

1 GARY S. WINUK
Chief of Enforcement
2 DAVE BAINBRIDGE
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 **CITIZENS IN CHARGE and**
13 **HOWARD RICH**

14 Respondents.

FPPC No. 13/336

15 **STIPULATION, DECISION, and ORDER**

16
17 **STIPULATION**

18 Complainant, the Fair Political Practices Commission, and respondents Citizens in Charge and
19 Howard Rich hereby agree that this Stipulation will be submitted for consideration by the Fair Political
20 Practices Commission at its next regularly scheduled meeting.

21 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
22 matter and to reach a final disposition without the necessity of holding an additional administrative
23 hearing to determine the liability of Respondents.

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

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

4 It is further stipulated and agreed that respondent Citizens in Charge violated the Political
5 Reform Act by acting as an intermediary on a contribution without disclosing the identity of the true
6 contributor in violation of Government Code section 84302, and respondent Howard Rich violated the
7 Political Reform Act by making a campaign contribution in a name other than his legal name in
8 violation of Government Code section 84301 and failing to timely file two campaign statements as a
9 major donor committee in violation of Government Code section 84200, subdivision (b), all as described
10 in Exhibit 1. Exhibit 1 is attached hereto and incorporated by reference as though fully set forth herein.
11 Exhibit 1 is a true and accurate summary of the facts in this matter.

12 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
13 Respondents also agree to the Commission imposing administrative penalties in the total amounts of
14 Five Thousand Dollars (\$5,000) as to respondent Citizens in Charge and Nine Thousand Dollars
15 (\$9,000) as to respondent Howard Rich. Cashiers' check from Respondents in said amount, made
16 payable to the "General Fund of the State of California," are submitted with this Stipulation as full
17 payment of the administrative penalty, and shall be held by the State of California until the Commission
18 issues its Decision and Order regarding this matter. The parties agree that in the event the Commission
19 refuses to accept this Stipulation, it shall become null and void, and within fifteen (15) business days
20 after the Commission meeting at which the Stipulation is rejected, all payments tendered by
21 Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
22 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
23 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
24 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

25
26 Dated: _____
27 Gary S. Winuk, on Behalf of the Enforcement Division
28 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: _____
Paul Jacob, on behalf of Citizens in Charge

Dated: _____
Howard Rich

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

DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Citizens in Charge and Howard Rich,” FPPC No. 13/336, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: _____
Joann Remke, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Citizens in Charge (“Respondent CIC”) is 501(c)(4) non-profit organization based in Virginia. Respondent Howard Rich (“Respondent Rich”) is an individual who resides in Pennsylvania.

The Political Reform Act (the “Act”)¹ prohibits the making of contributions in a name other than the name of the true source of the contributions. Contributions may be made by an intermediary on behalf of another person but the intermediary and original contributor information must be disclosed. The Act also requires those who make contributions of \$10,000 or more to file campaign statements as major donor committees disclosing those contributions.

Respondent CIC acted as the intermediary for a \$200,000 contribution by Respondent Rich to California Term Limits PAC Sponsored by California Term Limits and Citizens in Charge (“CA Term Limits PAC”) that was disclosed as a contribution from Respondent CIC, not Respondent Rich, in violation of the Act. Further, Respondent Rich failed to file two major donor campaign statements disclosing two contributions he made in 2012 that each exceeded \$10,000 in violation of the Act.

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

COUNT 1: Respondent Rich made a \$200,000 contribution to CA Term Limits PAC in the name of Respondent CIC rather than his own name in violation of Section 84301.

COUNT 2: Respondent Rich, who qualified as a major donor committee in 2012 as a result of making two contributions that exceeded \$10,000, failed to file two campaign statements disclosing those contributions in violation of Section 84200, subdivision (b).

COUNT 3: Respondent CIC, acting as an intermediary for Respondent Rich, made a \$200,000 contribution to CA Term Limits PAC in its own name so that the identity of the true contributor, Respondent Rich, was not disclosed, in violation of Section 84302.

SUMMARY OF THE LAW

Contributions Made Under Legal Name and by Intermediaries

Section 81002, subdivision (a) provides that “receipts and expenditures in election campaigns shall be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.” In order to obtain disclosure of the true source of campaign contributions, Section 84301 provides that “no contribution shall be made, directly or

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated.

indirectly, by any person in a name other than the name by which such person is identified for legal purposes.” Section 84302 provides that no person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing both the name of the intermediary and the contributor.

