



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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To: Chair Miadich, Commissioners Cardenas, Hatch, and Hayward

From: Thomas Jones, Executive Director
Galena West, Chief of Enforcement
Theresa Gilbertson, Commission Counsel

Date: March 9, 2020

RE: Request for Authority to File a Civil Complaint

Case Name: *In the Matter of Friends of Joe Aguirre for Delano City Council 2014 and Joe Aguirre*; FPPC No. 17/193

The Enforcement Division presents this matter to the Fair Political Practices Commission (the “Commission”) in order to obtain authority to file a civil complaint against the above-named respondents to enforce the provisions of the Political Reform Act (the “Act”).¹

INTRODUCTION

Joe Aguirre (“Aguirre”) was elected to the Delano City Council in 2010. He ran for re-election in the November 4, 2014 General Election but was unsuccessful. Friends of Joe Aguirre for Delano City Council 2014 (“Committee”) was his candidate-controlled committee. Aguirre served as the Committee’s treasurer. This committee remains open. Aguirre ran again in the November 8, 2016 General Election and was successful. His current term expires in 2020. He was appointed and served as the Mayor for a one-year term in 2019.

Evidence shows that the Committee and Aguirre failed to timely file campaign statements and reports since opening the Committee with a statement of organization filed on or around July 30, 2014. Evidence also shows that Aguirre failed to report his income on Statements of Economic Interests filed in connection with his office as city council member.

The Enforcement Division has made numerous attempts to contact Aguirre since July of 2017. Given that Aguirre has failed to comply with requests to come into compliance with the Act in over two years, has been served with an accusation in this case, and remains in office, the Enforcement Division believes this matter is appropriate for resolution in a civil proceeding.

Section 90009 of the Act authorizes the Commission to seek injunctive relief in a superior court to compel disclosure consistent with the Act. Further, Section 91004 provides that

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. 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 Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

any person who intentionally or negligently violates the reporting requirements of the Act shall be liable for monetary penalties in a civil action. The Enforcement Division is presenting this matter to the Commission for authorization to proceed civilly to obtain injunctive relief and civil penalties.

Regulation 18361.2 governs the procedure for civil litigation. After reviewing this memorandum, the Commission may direct the Executive Director to do any of the following:

- (1) Initiate civil litigation.
- (2) Decide whether probable cause proceedings should be commenced.
- (3) Return the matter to staff for further investigation.
- (4) Take no further action on the matter or take whatever other action it deems appropriate.

In this matter, the Enforcement Division asks the Commission to initiate civil litigation.

APPLICABLE LAW

Definition of Controlled Committee

The Act defines a “committee” to include any person (or combination of persons) who receives contributions totaling \$2,000 or more in a calendar year.² In 2014, this dollar threshold was \$1,000. This type of committee is commonly referred to as a “recipient committee.” A recipient committee that is controlled directly or indirectly by a candidate, or which acts jointly with a candidate in connection with the making of expenditures, is a “controlled committee.”³

Mandatory Filing of Campaign Statements and Reports

The Act requires candidate-controlled committees to file campaign statements at specific times disclosing information regarding contributions received and expenditures made by the campaign committees.⁴

A candidate-controlled committee must file semi-annual campaign statements each year no later than July 31 for the reporting period ending on June 30, and no later than January 31 of the following year for the reporting period ending December 31.⁵ Whenever the deadline falls on a Saturday, Sunday, or official state holiday, the filing deadline for a statement shall be extended to the next regular business day.⁶

In addition to semi-annual campaign statements, a candidate-controlled committee must file two pre-election campaign statements before an election in which the candidate is listed on the ballot.⁷

² Section 82013, subd. (a)

³ Section 82016.

⁴ Sections 84200-84225.

⁵ Section 84200, subd. (a).

⁶ Regulation 18116, subd. (a).

⁷ Section 84200.5.

