans. At all relevant times, Respondent Bryan Williams (“Respondent Williams”) was the treasurer for both the committee and the slate mailer organization.

The Political Reform Act (the “Act”)¹ requires slate mailer organizations to report certain information about disbursements made. Also, the Act imposes rules about identification of which candidates did not pay to appear in a slate mailer. Additionally, the Act requires the reporting of certain information about the making of independent expenditures.

For purposes of this Stipulation, Respondents’ violations of the Act are set forth as follows:

COUNT 1: For the reporting period ending May 22, 2010, Respondents Voting Guide and Williams failed to timely report subvendor information for disbursements totaling approximately \$27,020, in violation of Section 84219, subdivision (h)(5).

COUNT 2: On or about June 3, 2010, Respondent PAC sent a mailer in support of Zack Scrivner’s candidacy for the Kern County Board of Supervisors. The mailer cost approximately \$5,978 and was an independent expenditure. Respondents PAC and Williams were required to report the expenditure by filing a late independent expenditure report within 24 hours, but they failed to do so, in violation of Section 84204.

COUNT 3: Regarding the independent expenditure in the form of a mailer that is the subject of Count 2, Respondents PAC and Williams were required to disclose Mr. Scrivner as the candidate who received the benefit of the independent expenditure on a semi-annual campaign statement that was filed for the period ending June 30, 2010, but they failed to do so, in violation of Section 84211, subdivision (k)(5).

COUNT 4: During the reporting period ending June 30, 2010, Respondent Voting Guide produced and sent a slate mailer supporting various candidates. Some of these

¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, 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 as in effect at the time of the violations, unless otherwise indicated.

candidates did not pay for the support of the slate mailer. Respondents Voting Guide and Williams were required to disclose this on a campaign statement filed for the period ending June 30, 2010, but they failed to provide this required disclosure as to several candidates in violation of Section 84219, subdivision (e).

COUNT 5: On or about October 29, 2010, Respondent PAC sent another mailer in support of Zack Scrivner's candidacy for the Kern County Board of Supervisors. The mailer cost approximately \$13,604 and was an independent expenditure. Respondents PAC and Williams were required to report the expenditure by filing a late independent expenditure report within 24 hours, but they failed to do so, in violation of Section 84204.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they existed at the time of the violations in question.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When the Political Reform Act was enacted, the people of the state of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities. (Section 81001, subd. (h).) To that end, Section 81003 requires that the Act be liberally construed to achieve its purposes.

One of the purposes of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited. (Section 81002, subd. (a).) Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced." (Section 81002, subd. (f).)

Definition of Slate Mailer Organization

A slate mailer is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. (Section 82048.3.)

Generally speaking, a slate mailer organization includes any person who, directly or indirectly, does all of the following: (1) is involved in the production of one or more slate mailers and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailers; and (2) receives or is promised payments totaling \$500 or more in a calendar year for the production of one or more slate mailers. (Section 82048.4, subd. (a).)

Definition of State General Purpose Recipient Committee

A committee includes any person or combination of persons who receive contributions totaling \$1,000 or more in a calendar year. (Section 82013, subd. (a).) This type of committee commonly is referred to as a recipient committee.

Generally speaking, a state general purpose recipient committee includes any recipient committee which is formed or exists primarily to support or oppose more than one candidate or ballot measure in a state election, or in more than one county. (Section 82027.5, subd. (a).)

Definition of Independent Expenditure

Generally speaking, an independent expenditure means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Section 82031.)

Required Filing of Campaign Statements and Reports

Committees and slate mailer organizations are required to file certain campaign statements and reports at specified times. (Sections 84200, et seq.) For example, a state general purpose recipient committee is required to file late independent expenditure reports within 24 hours of making such expenditures. (Section 84204.)

Attached hereto as Exhibit 2 is a filing schedule for slate mailer organizations in connection with the June 8, 2010 primary election.

Attached hereto as Exhibits 3 and 4 are filing schedules for state general purpose recipient committees in connection with the June 8, 2010 primary election and the November 2, 2010 general election, respectively.

Required Reporting of Independent Expenditures and Disbursements to Subvendors

Campaign statements filed by a committee are required to include, among other things, certain information about independent expenditures, including the date of the independent expenditure, the cumulative amount of independent expenditures made relative to a candidate or measure, the full name of the candidate, and the office and district for which he or she seeks nomination or election, or the number or letter of the measure, and the jurisdiction in which the measure or candidate is voted upon. (See Section 84211, subd. (k)(5).)

