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8
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 16/20081

12 HEMET TAXPAYERS
13 ASSOCIATION AND ROBERT
14 RIGHETTI,

STIPULATION, DECISION AND ORDER

15 Respondents.

16
17 **INTRODUCTION**

18 Respondent, Hemet Taxpayers Association (the “Committee”), is a city general purpose
19 committee that campaigned against the passage of Measure U, a local ballot measure. Measure U was
20 adopted in the November 8, 2016, General Election. Respondent, Robert Righetti (“Righetti”), served as
21 the Committee’s treasurer.

22 The Political Reform Act (the “Act”)¹ requires committees and treasurers to present disclosure
23 statements in a clear and conspicuous manner on any advertisements produced by a committee to
24 support or oppose a ballot measure. The Committee and Righetti violated the Act by failing to present its
25 disclosure statement in a clear and conspicuous manner on advertisements.

26
27 ¹ The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections
28 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**

14 “Independent expenditure” means an expenditure made by any person in connection with a
15 communication which expressly advocates the defeat of a clearly identified measure but which is not
16 made to or at the behest of the affected committee.⁶

17 **Advertisement**

18 “Advertisement” means any general or public advertisement which is authorized and paid for by
19 a committee for the purpose of opposing a ballot measure.⁷

20 **Advertisement Disclosure**

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

24 ///

25 _____
26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Section 81002, subdivision (f).

⁶ Section 82031.

⁷ Section 84501, subdivision (a).

⁸ Section 84506.

1 Disclosures shall include “paid for by” in the same manner as, and immediately adjacent to and
2 above, or immediately adjacent to and in front of, the required identification.⁹ Any disclosures shall be
3 presented in a clear and conspicuous manner to give the reader adequate notice of the identity of the
4 committee that paid for the communication.¹⁰ All disclosure statements on over-sized print media shall
5 constitute at least 5% of the height of the advertisement and printed in a contrasting color.¹¹

6 **Joint and Several Liability of Committee and Treasurer**

7 It is the duty of a committee treasurer to ensure the committee complies with the Act.¹² A
8 treasurer may be held jointly and severally liable, along with the committee and candidate, for violations
9 committed by the committee.¹³

10 **Liability for Violations**

11 Any person who violates any provision of the Act, who purposely or negligently causes any
12 other person to violate any provision of the Act, or who aids and abets any other person in the violation
13 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹⁴

14 **SUMMARY OF THE FACTS**

15 This case was opened in response to a sworn complaint received on October 25, 2016, alleging
16 the Committee and Righetti violated the Act by failing to comply with the minimum height requirements
17 for advertisement disclosures on over-sized print media. The Enforcement Division investigated and
18 determined the Committee had made an independent expenditure for an advertisement to oppose
19 Measure U. The Committee purchased and released a black billboard, approximately 4 feet high and 8
20 feet wide, with white lettering that stated “NO “U” DON’T”. There was a white strip in the bottom half
21 of the billboard with black lettering that stated “NO to Union Control”. Underneath “Union Control”,
22 within the white strip, the Committee included a disclosure statement in black letters, approximately ¾
23 of an inch in height. The disclosure statement stated, “Paid for by Hemet Taxpayers Association – 140
24 E. Stetson Avenue #266, Hemet, CA 92545 – FPPC# 1333112. ”

25
26 ⁹ Regulation 18450.4, subdivision (b)(1).

27 ¹⁰ Section 84507 and Regulation 18450.4, subdivision (b)(3).

28 ¹¹ Regulation 18450.4, subdivision (b)(3)(D).

¹² Sections 81004, 84100, and Regulation 18427.

¹³ Sections 83116.5 and 91006.

¹⁴ Sections 83116 and 83116.5.

1 The disclosure statement on the Committee’s billboard properly included the name of the
2 committee and the “paid for by” language but failed to meet the height requirements to give the reader
3 adequate notice of the identity of the committee that paid for the advertisement. The Committee’s
4 billboard advertisement was approximately 4 feet high. To meet the 5% height requirement the
5 disclosure on the Committee’s billboard advertisement would have to be approximately 2.4 inches tall (4
6 feet x 12 inches = 48 inches x 5% = 2.4 inches). The disclosure statement on the Committee’s billboard
7 advertisement was approximately $\frac{3}{4}$ of an inch in height.

8 On October 25, 2016, 14 days before the election, the Committee received notice of the sworn
9 complaint including the alleged violation of failing to meet the minimum height requirement on its
10 advertisement disclosures. The Committee did not amend the disclosure statement on its billboard prior
11 to the pertinent election.

12 VIOLATIONS

13 **Count 1: Failure to Present Disclosure Statement in a Clear and Conspicuous Manner**

14 The Committee and Righetti failed to include a disclosure statement on its over-sized print media
15 that met the 5% height requirement, in violation of Government Code Section 84507 and California
16 Code of Regulations 18450.4, subdivision (b)(3)(D).

