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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 16/19759

BETSY TUNNELL,

STIPULATION, DECISION AND ORDER

Respondent.

INTRODUCTION

Respondent, Betsy Tunnell (“Tunnell”), is an individual who unknowingly formed an independent expenditure committee, Independent Expenditure Committee Against Measure B. Tunnell made independent expenditures to oppose Measure B, a Fresno County local ballot measure. Measure B appeared on the November 8, 2016 election ballot and did not pass.

The Political Reform Act (the “Act”)¹ requires independent expenditure committees to file have disclosures on advertisements. Tunnell violated the Act by failing to comply with the disclosure requirements for political advertisements.

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¹The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections 81000 through 91014. All statutory references are to this code. 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 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
3 in 2016. For this reason, all legal references and discussions of law pertain to the Act’s provisions as
4 they 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 Thus, it was
8 decreed the Act “should be liberally construed to accomplish its purposes.³ A central purpose of the Act
9 is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully
10 and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Another
11 purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be “vigorously
12 enforced.”⁵

13 **Independent Expenditure Committee**

14 Committee means any person or combination of persons who directly or indirectly makes
15 independent expenditures totaling \$1,000 or more in a calendar year.⁶ This type of committee is referred
16 to as an independent expenditure committee.

17 **Independent Expenditure**

18 “Independent expenditure” means an expenditure made by any person in connection with a
19 communication which expressly advocates the defeat of a clearly identified measure but which is not
20 made to or at the behest of the affected committee.⁷

21 **Late Independent Expenditure**

22 “Late independent expenditure” means an independent expenditure that totals in the aggregate
23 \$1,000 or more and is made against a specific measure involved in an election during the 90-day period

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26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 82013, subdivision (b).

⁷ Section 82031.

1 preceding the date of the election.⁸ A committee that makes a late independent expenditure shall report
2 the late independent expenditure within 24 hours of the time it is made.⁹

3 **Advertisement**

4 “Advertisement” means any general or public advertisement which is authorized and paid for by
5 a committee for the purpose of opposing a ballot measure.¹⁰

6 **Advertisement Disclosure**

7 An advertisement opposing a ballot measure, that is paid for by an independent expenditure,
8 shall include a disclosure statement that identifies the name of the committee making the independent
9 expenditure.¹¹

10 Disclosures shall include “paid for by” in the same manner as, and immediately adjacent to and
11 above, or immediately adjacent to and in front of, the required identification.¹² The disclosures shall be
12 presented in a clear and conspicuous manner to give the reader adequate notice of the identity of the
13 person or committee that paid for the communication.¹³ All disclosure statements on printed materials
14 that are larger than those designed to be individually distributed shall constitute at least 5% of the height
15 of the advertisement and printed in a contrasting color.¹⁴ The disclosure statement on electronic media
16 advertisements must be presented in a clear and conspicuous manner.¹⁵ A disclaimer is not clear and
17 conspicuous if it is difficult to read, or if the placement is easily overlooked.¹⁶

18 **Liability for Violations**

19 Any person who violates any provision of the Act, who purposely or negligently causes any
20 other person to violate any provision of the Act, or who aids and abets any other person in the violation
21 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹⁷

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24 ⁸ Section 82036.5.

25 ⁹ Section 84204, subdivision (a).

26 ¹⁰ Section 84501, subdivision (a).

27 ¹¹ Section 84506.

28 ¹² Regulation 18450.4, subdivision (b)(1).

¹³ Regulation 18450.4, subdivision (b)(3).

¹⁴ Regulation 18450.4, subdivision (b)(3)(D).

¹⁵ Regulation 18450.4, subdivision (b)(3)(G).

¹⁶ *Id.*

¹⁷ Sections 83116 and 83116. 5.

1 **SUMMARY OF THE FACTS**

2 This case was opened in response to a sworn complaint alleging Tunnell violated provisions of
3 the Act by distributing advertisements without the required disclosures.

4 Tunnell was successful in her campaign to oppose a Fresno County ballot measure which did not
5 pass in the November 8, 2016, General Election. During investigation, it was discovered Tunnell
6 qualified as an independent expenditure committee on September 23, 2016 when she placed a second
7 order for campaign materials which exceeded the \$1,000 threshold. Tunnell reported making a total of
8 \$3,317.56 in independent expenditures for campaign materials advocating opposition to Measure B.

9 **Failure to Comply with Disclosure Requirements for Political Advertisements**

10 Tunnell had created a website, www.KeepItKingsburg.com, advocating opposition to Measure
11 B. Originally, the website did not contain any disclosures. On November 4, 2016, after receiving contact
12 from Enforcement, Tunnell updated the website to include the required disclosure. Tunnell did not place
13 the disclosure on the home page. Instead, Tunnell included the disclosure on a separate page labeled
14 “Important Documents” which could be accessed via a link from the home page. The disclaimer read,
15 “Paid for by the Independent Expenditure Committee Against Measure B, Betsy Tunnell.”

