

1 GARY S. WINUK
Chief of Enforcement
2 ZACHARY W. NORTON
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660

5 Attorneys for Complainant
6
7

8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 12/758
13 BREANS AGAINST MEASURES T & U,)
14 REHAN CHAUDRY, TREASURER, AND) STIPULATION, DECISION and
BRETT MURDOCK) ORDER
15 Respondents.)
16)
17)

18 Complainant, the Fair Political Practices Commission, and Respondents Breans Against
19 Measures T & U, Rehan Chaudry, Treasurer, and Brett Murdock agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 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 the Respondent, 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,
28 the right to personally appear 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 Breans Against Measures T & U, Rehan
5 Chaudry, Treasurer, and Brett Murdock, violated the Political Reform Act by (1) failing to disclose that
6 the Committee was controlled, and include the name of the controlling candidate on its statement of
7 organization, in violation of Government Code Section 84101 subdivision (e) (1 count). This count is
8 described in Exhibit 1, which is attached hereto and incorporated by reference as though fully set forth
9 herein. Exhibit 1 is a true and accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondent also agrees to the Commission imposing upon them an administrative penalty in the amount
12 of Two Thousand Dollars (\$2,000). A cashier's check from Respondents in said amount, made payable
13 to the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
14 administrative penalty, to be held by the State of California until the Commission issues its decision and
15 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
16 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
17 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
18 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
19 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
20 becomes necessary, neither any member of the Commission, nor the Executive Director, shall be
21 disqualified because of prior consideration of this Stipulation.

22
23
24 Dated: _____

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____
Respondents, Rehan Chaudry, Individually
and on behalf of Against Measures T & U

Dated: _____
Respondents, Rehan Chaudry, Individually
and on behalf of Against Measures T & U

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Breans Against Measures T & U,
3 Rehan Chaudry, Treasurer, and Brett Murdock” FPPC No. 12/758, including all attached exhibits, is
4 hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
5 upon execution below by the Chair.

6
7 **IT IS SO ORDERED.**

8
9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Breans Against Measures T & U (“Respondent Committee”) qualified as a Primarily Formed ballot measure committee on or about October 1, 2012, when it filed a Statement of Organization. At all relevant times to this matter, Respondent Rehan Chaudry was the treasurer of Respondent Committee. The Committee opposed Measures T, the Brea Accountability Act, and U, the Brea Open Governance Act, on the ballot in the November 6, 2012 election. Measure T was approved, while measure U was defeated. Contributions to and expenditures by the Committee totaled approximately \$14,660. This case arose from a complaint concerning the Committee’s activity prior to the November 2012 election.

Respondent Brett Murdock is a member of the Brea city council, and serves as mayor pro tem. At all times relevant to the complaint, Respondent Murdock exerted significant influence on the actions and decisions of the committee, including decisions concerning the content and design of advertisements and mailers produced by the Committee, and Committee fundraising activities.

In this matter, Respondents Breans Against Measures T & U, Treasurer Rehan Chaudry and Bret Murdoch failed to disclose that the committee was a candidate controlled committee, and that Respondent Brett Murdock was the controlling candidate.

For the purposes of this Stipulation, Respondents’ violation of the Political Reform Act (the “Act”)¹, is stated as follows:

COUNT 1: In a Statement of Organization filed on or about October 1, 2012, Respondents Breans Against Measures T & U, Treasurer Rehan Chaudry, and Respondent Brett Murdock failed to disclose that the Committee was candidate controlled, as well as the identity of the controlling candidate, Brett Murdock, in violation of Section 84102, subdivision (e), of the Government Code.

SUMMARY OF THE LAW

Primarily Formed Committee

Under Section 82047.5 (d) , a committee is "primarily formed " if it is formed or exists primarily to support or oppose two or more measures being voted upon in the same city, county, multicounty, or state election. This type of committee is commonly referred to as a primarily formed ballot measure committee.

¹The 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.

Under Section 82016, a committee which is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.” A candidate controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee. (Section 82016, subdivision (a).) The term “candidate,” as defined by the Act, includes elected officials at the state and local level. (Section 82007.)

Statement of Organization

Section 84101(a) requires every committee qualified under Section 82013(a) to file a Statement of Organization with the Secretary of State within 10 days after receiving contributions totaling \$1,000 or more in a calendar year.

Section 84102(e) states, in relevant part, that the statement of organization shall include a statement whether the committee is independent or controlled and, if it is controlled, the name of each candidate by which it is controlled.

