



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811

August 30, 2023

Neil G. Kitchens
[REDACTED]

Warning Letter re: FPPC No. 18/678; In the Matter of Neil G. Kitchens, Committee to Elect Neil Kitchens for Assembly 2018

Dear Neil G. Kitchens and Committee to Elect Neil Kitchens For Assembly 2018:

The Enforcement Division of the Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act¹ (the “Act”). We had received a complaint that you and the Committee to Elect Neil Kitchens (the “Committee”) may have violated various provisions of the Act relating to campaign filings and reporting during your candidacy for State Assembly District 30 in the 2018 election cycle. Those allegations were investigated, and after careful consideration of various mitigating and aggravating factors, we have determined that it is appropriate to issue a warning letter for the alleged violations and not pursue an administrative enforcement action. This letter outlines the terms of the warning being issued to you and the Committee. All references to the law are from 2018 when the violations occurred.

With respect to the Charter Public Schools and CA Republican Taxpayers Association PAC and allegations of your Committee’s coordination with those political organizations, there was insufficient evidence discovered during the investigation to validate the allegations. Additionally, insufficient evidence was found to validate personal use of campaign funds. Therefore, these portions of the complaint are being closed without any further action for insufficient evidence of any violation.

The Act requires a committee², and its principal officer(s)³ to follow certain regulations set forth in the Act. A committee and its principal officer(s) must amend its Statement of Organization when required⁴ and timely file a termination statement when campaign activity is terminated.⁵ Additionally, the committee must timely file required pre-election campaign statements. For the period ending 45 days before the date of the election, the statement must be filed no later than 40 days before the date of the election, and for the period ending 17 days before the date of the

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² Section 82013, subdivision (a) and Section 82047.5, subdivision (d).

³ Section 82047.6

⁴ Section 84103.

⁵ Section 84214.

election, the statement must be filed no later than 12 days before the date of the election⁶. Furthermore, if a contribution of \$1,000 or more is received within 90 days of the date of the election, or in this case between August 8 and November 6, 2018, then that contribution must be reported within 24-hours of it being received⁷. The Act further requires a committee and its principal officers to timely and properly report contributions received and expenditures made in appropriate semi-annual campaign statements⁸ and to maintain detailed campaign records and other documents required.⁹ Finally, a Committee may only operate one campaign bank account.¹⁰

You and the Committee violated the Act by failing to file a Form 410 termination statement, late filed a Pre-Election Statement for the period of July 1, 2018 to September 22, 2018 by 20 days, failed all together to file a Pre-Election Statement for the period of September 23, 2018 to October 20, 2018 and a semi-annual statement for the period of October 21, 2018 to December 31, 2018, failed to file seven 24-hour Contribution Reports totaling \$12,700 in contributions received between August 17 and October 9, 2018, failed to report 13 contributions totaling \$5,329.89 received between August 18 and November 23, 2018, failed to report four credits to the Committee bank account totaling \$369.88 on January 2, 2019, failed to report 22 expenditures totaling \$5,413.00 between September 28 and December 31, 2018, and failed to itemize four expenditures totaling \$6,287.59 between August 22 and September 24, 2018.

The Committee also failed to properly file an amended Statement of Organization to properly disclose the Committee's date of qualification and violated the one bank account rule by reporting three expenditures that did not go through the Committee's designated bank account.¹¹

However, there are several important mitigating factors present in this case. You and the Committee have no prior Enforcement history with the Commission and were a first-time and unsophisticated candidate. Additionally, you and the Committee were unsuccessful in the November 6, 2018, General Election and raised and spent less than \$15,000. There was no evidence of intent to violate any provisions of the Act. Furthermore, you were likely under criminal investigation during some portions of your campaign, and it may have affected proper campaign reporting and responding to FPPC inquiries. In addition, the criminal investigation into your campaign ultimately resulted in you pleading no contest and being placed on probation for felony filing of a false declaration of candidacy arising out of your campaign for Assembly. Therefore, while you were not prosecuted for violating any provisions of the Act, another enforcement agency has prosecuted you for violating elections laws arising out of the same campaign. Finally, both your State Assembly Committee, for which the violations herein are connected to, and your State Senate Committee have been administratively terminated.¹² Thus, we have also taken other administrative actions to ensure that your Committees did not stay open. Based on the foregoing, and in accordance with the Enforcement Division Policy Directives formally adopted by the Commission on January 26, 2023, which requires the Enforcement Division to take all appropriate actions within their discretion to decrease the Division's annual carryover caseload, the Enforcement Division is closing this case

⁶ Section 84200.4 and 84200.8.

⁷ Section 84203, subdivision (b).

⁸ Section 84200.

⁹ Section 84104 and Regulation 18401, subdivision (a).

¹⁰ Section 85201.

¹¹ However, these violations are not part of this warning letter because the 5-year statute of limitations has expired.

¹² Regulation 18404.2.

with this warning letter.¹³ Discretion was used based upon mitigating or aggravating circumstances and the totality of the circumstances.¹⁴ Additionally, discretion was used for violations that caused minimal public harm when lack of experience or knowledge of the Act's requirements caused multiple violations with minimal public harm and the committee had a small amount of activity.¹⁵ This resolution may not be used as a comparable case for other enforcement matters.¹⁶

This letter serves as a written warning. However, the information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future may result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC Enforcement Division case resolution mechanism without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. However, the warning letter resolution does not provide you with the opportunity for a hearing before an Administrative Law Judge or the Commission. If you wish to avail yourself of administrative proceedings by requesting that your case proceed with prosecution rather than this warning, please notify us within ten (10) days of the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. Specifically, the next step in your matter would be the issuance of a public accusation since a finding of probable cause was already made. If we do not receive such notification, this warning letter will be posted on the Commission's website ten (10) days from the date of this letter.

If you have any questions regarding this letter, please contact me at 916-322-7771 or aberjikly@fppc.ca.gov.

Sincerely,

Artin Berjikly

Artin Berjikly, Senior Commission Counsel
Enforcement Division

¹³ <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2023/january/15.0-Enforcement-directives.pdf>

¹⁴ Regulations 18360.1 and 18360.3.

¹⁵ Regulation 18360.2.

¹⁶ See Regulation 18361.5, subdivision (e)(3).