For the November 8, 2016 election, a committee was required to file the first pre-election campaign statement for the period ending 45 days before the election (September 24, 2016) no later than 40 days before the election (September 29, 2016).⁸ For the period ending 17 days before the election (October 22, 2016), a committee was required to file the second pre-election campaign statement no later than 12 days before the election (October 27, 2016).⁹

One Designated Campaign Bank Account

Candidates are required to establish one campaign contribution bank account. All campaign expenditures must be made from this account.¹⁰

Duty to File Statement of Economic Interest

An express purpose of the Act is to ensure that the assets and income of candidates and public officials be disclosed, so that conflicts of interest may be avoided.¹¹ In furtherance of this purpose, the Act requires certain public officials, including members of city councils of cities to periodically disclose their investments, real property interests, and income.¹² When a candidate for city council runs for office, they are required to file a Statement of Economic Interest (“SEI”) that discloses reportable investments, business positions, interests in real property, and sources of income no later than the final filing date of a declaration of candidacy. The statement shall cover the preceding 12 months.¹³

Public officials, including city council members, must file SEIs annually. The public official must report the interests during the period since the previous statement was filed. This statement is due interests no later than April 1 for members of city councils.¹⁴

Annual Fee

Each committee required to file a statement of organization must pay the SOS a \$50 annual fee by January 15 each year until the committee is terminated.¹⁵ A committee that fails to timely pay the \$50 annual fee is subject to a penalty equal to three times the amount of the fee. The Commission is required to enforce this provision of the Act.¹⁶

Joint and Several Liability of Candidate, Committee, and Treasurer

⁸ Section 84200.8, subd. (a).

⁹ Section 84200.8, subd. (b).

¹⁰ Section 85201, subd. (e).

¹¹ Section 81002, subd. (c).

¹² Section 87200 and 87207.

¹³ Section 87200 and 87201.

¹⁴ Section 87203 and Regulation 18723.

¹⁵ Section 84101.5, subd. (a) and (c)

¹⁶ Section 84101.5, subd. (d).

It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹⁷ A treasurer may be held jointly and severally liable, along with the candidate and the committee, for violations committed by the committee.¹⁸

Civil Liability

The Commission may seek injunctive relief in a superior court to compel disclosure consistent with the Act, and the court shall grant expedited review of the matter.¹⁹ Any person who intentionally or negligently violates any of the Act's reporting requirements shall be liable in a civil action for an amount not more than the amount or value not properly reported.²⁰

FACTS

The Enforcement Division received referrals against the Committee and Aguirre from the City Clerk of Delano for failure to file campaign statements and from the Secretary of State for failure to pay the annual fees.

Aguirre filed an initial statement of organization for the Committee with the Secretary of State on July 30, 2014 and indicated that the Committee qualified as a recipient committee on July 18, 2014, with the identification number 1368843. As of January 23, 2020, the Committee has failed to file any campaign disclosure statements or reports, except for one 24-hour contribution report, disclosing receipt of \$5,000 from Rudy Salas for Assembly 2014 on August 18, 2014. Therefore, there was incomplete disclosure for the 2014 election and no disclosure for the 2016 election and no disclosure during Aguirre's time in office. In addition, records show that some of the Committee's expenditures were not made through the designated campaign bank account.

Aguirre is required, as a candidate and as a sitting city council member for the City of Delano, to periodically file statements of economic interest ("SEI"). Aguirre consistently reports no reportable interests on his assuming office SEI in 2016 and his annual SEIs for 2017 and 2018. However, he has had reportable income during the reporting periods from a full-time position with the Delano Regional Medical Center. In addition, Aguirre failed to file a candidate SEI in connection with his candidacy for City Council during the November 8, 2016 General Election and has failed to file an annual SEI for 2016.

The Enforcement Division has made numerous attempts to notify Aguirre of the complaints and to demand that Aguirre and the Committee comply with the filing requirements of the Act, beginning December 11, 2017 through January 24, 2020 by email and by letter. The Enforcement Division has spoken to Mr. Aguirre but has been unsuccessful in obtaining compliance.