Section 84102, subdivision (g), states that other information must be included in the statement of organization required by the rules or regulations of the Commission consistent with the purposes and provisions of this chapter. Regulation 18410(a)(13) requires that a controlling candidate verify and sign the Statement of Organization.

Liability of Committee Treasurers

Under Section 81004, subdivision (b), Section 84100, and Regulation 18427, subdivision (c), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee. (Sections 83116.5 and 91006.)

SUMMARY OF THE FACTS

Breans Against Measures T & U qualified as a Primarily Formed ballot measure committee under the Political Reform Act on or about October 1, 2012, upon the filing of a statement of organization. The Committee opposed Measures T, the Brea Accountability Act, and U, the Brea Open Governance Act, on the ballot in the November 6, 2012 election. Measure T was approved, while measure U was defeated. Contributions to, and expenditures by, the Committee totaled approximately \$14,660.

///
///
///

COUNT 1

Failure to File as a Candidate Controlled Committee

Respondents had a duty to include, on the committee's statement of organization, a statement whether the committee is independent or controlled and, if it is controlled, the name of each candidate by which it is controlled. At all times relevant, the Committee was in fact controlled by Respondent Brett Murdoch, Mayor Pro Tem of Brea. As such, Respondents were required to file as a controlled committee, and disclose Respondent Murdoch as the controlling candidate, but failed to do so.

By failing to disclose that the Committee was controlled, and include the name of the controlling candidate on its statement of organization, Respondents violated Section 84101 subdivision (e), of the Government Code.

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of Five Thousand Dollars (\$5,000).

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. The Enforcement Division also considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6), which include: the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the Respondent voluntarily filed amendment to provide full disclosure. Additionally, liability under the Act is governed in significant part by the provisions of Section 91001, subdivision (c), which requires the Commission to consider whether or not a violation is inadvertent, negligent or deliberate, and the presence or absence of good faith, in applying remedies and sanctions.

Respondents had a duty to disclose the identity of the candidate controlling the committee. The public harm inherent in disclosure violations is that the public is deprived of important information concerning the identify of the candidate who exerts significant influence on the actions and decisions of the committee. The public harm is aggravated by the fact that Brett Murdoch's name did not appear on any of the campaign statements, and there was no information available to the public indicating that he controlled the committee. As an incumbent, Respondent Murdoch should have been aware of the filing requirements for controlled committees.

Regarding Count 1, there are no recent stipulations for violations of Section 84102(e), however, recent stipulations for violations of 84102 (b), a similar disclosure provision, show that violations for failing to disclose the sponsor of a committee generally settle in the range of

\$2,000 to \$2,500 per count, depending upon various factors, including whether the failure appears negligent or deliberate.

Other similar cases approved recently by the Commission for violations of Section 84102 include:

In the Matter Californians for SAFE Food, a coalition of public health and food safety experts, labor unions, consumers, family farmers and veterinarians. No on Proposition 2 and J. Richard Eichman, FPPC No. 08/0515 . This case involved a campaign committee primarily formed to oppose Proposition 2 in the November 2008 General Election. Respondents failed to disclose Pacific Egg and Poultry Association as a sponsor on Respondent Committee's statement of organization, and to include Pacific Egg and Poultry Association in Respondent Committee's name, in violation of Government Code Sections 84102, subdivisions (a) and (b). A \$2,500 penalty for this violation was approved by the Commission on April 8, 2010.

In the Matter of In the Matter of Friends of BAREC and Katherine Mathewson, FPPC No. 10/170. This case involved a campaign committee primarily formed to oppose city ballot Measures A and B in the City of Santa Clara September 2007 election. Respondents failed to identify Friends of BAREC as a sponsored, primarily formed ballot measure committee, in violation of Government Code Sections 84102, 84106 and 84107. A \$2,000 penalty was approved by the Commission on October 14, 2010.

In this case, Respondents did file the required statements to disclose all receipts and expenditures before the election, and contend that the violation was negligent. Respondents cooperated fully with the investigation. Therefore, imposition of an administrative penalty in the amount of Two Thousand Dollars (\$2,000) is recommended.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, including whether the behavior in question was inadvertent, negligent or deliberate and the presence or absence of good faith, as well as consideration of penalties in prior enforcement actions, the imposition of a penalty of Two Thousand Dollars (\$2,000) is recommended.