17 PROPOSED PENALTY

18 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
19 count. Thus, the maximum penalty that may be imposed here is \$5,000.¹⁵

20 In determining the appropriate penalty for a particular violation of the Act, the Commission
21 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the
22 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
23 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
24 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
25 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
26 record of violations.¹⁶

27
28 ¹⁵ Section 83116, subdivision (c).

¹⁶ Regulation 18361.5, subdivision (d).

1 In this case, the evidence supports that there was no intent to conceal, deceive or mislead the
2 public as to the source of the billboard advertisement at issue here as the Committee and Righetti placed
3 the full disclosure statement on the billboard in a contrasting color from the background. The violation
4 here appears to be inadvertent, as the Committee and Righetti were recently charged for violating the
5 same provision of the Act. As discussed in length below, on October 20, 2016, the Commission
6 approved a penalty for failing to include the proper disclosure statements on advertisements, specifically
7 the Committee was informed of the height requirement for disclosure statements on advertisements.

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

10 *In the Matter of Hemet Taxpayers Association*; FPPC No. 16/426. Respondent, a city general
11 purpose committee, failed to include any disclosure statements on advertisements published by the
12 Committee. Prior to receiving contact from the Enforcement Division, Respondent had attempted to add
13 the missing disclosures to each of its signs by adding a sticker that contained the disclosures. The added
14 disclosures did not meet the 5% height requirement so Respondents agreed to the Enforcement
15 Division's suggestion for issuance of a press release prior to the pertinent election. On October 20, 2016,
16 the Commission approved a penalty of \$2,000.

17 *In the Matter of Fullerton Taxpayers for Reform, Tony Bushala, and Jack Dean*; FPPC No.
18 16/422. Respondent, a city general purpose committee, failed to meet the minimum height requirements
19 for its disclosure statement included on campaign signs and failed to include the required disclaimer that
20 the advertisement was not authorized or paid for by a candidate. Following contact from the
21 Enforcement Division, Respondent removed all of the campaign signs and replaced them with new signs
22 that contained the proper disclosures two days prior to the June 7, 2016 election. On April 20, 2017, the
23 Commission approved a penalty of \$2,500.

24 A similar penalty than that approved in the *Fullerton Taxpayers* case is recommended. Similar to
25 the case here, the prior *Hemet* and *Fullerton Taxpayers* case involved violations of the advertisement
26 provisions regarding the 5% height requirement on over-sized print media. At the time the Committee
27 and Righetti were designing and purchasing the over-sized print media at issue here, the Committee and
28

1 Righetti were in settlement negotiations with the Enforcement Division. The Committee and Righetti
2 knew or should have known of the 5% height requirement for disclosures on over-sized print media.

3 Unlike *Hemet* and *Fullerton Taxpayers*, the Committee and Righetti did not amend the
4 disclosure statement prior to the election despite its notice from the Enforcement Division of the sworn
5 complaint. In mitigation, unlike *Hemet* and *Fullerton Taxpayers*, the disclosure statement at issue here
6 complied with all of the advertisement provisions aside from the height requirement. Therefore, a
7 penalty of \$2,500 is recommended.

8 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
9 in the amount of \$2,500 is justified.

10 CONCLUSION

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
12 Respondents Hemet Taxpayers Association and Robert Righetti hereby agrees as follows:

- 13 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate
14 summary of the facts in this matter.
- 15 2. This stipulation will be submitted for consideration by the Fair Political Practices
16 Commission at its next regularly scheduled meeting – or as soon thereafter as the matter may be
17 heard.
- 18 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
19 of reaching a final disposition without the necessity of holding an administrative hearing to
20 determine the liability of Respondents pursuant to Section 83116.
- 21 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
22 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
23 18361.9. This includes, but is not limited to the right to appear personally at any administrative
24 hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to
25 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
26 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
27 hearing officer, and to have the matter judicially reviewed.

1 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
2 Respondents agree to the Commission imposing against them an administrative penalty in the
3 amount of \$2,500. One or more cashier's checks or money orders totaling said amount – to be
4 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
5 payment of the administrative penalty described above, and same shall be held by the State of
6 California until the Commission issues its decision and order regarding this matter.

7 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
8 null and void, and within fifteen business days after the Commission meeting at which the
9 stipulation is rejected, all payments tendered by Respondents in connection with this stipulation
10 shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if
11 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
12 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
13 this stipulation.

14 7. The parties to this agreement may execute their respective signature pages separately. A
15 copy of any party's executed signature page, including a hardcopy of a signature page
16 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
17
18

19 Dated: _____

Galena West, Chief of Enforcement
Fair Political Practices Commission

23 Dated: _____

Robert Righetti, Treasurer of Hemet Taxpayers Association

1 The foregoing stipulation of the parties “In the Matter of Hemet Taxpayers Association and
2 Robert Righetti,” FPPC Case No. 16/20081, is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution by the Chair.

4
5 IT IS SO ORDERED.

6
7 Dated: _____

Richard C. Miadich, Chair
Fair Political Practices Commission