

1 GALENA WEST
Chief of Enforcement
2 CHRISTOPHER BURTON
Senior Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 322-5660

5 Attorneys for Complainant
6 Fair Political Practices Commission, Enforcement Division

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

10
11 In the Matter of:

12 ABRAHAM GHORBANIAN

13 Respondent.

FPPC Case No. 18/1266

14 STIPULATION, DECISION AND ORDER

15
16 INTRODUCTION

17 Abraham Ghorbanian (the “Committee” or “Respondent”) qualified as an independent
18 expenditure committee that supported Ed Pope, candidate for Mayor of Irvine, and Farrah Khan,
19 candidate for Irvine City Council, in the November 6, 2018 General Election. The Committee made
20 \$15,696 in independent expenditures in advance of the election, thereby meeting the \$1,000 threshold,
21 and qualifying as an independent expenditure committee with reporting and disclosure obligations under
22 the Political Reform Act (the “Act”).¹ The Committee failed to meet those obligations by failing to
23 timely file two 24-hour independent expenditure reports, and failing to include the required disclosures
24 on a print advertisement.

25 ///

26
27
28 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practice Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred in
3 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
4 existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² For this reason,
8 the Act is to be construed liberally to accomplish its purposes.³

9 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
10 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
11 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
12 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
13 “vigorously enforced.”⁶

14 Independent Expenditure Committee

15 Any person who makes independent expenditures totaling \$1,000 or more in a calendar year
16 qualifies as an independent expenditure committee.⁷ An “independent expenditure” is an expenditure by
17 any person in connection with a communication which expressly advocates the election or defeat of a
18 clearly identified candidate or the qualification, passage, or defeat of a clearly identified ballot measure,
19 or taken as a whole and in context, unambiguously urges a particular result in an election but which is not
20 made to or at the behest of the affected candidate or committee.⁸

21 ///

22 ///

23 ///

24 _____
25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Section 82013, subd. (b).

⁸ Section 82031.

1 "Made at the behest" of a candidate or committee means made under the control or at the
2 direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or
3 with the express, prior consent of the candidate or committee.⁹

4 Mandatory Filing of Campaign Statements

5 At the core of the Act's campaign reporting system is the requirement that committees file
6 campaign statements and reports for certain reporting periods and by certain deadlines.¹⁰

7 The Act requires independent expenditure committees to file semiannual campaign statements
8 each year no later than July 31 for the period ending June 30, and no later than January 31 for the period
9 ending December 31, if they have made contributions or independent expenditures during the respective
10 six-month period.¹¹

11 Duty to File 24-Hour Independent Expenditure Reports

12 When a committee makes a late independent expenditure, the committee must disclose the
13 expenditure in a 24-hour independent expenditure report filed in the places where it would be required
14 to file campaign statements as if it were formed or existing primarily to support or oppose the candidate
15 or measure for or against which it is making the late independent expenditure within 24 hours of making
16 the late independent expenditure.¹² A "late independent expenditure" means any independent
17 expenditure which totals in the aggregate \$1,000 or more and is made for or against any specific
18 candidate or measure involved in an election within 90 days before the date of the election or on the date
19 of the election.¹³

20 Advertisement Disclosure

21 An "advertisement" under the Act means any general or public communication that is authorized
22 and paid for by a committee for the purpose of supporting or opposing a candidate(s) for elective office
23 or a ballot measure(s).¹⁴

24
25 _____
26 ⁹ Regulation 18225.7, subd. (b).

27 ¹⁰ Sections 84200, *et seq.*

28 ¹¹ Section 84200, subd. (b).

¹² Section 84204.

¹³ Section 82036.5.

¹⁴ Section 84501.