Major Donor Committee Campaign Statements

Any person who makes contributions totaling \$10,000 or more in a calendar year qualifies under Section 82013, subdivision (c) as what is commonly referred to as a “major donor” committee. Major donor committees must file semi-annual campaign statements if they have made contributions during the six month period before the closing date of the statement period. (Section 84200, subd. (b).) The closing date for the statement periods are June 30th for the first half of the year and December 31st for the second half of the year.

SUMMARY OF THE FACTS

Respondent CIC is a 501(c)(4) non-profit organization located in Woodbridge, Virginia. Its stated purpose is to protect the initiative and referendum process in the states where it exists and expand the process into those states that do not have a referendum/initiative process.

Respondent Rich regularly makes political contributions supporting efforts to further the initiative and referendum processes in states across the United States of America. He has made numerous contributions to Respondent CIC and similar organizations over the years.

CA Term Limits PAC is a general purpose committee based in Irvine, California. It was created on August 1, 2012. Its principal officer is Jon Fleischman. In August of 2012, Mr. Fleischman asked Paul Jacob, the president of Respondent CIC, for a contribution to CA Term Limits PAC. Mr. Fleischman said the committee would put the money toward its goal of improving the initiative and referendum process in California. Mr. Jacob subsequently contacted Respondent Rich and asked him for money to contribute to CA Term Limits PAC. Respondent Rich agreed to give \$200,000 to CA Term Limits PAC.

On August 27, 2012, Respondent Rich deposited \$200,000 in Respondent CIC’s checking account via a wire transfer. Using those funds received from Respondent Rich, Respondent CIC sent a check dated August 27, 2012 from its checking account to CA Term Limits PAC in the amount of \$200,000.

CA Term Limits PAC reported receiving a \$200,000 contribution on September 5, 2012 from Citizens in Charge on its first pre-election campaign statement filed on October 5, 2012. CA Term Limits PAC reported receiving only one other contribution prior to the election, a \$100 contribution from Jon Fleischman that it subsequently returned to Mr. Fleischman. CA Term Limits PAC spent nearly all of the \$200,000 on independent expenditures supporting certain candidates for city council and mayor in Irvine and opposing other candidates for those offices. The independent expenditures were in the form of slate mailers to residents of Irvine.

Respondent Rich did not file a timely major donor campaign statement disclosing the contribution to CA Term Limits PAC. Further, in February of 2012, Respondent Rich made a \$45,000 contribution to Californians for Term Limits, No on Proposition 28 with Major Funding from the Liberty Initiative Fund (“No on 28 Committee”). He failed to file a major donor campaign statement disclosing this contribution. However the committee that received the contribution properly disclosed it on its campaign statement for that period. In conjunction with this stipulated decision, Respondent Rich filed campaign statements as a major donor disclosing its contributions to CA Term Limits PAC and the No on 28 Committee.

Respondent CIC filed a major donor statement purporting to have made a \$200,000 contribution to CA Term Limits PAC on August 27, 2012. This statement was filed approximately eleven months after the filing deadline. This filing was made in error since Respondent CIC was not actually a contributor but rather an intermediary on the contribution to CA Term Limits PAC. Respondent CIC subsequently amended that statement in conjunction with this stipulated decision.

Violations by Respondent Rich

Count 1

Making a Contribution in the Name of Another

Respondent Rich made a \$200,000 contribution to CA Term Limits PAC in the name of Citizens in Charge rather than his own name in violation of Section 84301.

Count 2

Failure to File Major Donor Statements

Respondent Rich, who qualified as a major donor committee in 2012 as a result of making two contributions that exceeded \$10,000, failed to file campaign statements disclosing those contributions in violation of Section 84200, subdivision (b).

Violation by Citizens in Charge

Count 3

Undisclosed Intermediary

Citizens in Charge, acting as an intermediary for Respondent Rich, made a \$200,000 contribution to CA Term Limits PAC in its own name so that the identity of the true donor, Respondent Rich, was not disclosed, in violation of Section 84302.

CONCLUSION

This matter consists of three counts, two against Respondent Rich, and one against Respondent CIC, which carry a maximum administrative penalty of Five Thousand Dollars (\$5,000) per count and Fifteen Thousand Dollars (\$15,000) total.

In determining the appropriate penalty for a particular violation of the Act, the Fair Political Practices Commission (“Commission”) 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.