¹⁷ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁸ Sections 83116.5 and 91006.

¹⁹ Section 90009.

²⁰ Section 91004.

The Enforcement Division initiated an administrative action against the Committee and Aguirre in this matter:

- Report in Support of a Finding of Probable Cause (“PC Report”) served by certified mail on September 11, 2018. The Enforcement Division did not receive a response from Aguirre.
- Ex Parte Request for an Order Finding Probable Cause and an Order that an Accusation Be Prepared and Served (“Ex Parte Request”) was submitted to the Hearing Officer on October 30, 2018
- Order issued by the Hearing Officer on October 31, 2018
- Accusation was personally served on May 7, 2019
- The Enforcement Division emailed the City Manager of Delano requesting assistance in contacting Aguirre on September 12, 2019. On the same day, City Manager Maribel Reyna responded and indicated that she would pass on the message at the next City Council meeting, held on September 16, and would encourage Aguirre to fulfill his reporting obligation. Aguirre did not respond.
- The Enforcement Division emailed Rachel Richman, City Attorney for Delano, requesting assistance in contact Aguirre on January 31, 2020.
- On February 3, 2020 and February 19, 2020, Richman indicated that she had attempted to contact Aguirre by phone, text message, and in person regarding the matter.

As of the date of this memorandum, Respondents have failed to file outstanding campaign statements, amend Statements of Economic Interest, or respond to the PC Report or Accusation in this matter.

VIOLATIONS²¹

The Committee and Aguirre failed to timely file five semiannual campaign statements and two pre-election campaign statements, failed to utilize make expenditures from a designated campaign bank account, failed to timely file two statements of economic interests, and failed to pay the required annual fee to the Secretary of State.

MITIGATING OR EXCULPATORY FACTORS

Aguirre was an unsuccessful candidate in the November 4, 2014 General Election. Aguirre does not have prior enforcement history.

AGGRAVATING FACTORS AND OTHER RELEVANT MATERIALS

²¹ The administrative statute of limitations is five years and has been tolled for several counts in 2014, 2015, and 2016, which were included in the Accusation. The violations referenced here are within the 4-year civil action statute of limitations.

Aguirre has run for office multiple times and knew or should have known the filing obligation. In spite of this, the Committee and Aguirre failed to disclose the Committee's activity during the 2014 and the 2016 election. There was considerable public harm because for both elections, the public had no disclosure as to the Committee's activities. To date, the Committee and Aguirre have failed to file numerous statements, showing a pattern of behavior.

During the relevant time, no Delano City Councilmembers disclosed reportable income on SEIs. The Commission's SEI Unit reached out to all City of Delano filers and instructed officials about the 87200 requirements and requested amendments to be filed by December 31, 2019. To date, Aguirre has not filed any amendments.

Aguirre is currently in office and his term expires in 2020.

RECOMMENDATION FOR CIVIL ACTION

Civil action in this case is appropriate given the severity of the campaign reporting violations and failure to report on statements of economic interest. Aguirre ran for office in 2014 and 2016, and was successful in 2016, yet failed to report any campaign activity, with the exception of a 24-hour contribution report in 2014. As a result, the public was deprived of disclosure regarding the financial activity of the Committee. The public harm involved here is further aggravated by the fact that Aguirre remains in office. In addition, Aguirre has had many opportunities to communicate with the Enforcement Division, and to file the missing statements, yet has failed to do so for over two years. Therefore, the Enforcement Division recommends filing a civil action against Aguirre and the Committee in order to seek an order compelling Aguirre and the Committee to file the necessary campaign statements and reports, compelling Aguirre to disclose all economic interests in amended SEIs and awarding civil penalties pursuant to Section 91004.

CONCLUSION

We recommend that the Commission authorize staff to file a civil complaint in this matter against Joe Aguirre and Friends of Joe Aguirre for Delano City Council 2014.