1 Under the Act, any advertisement paid for by an independent expenditure committee shall include
2 the words “Paid for by” followed by the name of the committee.¹⁵

3 Further, under the Act, an advertisement that supports or opposes a candidate, paid for by an
4 independent expenditure, shall include a statement that it “was not authorized by a candidate or a
5 committee controlled by a candidate.”¹⁶

6 The Act also sets out certain display requirements for these disclosures as displayed on print
7 advertisements. Print ad disclosures must appear in a printed or drawn box with a solid white background
8 on the bottom of at least one page, set apart from other printed matter, and must use text that is in a
9 contrasting color.¹⁷ Disclosures on ads individually distributed, including mailers, must use text that is in
10 Arial font, at least 10-point in size.¹⁸

11 **SUMMARY OF THE FACTS**

12 Ed Pope was a candidate for Mayor of Irvine in the November 6, 2018 General Election, but was
13 unsuccessful, receiving approximately 31.4 percent of the vote. Farrah Khan was a candidate for Irvine
14 City Council in the November 6, 2018 General Election, and was successful, receiving approximately
15 15.5 percent of the vote.

16 The Committee became an independent expenditure committee when it made independent
17 expenditures totaling \$15,696 on or about October 15, 2018, thereby reaching the \$1,000 threshold
18 required of independent expenditure committees. Specifically, the Committee paid for the dissemination
19 of 90,000 copies of a mailer expressly advocating the Committee’s support of Ed Pope and Farrah Khan
20 prior to the election.¹⁹

21 One side of the advertisement clearly used the term “vote” and identified the candidates by their
22 full names, positions sought, photographs, and websites. The other side of the mailer printed a letter from
23 “Abraham Ghorbanian, DDS MS” to his “neighbors,” describing the reasons why he and his wife would
24

25 ¹⁵ Section 84502, subd. (b).

26 ¹⁶ Section 84506.5.

27 ¹⁷ Section 84504.2, subd. (a)(1).

28 ¹⁸ Section 84504.2, subd. (a)(2).

¹⁹ The mailer also advocated for the election of Katie Porter to the United States Congress, a position that is outside the jurisdiction of the Enforcement Division. Therefore, the amount attributed to the independent expenditure (\$15,696) represents two-thirds of the cost of the mailer.

1 be voting for Ed Pope and Farrah Khan.

2 The Committee did not coordinate with Ed Pope or Farrah Khan in the production and
3 distribution of the mailer. The Committee was solely responsible for the content of the advertisement and
4 received no input from and did not consult with the candidates.

5 The mailer's express advocacy for the candidates was clear, and the related expenditures were not
6 made at the behest of the candidates. As a result, the payments made by the Committee were independent
7 expenditures, thereby qualifying the Committee as an independent expenditure committee.

8 Although the mailer stated the name of the Committee in the form of a valediction at the bottom
9 of one side of the mailer, the mailer failed to include the required "Paid for by" phrase preceding the
10 name of the Committee. Further, the mailer failed to include the required disclaimer that the ad was not
11 authorized by a candidate or candidate-controlled committee.

12 The Committee also failed to meet its campaign filing obligations once it qualified as an
13 independent expenditure committee. Since the Committee made independent expenditures during the
14 reporting period of June 30, 2018 to December 31, 2018, it was required to file a semiannual campaign
15 statement covering that period. Further, the Committee was required to file two 24-hour independent
16 expenditure reports within 24 hours of making the aforementioned late independent expenditures.
17 However, the Committee did not timely file these documents.

18 VIOLATIONS

19 Count 1: Failure to Timely File 24-Hour Independent Expenditure Reports

20 The Committee failed to timely file two 24-hour independent expenditure reports for late
21 independent expenditures totaling \$15,696 made on October 15, 2018, in violation of Section 84204.

22 Count 2: Failure to Comply With Disclosure Requirements for Political Advertisements

23 The Committee failed to print the required "Paid for by" phrase or "not authorized" disclaimer on
24 a print advertisement, in violation of Sections 84502 and 84506.5.

25 PROPOSED PENALTY

26 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
27
28

1 count. Thus, the maximum penalty that may be imposed is \$10,000.²⁰

2 In determining the appropriate penalty for a particular violation of the Act, the Commission
3 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
4 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
5 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
6 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
7 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
8 record of violations.²¹

9 In this case, the Enforcement Division found no evidence that the Committee intended to conceal,
10 deceive, or mislead the public. Further, the Committee does not have a prior history of violating the Act.

