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

May 31, 2023

Greenway Capitola-The Better Way, Juan Escamilla and Thomas Evans
c/o Jim Sutton
150 Post St
Suite 405
San Francisco, CA 94108

Sent via email: jsutton@campaignlawyers.com

Warning Letter: FPPC No. 2018-01259; Greenway Capitola-The Better Way, Juan Escamilla, and Thomas Evans

Dear Jim Sutton,

The Enforcement Division of the Fair Political Practices Commission ("Commission") enforces the provisions of the Political Reform Act (the "Act").[1] The Enforcement Division received three non-sworn complaints alleging Greenway Capitola-The Better Way ("the Committee") failed to properly classify as a primarily-formed committee, failed to timely report independent expenditures and/or non-monetary contributions on campaign statements, failed to timely file 24-hour independent expenditure and/or contribution reports, and failed to comply with the Act's advertising disclosure requirements.

The Enforcement Division has completed its investigation and found the Committee failed to timely file an amendment to its statement of organization to change the name of the committee, a primarily formed ballot measure committee, to include the language, "supporting Measure L," failed to comply with the Act's advertisement disclosure requirements, failed to timely file four 24-hour contribution reports, and failed to timely report $13,137 in contributions and expenditures.

Measure L appeared on the ballot in the November 6, 2018 General Election. The ballot measure received the designation "L" on or around August 10, 2018. The Committee was a primarily formed ballot measure committee formed to support Measure L. The Act requires primarily formed ballot measure committees to amend the name of the committee to include a statement indicating support or opposition to the measure the committee was formed to support or oppose within 30 days of designation.[2] In this case, the Committee was required to include a phrase similar to "supporting Measure L" in its name by September 9, 2018, but failed to do so. The failure to comply with the Act's naming requirements caused advertisement disclosure statements to be incomplete.

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[1] The Political Reform Act is contained in Government Code Sections 81000 through 91014.
[2] Section 84107

The Act also requires each committee that makes or receives a late contribution to report the late contribution within 24 hours of the time it is made or received.[3] A "late contribution" includes a contribution that totals in the aggregate $1,000 or more and is made to or received by a candidate, a controlled committee, or a committee formed or existing primary to support or oppose a candidate or measure during the 90-day preceding the date of the election, or on the date of the election, at which the candidate or measure is to be voted on.[4] In this case, the Committee failed to timely file four 24-hour contribution reports for late contributions received by the applicable due dates.

Finally, the Act requires committees to report all contributions and expenditures.[5] The following information about a person who makes, in the aggregate, contributions of $100 or more must be disclosed: (1) full name; (2) street address; (3) occupation; (4) employer, or if self-employed, the name of the contributor's business; (5) the date and amount of each contribution received from the contributor during the reporting period; and (6) the cumulative amount of contributions received from the contributor.[6] For expenditures of $100 or more, the committee must disclose:(1) the full name of each person to whom an expenditure is made; (2) the person's street address; (3) the amount of the expenditure; and (4) a brief description of the expenditure.[7] An expenditure also includes payments made by an agent or independent contractor, commonly referred to as "subvendor payments," of $500 or more.[8] In this case, the Committee failed to timely report expenditures totaling $450 on the campaign statement covering January 1, 2018 to June 30, 2018. Additionally, the Committee failed to timely report $100 in contributions, failed to timely report subvendor payments totaling $2,000, and failed to timely report expenditures totaling $2,398 on the campaign statement covering September 23, 2018 to October 20, 2018.

The Enforcement Division has determined that mitigating circumstances exist here. The evidence shows the Committee has no prior Enforcement history, the principal officers were inexperienced with the Act and largely made a good faith effort to comply with the Act, the committee amended all reports after receiving contact from the Enforcement Division, the Committee's advertisements included a "Paid for by" disclosure and were not misleading, and the committee has since terminated, and there was no evidence of an intent to conceal the violations. 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.[9] Discretion was used based upon mitigating or aggravating circumstances and the totality of the circumstances.[10] 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

[3] Section 84203.
[4] Section 82036, subd. (a).
[5] Section 84211
[6] Section 84211, subd. (f).
[7] Section 84211, subd. (k)
[8] Sections 84211, subd. (k)(6), and 84303, subd. (a).
[9] https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2023/january/15.0-Enforcement-directives.pdf
[10] Regulations 18360.1 and 18360.3.

were corrected after contact.[11] This resolution may not be used as a comparable case for other enforcement matters.[12]

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.

Although the Enforcement Division is closing this case without seeking a penalty, the Committee is still required to file all outstanding campaign statements and pay any late filing fees assessed by the filing officer. Please contact the Committee's filing officer for further information about required filings. Any future non-filings may result in monetary penalties and this warning letter may be considered in any future enforcement actions.

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 your client with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Commission. If your client wishes to avail themselves of these proceedings by requesting that this case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the Enforcement Division will rescind this warning letter and proceed with administrative prosecution of this case. 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) 322-5772 or MNash@fppc.ca.gov

Sincerely,

Marissa Nash

Marissa Nash
Commission Counsel
Enforcement Division

[11] Regulation 18360.2.
[12] See Regulation 18361.5, subdivision (e)(3).