STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

March 20, 2023

O'Leary for Board of Equalization 2018
Micheál O'Leary
[redacted]

Warning Letter Re: FPPC No. 2020-00849, In the Matter of O'Leary for Board of Equalization 2018, Michael Hamil, Micheál O'Leary

Dear Respondents:

The Enforcement Division of the Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act").[1] This letter is in response to an audit report completed by the Commission's Audit Division. The audit found that O'Leary for Board of Equalization 2018 ("Committee"), Hamil, and O'Leary failed to maintain adequate records to substantiate the campaign statement reporting and failed to file certain reports by the respective deadlines. The Enforcement Division confirmed these violations.[2]

The Act requires candidate-controlled committees to maintain detailed accounts, records, bills, and receipts necessary to establish that campaign statements were properly filed.[3] Additionally, a candidate for elective state office who is required to file electronically with the Secretary of State must file reports to disclose the receipt of any contribution of $5,000 or more received outside the election cycle.[4] During the election cycle, candidates are required to disclose the receipt of any contribution of $1,000 or more on 24-hour reports.[5]

The Committee and O'Leary failed to maintain adequate source records, accounts, or documentation to demonstrate that the campaign statements were properly filed. Specifically, the Committee and O'Leary did not maintain canceled checks issued by the committee, invoices or

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[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 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

[2] The treasurer, Michael Hamil, has passed away since these violations occurred. As such, the Enforcement Division takes no action against the treasurer in this matter.

[3] Section 84104.

[4] Section 85309, subdivision (c).

[5] Section 84203.

receipts for expenditures, copies of contribution checks, and supporting records related to loans made between the Committee and the candidate. In addition, the Committee and O'Leary failed to timely file two 10-day reports to disclose contributions of $5,000 or more received outside the election cycle and three 24-hour reports to disclose contributions of $1,000 or more during the election cycle.

However, there are several mitigating factors present in this case. The treasurer of record passed away prior to the audit and investigation of this matter. O'Leary was cooperative with the audit and the audit determined that the filers substantially complied with the disclosure and recordkeeping provisions of the Act. O'Leary largely funded the campaign and was unsuccessful in the election. The contribution activity was reported on regularly filed campaign statements and therefore there was disclosure prior to the election. Further, the Committee has since terminated, and Respondents do not have a prior enforcement history. 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 with this warning letter.[6] Here, discretion was used based upon mitigating or aggravating circumstances and the totality of the circumstances.[7] 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 that were corrected upon contact.[8] This resolution may not be used as a comparable case for other enforcement matters.[9]

This letter serves as a written warning. 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 will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an Enforcement Division case resolution 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 probable cause hearing or hearing before an Administrative Law Judge or the Commission. If you wish to avail yourselves of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with

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[6] https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2023/january/15.0-Enforcement-directives.pdf
[7] Regulation 18360.1.
[8] Regulation 18360.2.
[9] See Regulation 18361.5, subdivision (e)(3).

administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the Commission's website ten days from the date of this letter.

If you need forms or a manual, or guidance regarding their obligations, please call the Commission's Toll-Free Advice Line at 1-866-275-3772 or visit our website at www.fppc.ca.gov. Please feel free to contact me at tgilbertson@fppc.ca.gov or (916) 323-6421 (voicemail) with any questions you may have regarding this letter.

Sincerely,

Theresa Gilbertson

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division