11 The Commission also considers penalties in prior cases involving similar violations. Recent
12 similar cases involving a committee's failure to timely file 24-hour independent expenditure reports
13 include the following:

14 • *In the Matter of Save Avalon Now, A Committee Supporting Mayor Marshall, Council*
15 *Candidates Montano and Hernandez, Opposing Council Candidates MacGugan-Cassidy, Olsen and*
16 *Fertig 2016; Mike Sheehan; and Lysa Ray; FPPC No. 16/19829. Respondents, a primarily formed*
17 *committee, and its principal officer and treasurer, failed to timely file three 24-hour independent*
18 *expenditure reports for a total of \$3,208.90 in late expenditures, in violation of Section 84204. The*
19 *pertinent late independent expenditures were not otherwise disclosed on another statement or report filed*
20 *prior to the subject election. In September 2018, the Commission approved a fine of \$1,500 on one count.*

21 As to Count 1, the Committee is deserving of a penalty higher than that approved in the *Save*
22 *Avalon Now* case given the higher amount of financial activity that went unreported. In further
23 aggravation, the Committee also failed to timely file its semiannual campaign statement for the period
24 ending December 31, 2018, which captured the pertinent late independent expenditures.

25 Recent similar cases involving a failure to comply with the Act's advertising disclosure
26

27 _____
28 ²⁰ Section 83116, subd. (c).

²¹ Regulation 18361.5, subd. (d).

requirements include the following:

- *In the Matter of Preserve Tracy / “No on Measure M” and Dana Richards*; FPPC No. 18/1104.

Respondents, a primarily formed ballot measure committee and its treasurer, failed to include the proper disclosures on two yard sign and one website advertisement, in violation of Sections 84502, 84504.2, subdivision (b), and 84107. The committee paid for one yard sign ad that failed to include the necessary “Paid for by” or committee name disclosures. Respondents quickly modified the sign by adding corrective stickers; however, the added disclosure was too small and did not print the full name of the committee. The committee paid for a second yard sign advertisement that failed to print the full name of the committee. Finally, the committee maintained a website that failed to include the required “Paid for by” phrase. In February 2019, the Commission approved a fine of \$2,500 on one count.

As to Count 2, a penalty lower than in the comparable case is warranted given the lower number of non-complying advertisements. Further, whereas one of the ads at issue in the comparable case failed to include any disclosure whatsoever, the mailer here at least contained the name of the Committee.

Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Timely File 24-Hour Independent Expenditure Reports	\$2,000
2	Failure to Comply With Disclosure Requirements for Political Advertisements	\$1,500
	TOTAL:	\$3,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondent, Abraham Ghorbanian, hereby agree as follows:

1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose

1 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
2 liability of Respondent pursuant to Section 83116.

3 4. Respondent understands, and hereby knowingly and voluntarily waives, any and all
4 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
5 This includes, but is not limited to, the right to appear personally at any administrative hearing held in
6 this matter, to be represented by an attorney at Respondent's own expense, to confront and cross-examine
7 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
8 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
9 reviewed.

10 5. Respondent agrees to the issuance of the decision and order set forth below. Also,
11 Respondent agrees to the Commission imposing against him an administrative penalty in the amount of
12 \$3,500. One or more payments totaling this amount, to be paid to the General Fund of the State of
13 California, is/are submitted with this stipulation as full payment of the administrative penalty described
14 above, and they will be held by the State of California until the Commission issues its decision and order
15 regarding this matter.

16 6. If the Commission declines to approve this stipulation—then this stipulation shall become
17 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
18 rejected, all payments tendered by Respondent in connection with this stipulation shall be reimbursed to
19 Respondent. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
20 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
21 Director, shall be disqualified because of prior consideration of this Stipulation.

22 7. The parties to this agreement may execute their respective signature pages separately. A
23 copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax
24 or as a PDF email attachment is as effective and binding as the original.

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: _____
Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
Abraham Ghorbanian

1 The foregoing stipulation of the parties “In the Matter of Abraham Ghorbanian,” FPPC Case No. 18/1266
2 is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective
3 upon execution below by the Chair.

4
5 IT IS SO ORDERED.

6
7 Dated: _____
8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28