Also, slate mailer organizations are required to disclose on each campaign statement: (1) the total amount of disbursements made during the period covered by the campaign statement; and (2) the total amount of disbursements made during the period covered by the campaign statement to persons who have received \$100 or more. (Section 84219, subds. (b) and (f).) For

each person to whom a disbursement of \$100 or more has been made during the period covered by the campaign statement, the following information must be disclosed on the campaign statement: (1) the recipient's full name; (2) the recipient's street address; (3) the amount of each disbursement; and (4) the description of the consideration for which each disbursement was made. Additionally, this same information must be reported for each person, if different from the payee, who has provided consideration for a disbursement of \$500 or more during the period covered by the campaign statement. (See Section 84219, subd. (h).) Such persons commonly are referred to as subvendors and the information pertaining to them commonly is referred to as subvendor information.

Required Identification of Candidates Not Paying to Appear in Slate Mailers

Many times, a slate mailer organization will produce and mail slate mailers in support of candidates without receiving payment from the candidates. When this happens, the slate mailer organization is required to disclose (on the campaign statement for that reporting period) the name of each such candidate, the jurisdiction, and the office sought. (Section 84219, subd. (e).)

Joint and Several Liability of Treasurer

The treasurer of a slate mailer organization is charged with the duty to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the Act's reporting requirements. The same holds true with respect to committee treasurers. (See Sections 81004, 84100, 84104, 84108, subd. (a), and Regulation 18427.) A treasurer may be held jointly and severally liable, along with the slate mailer organization or committee, for reporting violations. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

As stated above, Respondent Voting Guide is a slate mailer organization. Respondent PAC is a state general purpose recipient committee sponsored by the Kern County Young Republicans. At all relevant times, Respondent Williams was the treasurer for both the committee and the slate mailer organization.

Count 1

At all relevant times, Western Pacific Research, Inc. ("WPR"), a political consulting firm, was a consultant for Respondent Voting Guide. In this capacity, during the reporting period ending May 22, 2010, WPR made a payment in the approximate amount of \$27,020 to The Ad Edge on behalf of Respondent Voting Guide in connection with the production of a voting guide mailer.

On its campaign statement for the period ending May 22, 2010, Respondent Voting Guide reported the amount in question as an accrued expense and listed WPR as the creditor, but The Ad Edge was not reported as a subvendor.²

In this way, Respondents Voting Guide and Williams committed one violation of Section 84219, subdivision (h)(5).

Count 2

On or about June 3, 2010, Respondent PAC sent a mailer in support of Zack Scrivner's candidacy for the Kern County Board of Supervisors. The mailer cost approximately \$5,978 and was an independent expenditure.

Respondents PAC and Williams were required to report the expenditure by filing a late independent expenditure report within 24 hours, but they failed to do so.

In this way, Respondents PAC and Williams committed one violation of Section 84204.

Count 3

Regarding the independent expenditure in the form of a mailer that is the subject of Count 2, Respondents PAC and Williams were required to disclose Mr. Scrivner as the candidate who received the benefit of the independent expenditure on a semi-annual campaign statement that was filed for the period ending June 30, 2010, but they failed to do so.

On the original campaign statement, the cost of the mailer incorrectly was disclosed as an independent expenditure in support of a candidate for California State Assembly, and the name of the candidate was not disclosed. On November 12, 2010, in response to a request from the California Secretary of State, the statement incorrectly was amended to disclose Shannon Grove as the candidate for California State Assembly who received the benefit of the independent expenditure. As stated above, the mailer actually was sent in support of Mr. Scrivner.

In this way, Respondents PAC and Williams committed one violation of Section 84211, subdivision (k)(5).

² The accrued expense was reported on Schedule F, which reported that approximately half of the accrued expense was paid by Respondent Voting Guide to WPR during that reporting period, and the other half remained outstanding. Later, in response to correspondence from the Enforcement Division, Respondent Voting Guide amended its filing to list The Ad Edge as a subvendor for a payment in the amount of \$18,000 from WPR. Although there is some question about the exact amount that should have been reported as a subvendor payment to The Ad Edge, it is undisputed that The Ad Edge should have been listed as a subvendor on the original campaign statement that was filed for the period ending May 22, 2010.

Count 4

During the reporting period ending June 30, 2010, Respondent Voting Guide produced and sent a slate mailer supporting various candidates. Some of these candidates did not pay for the support of the slate mailer. Respondents Voting Guide and Williams were required to disclose this on a campaign statement filed for the period ending June 30, 2010, but they failed to do so.

In this way, Respondents Voting Guide and Williams committed one violation of Section 84219, subdivision (e).

Count 5

On or about October 29, 2010, Respondent PAC sent another mailer in support of Zack Scrivner's candidacy for the Kern County Board of Supervisors. The mailer cost approximately \$13,604 and was an independent expenditure. Respondents PAC and Williams were required to report the expenditure by filing a late independent expenditure report within 24 hours, but they failed to do so.

In this way, Respondents PAC and Williams committed one violation of Section 84204.

CONCLUSION

This matter consists of five counts. The maximum penalty that may be imposed per count is \$5,000. Thus, the maximum penalty that may be imposed for all five counts is \$25,000. (See Section 83116, subd. (c).)