16 Tunnell purchased and released 4 foot x 8 foot banners to the public, which advocated for
17 opposition to Measure B. Originally, no disclosures appeared on the banners. On October 30, 2016, after
18 being contacted by the Enforcement Division, Tunnell amended her banners and added a disclosure, 3 to
19 4 inches in height, that read, “Paid for by: Independent Expenditure Committee Against Measure B.”
20 The banners were yellow in color with black text and the added disclosure was white in color with black
21 text.

22 During investigation, it was discovered Tunnell had not filed any campaign statements or reports
23 as an independent expenditure committee to disclose her campaign activity to oppose Measure B. After
24 receiving notice of her filing requirements from the Enforcement Division, Tunnell filed a 24-hour
25 independent expenditure report and a semi-annual campaign statement. For purposes of settlement these
26 violations are not being charged separately because of the size of the committee and the 24-hour
27 independent expenditure report and semi-annual campaign statement were filed prior to the pertinent
28 election thereby giving voters notice of Tunnell’s independent expenditures.

1 **VIOLATIONS**

2 **Count 1: Failure to Comply with Disclosure Requirements for Political Advertisements**

3 Tunnell failed to include the required disclosure statement on each of her campaign
4 advertisements, in violation of Government Code Section 84506 and Regulation 18450.4, subdivision
5 (b).

6 **PROPOSED PENALTY**

7 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
8 count. Thus, the maximum penalty that may be imposed here is \$5,000.¹⁸

9 In determining the appropriate penalty for a particular violation of the Act, the Commission
10 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the
11 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
12 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
13 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
14 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
15 record of violations.¹⁹

16 In this case, the evidence supports there was no intent to conceal, deceive or mislead the public
17 as to who produced the advertisements released by Tunnell because the advertisements were amended
18 prior to the election, which gave the public notice of who paid for the advertisements. Here, the
19 violations do not appear to be deliberate, as Tunnell was not sophisticated with the Act and worked
20 alone in her campaign against Measure B. Tunnell states this was the first-time she had participated in a
21 campaign. The violation committed here was an isolated incident and Tunnell has not had prior
22 enforcement history.

23 The Commission considers penalties in prior cases with the same or similar violations and
24 comparable facts.

25 *In the Matter of Save Avalon Now, a Committee supporting Mayor Marshall, Council*
26 *Candidates Montano and Hernandez, opposing Council Candidates MacGugan-Cassidy, Olsen and*

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28 ¹⁸Section 83116, subdivision (c).
¹⁹Regulation 18361. 5, subdivision (d).

1 *Fertig 2016; Mike Sheehan; and Lysa Ray*; FPPC Case No. 16/19829. Respondent, a committee
2 primarily formed to support and oppose six different candidates for mayor and city council, its principal
3 officer, and treasurer, failed to comply with disclosure requirements for political advertisements. The
4 committee received \$8,876.30 in contributions and spent \$7,992.22 on independent expenditures. The
5 committee had purchased three different mass mailers and eleven separate newspaper advertisements, all
6 of which failed to include the required disclosures and none of which were amended prior to the
7 election. On September 20, 2018, the Commission approved a penalty of \$3,000 for this count.

8 A lesser penalty than that approved in the *Save Avalon* case is recommended. Like *Save Avalon*,
9 Tunnell produced political advertisements that did not include the required disclosures. In mitigation,
10 Tunnell only produced two different advertisements that required disclosure, unlike *Save Avalon*, where
11 the committee produced 14 different advertisements that required disclosure. Also, unlike *Save Avalon*,
12 Tunnell formed a small committee spending only \$3,317.56. Further, in mitigation, unlike *Save Avalon*,
13 Tunnell amended her advertisements prior to the election to include the required disclosures. In
14 aggravation, Tunnell failed to timely report her campaign activity by late-filing a 24-hour independent
15 expenditure report. Although, Tunnell filed a 24-hour independent expenditure report and a semi-annual
16 campaign statement prior to the pertinent election. Therefore, a penalty of \$1,500 is recommended.

17 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
18 in the amount of \$1,500 is justified.

19 CONCLUSION

20 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
21 Respondent, Betsy Tunnell, hereby agree as follows:

- 22 1. Respondent violated the Act as described in the foregoing pages, which are a true and accurate
23 summary of the facts in this matter.
- 24 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
25 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 26 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
27 of reaching a final disposition without the necessity of holding an administrative hearing to
28 determine the liability of Respondents pursuant to Section 83116.

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

8 5. Respondent agrees to the issuance of the decision and orders set forth below. Also,
9 Respondent agrees to the Commission imposing against her an administrative penalty in the
10 amount of \$1,500. One or more cashier's checks or money orders totaling said amount – to be
11 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
12 payment of the administrative penalty described above, and same shall be held by the State of
13 California until the Commission issues its decision and order regarding this matter.

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

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page, including a hardcopy of a signature page
3 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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6 Dated: _____
7 Galena West, Chief of Enforcement
8 Fair Political Practices Commission
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10 Dated: _____
11 Betsy Tunnell, Respondent
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13 The foregoing stipulation of the parties "In the Matter of Betsy Tunnell," FPPC Case No.
14 16/19759, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
15 effective upon execution by the Chair.
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17 IT IS SO ORDERED.
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19 Dated: _____
20 Richard C. Miadich, Chair
21 Fair Political Practices Commission
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