A central purpose of the Act is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed so that the voters may be fully informed, and improper practices may be inhibited. (Section 81002, subdivision (a).) Disclosure of the true source of campaign contributions is an essential part of the Act’s mandate.

In light of the importance placed on truthful disclosure of the source of campaign contributions, violations of Sections 84301 and 84302 routinely result in a maximum penalty of \$5,000 per violation. For example, *In the Matter of Archway Property Services, LLC, and Andrew Hawkins Cohen*, FPPC No. 11/1056 (Default Decision approved by the Commission on October 16, 2014) resulted in a penalty of \$5,000 per count for a property management firm that directed its employees and contractors to make eight separate \$500 contributions, under their individual names, to 2011 San Francisco Mayoral Candidates Phil Ting and Ed Lee, and later reimbursed the individuals for their contributions. Similarly, the Commission imposed a maximum penalty of \$5,000 per count against the respondent in the case of *In the Matter of Wisdom Culture and Education Organization*, FPPC No. 11/475. In that case the respondent, a non-profit organization, made five campaign contributions to a mayoral candidate by having its employees make contributions in their names and then reimbursing the employees for making the contributions.

The Commission also recently levied maximum penalties against two undisclosed intermediaries at its October 16, 2014 meeting in the cases of *In the Matter of Yolo County Republican Central Committee*, FPPC No. 11/278 (Default Decision) and *In the Matter of Santa Clara County Republican Party*, FPPC No. 14/903 (Default Decision). In both of those cases the respondents, county central committees, acted as conduits for earmarked contributions from individual contributors to a candidate for Secretary of State without disclosing that it was acting as an intermediary and was not the true source of the contribution.

Given the seriousness of the violations and the penalties assessed in comparable cases, maximum penalties are justified for Counts 1 and 3.

With regard to Count 2, violations for failure to file a major donor campaign statement vary depending on a number of circumstances, including the amount of undisclosed activity and the respondent’s familiarity with the Act’s filing requirements. For example, *In the Matter of Peter Sperling*, FPPC No. 10/067, concerned an individual who made contributions totaling

\$6,000,000 to a statewide ballot measure committee without filing a campaign statement. Although the respondent was not a California resident, he was aware of his filing requirements because he had filed major donor statements on prior occasions and had been fined by the Commission in a prior action. The Commission approved a stipulated decision on October 14, 2010 imposing a \$4,000 penalty on the respondent for violating Section 84200, subdivision (b).

Similarly, *In the Matter of George Soros*, FPPC No. 05/492 involved an individual who failed to file a major donor statement disclosing \$500,000 in contributions to a state ballot measure committee. In that case, the respondent had a previously filed major donor statements and had received a warning letter in an unrelated matter. However, he made no attempt to conceal his contributions as evidenced by the fact that he made statements to the media about the contributions. On May 21, 2009, the Commission approved a stipulated decision imposing a penalty of \$4,000 for the violation.

In the Matter of Vail Drilling Company, FPPC No. 06/464 concerned a major donor committee that failed to file a campaign statement disclosing a \$500,000 contribution to candidate-controlled committee. The respondent was an out-of-state limited liability company that had no previous experience as a major donor in California. On May 21, 2009, the Commission approved a stipulated decision resulting in a penalty of \$3,000 for failing to timely file a campaign statement.

The amount of the undisclosed contributions by Respondent Rich are not nearly as large as in the comparable cases. But like the *Soros* and *Sperling* cases, Respondent Rich previously filed as a major donor committee and therefore was aware of his filing obligations under California law. However, unlike those cases, Respondent Rich has not previously been found to have violated the Act. Respondent Rich asserts that he did not know that under California law the \$200,000 payment he made to Citizens in Charge was a contribution to CA Term Limits PAC thereby triggering his filing obligations for the second half of 2012. Regardless, the Act clearly required him to file a major donor statement in conjunction with the \$45,000 contribution to the No on 28 Committee.

To their credit, respondents have cooperated with the Commission's investigation and agreed to this stipulated decision prior to a probable cause hearing.

PROPOSED PENALTY

After consideration of the factors of Regulation 18361.5, as well as consideration of penalties in prior enforcement actions, the following penalty is recommended: \$5,000 for Count 1; \$4,000 for Count 2; and \$5,000 for Count 3 for a total penalty on all counts of \$14,000.