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): (1) the seriousness of the violations; (2) the presence or lack of intent to deceive the voting public; (3) whether the violation was deliberate, negligent, or inadvertent; (4) whether the Respondent demonstrated good faith in consulting with Commission staff; (5) whether there was a pattern of violations; and (6) whether the Respondent, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Regarding Count 1, a recent stipulation involving failure on the part of a slate mailer organization to report subvendor information imposed a penalty in the mid-range. (See *In the Matter of Election Education Guide and Tracey Pomerance-Poirier*, FPPC Case No. 10/980, approved Jul. 12, 2012 [\$2,000 penalty imposed for one count failure to report subvendor information].)

The public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended, the identities of the recipients of such payments, and the reasons for such payments. In this case, the amount in question was significant, comprising roughly half of reported disbursements for that year. Also, in August 2009, Respondent Voting Guide received a warning letter from the Enforcement Division regarding failure to report subvendor information for payments made to WPR in 2004, 2006, and 2008. (Respondent Williams was not the treasurer during those years.) Additionally, in this case, the subvendor information in question was required to be reported before the primary election of 2010, but it was not reported until after the election (thereby depriving the public of important pre-election information).

The foregoing factors justify a somewhat higher penalty than normal, and for this reason, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,500 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, there is no history of prior violations of the Act by Respondent Williams.

Regarding Counts 2 and 5, one of the most recent stipulations involving failure to file a late independent expenditure report imposed a penalty in the mid-range. (See *In the Matter of Chico Democrats 08 and Michael Worley*, FPPC Case No. 09/537, approved Jan. 28, 2011 [\$2,500 penalty imposed for one count involving violation of Section 84204].)

As stated above, the public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended, the identities of the recipients of such payments, and the reasons for such payments. In this case, the amounts in question were significant, comprising approximately 20% and 46% for Counts 2 and 5, respectively, of the reported expenditures for that year.

However, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,000 per count for Counts 2 and 5 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, there is no history of prior violations of the Act by Respondents PAC and Williams.

Regarding Count 3, one of the most recent stipulations involving a violation of Section 84211, subdivision (k)(5), imposed a penalty in the mid-range. (See *In the Matter of Marin Professional Firefighters Political Action Committee*, FPPC Case No. 06/255, approved Apr. 8, 2010 [\$2,000 penalty imposed per count for two counts of violating Section 84211, subd. (k)(5)].)

As stated above, the public harm inherent in campaign reporting violations is that the public is deprived of important information such as the amounts expended, the identities of the recipients of such payments, and the reasons for such payments. In this case, the amount in

question was significant, comprising approximately 20% of reported disbursements for that year. Also, in aggravation, the information in question incorrectly was reported in such a way so as to be misleading. On the original campaign statement, the cost of the mailer incorrectly was disclosed as an independent expenditure in support of a candidate for California State Assembly, and the name of the candidate was not disclosed. On November 12, 2010, in response to a request from the California Secretary of State, the statement incorrectly was amended to disclose Shannon Grove as the candidate for California State Assembly who received the benefit of the independent expenditure. As described above, the mailer actually was sent in support of Mr. Scrivner's candidacy for the Kern County Board of Supervisors

The foregoing factors justify a somewhat higher penalty than normal, and for this reason, it is respectfully submitted that imposition of an agreed upon penalty in the amount of \$2,500 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, there is no history of prior violations of the Act by Respondents PAC and Williams.

Regarding Count 4, the most recent stipulation involving violation of Section 84219, subdivision (e), imposed a penalty in the mid-range. (See *In the Matter of Women's Voter Guide and Tracey Pomerance-Poirier*, FPPC Case No. 10/1023, approved May 17, 2012 [\$2,000 penalty imposed for one count of violating Section 84219, subdivision (e)].)

The public harm inherent in campaign reporting violations of this sort is that the public is deprived of important information such as whether the slate mailer organization made disbursements to support candidates without receiving compensation therefor from the candidates supported.

In this case, imposition of an agreed upon penalty in the amount of \$2,000 is justified. A higher penalty is not being sought because Respondents cooperated with the Enforcement Division of the Fair Political Practices Commission by agreeing to an early settlement of this matter well in advance of the Probable Cause Conference that otherwise would have been held. Also, there is no history of prior violations of the Act by Respondent Williams.

PROPOSED PENALTY

In summary, it is respectfully submitted that the facts of this case justify imposition of an agreed upon penalty as follows:

Count	Description	Named Respondents	Penalty
1	Failure to Report Subvendor Information	Voting Guide Williams	\$2,500
2	Failure to File Late Independent Expenditure Report	PAC Williams	\$2,000

3	Failure to Report Information re: Independent Expenditure on Semi-annual Campaign Statement	PAC Williams	\$2,500
4	Failure to Disclose Candidates Who Did Not Pay to Appear in Slate Mailer	Voting Guide Williams	\$2,000
5	Failure to File Late Independent Expenditure Report	PAC Williams	\$2,000
Total:			\$11,000