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8  
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
10 STATE OF CALIFORNIA

11  
12 In the Matter of:

FPPC No. 18/320

13 JOB CREATORS FOR A STRONG  
ECONOMY, OPPOSED TO NATHAN  
14 FLETCHER FOR SUPERVISOR 2018,  
SPONSORED BY THE LINCOLN CLUB  
15 OF SAN DIEGO COUNTY and BRIAN  
PEPIN,

STIPULATION, DECISION, AND ORDER

16 Respondents.  
17

18 INTRODUCTION

19 Respondent Job Creators for a Strong Economy, opposed to Nathan Fletcher for Supervisor 2018,  
20 sponsored by The Lincoln Club of San Diego County (the “Committee”) was a sponsored primarily  
21 formed committee by the time it was terminated on December 7, 2018. The Committee was known as Job  
22 Creators for a Strong Economy, sponsored by The Lincoln Club of San Diego County and was a sponsored  
23 general purpose committee at the time of the violation. Respondent Brian Pepin (“Pepin”), was the  
24 Committee’s principal officer. The Committee and Pepin failed to include disclosures that are required by  
25 the Political Reform Act (the “Act”)<sup>1</sup> on a print advertisement.

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28 <sup>1</sup> 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.

1 **SUMMARY OF THE LAW**

2 The violation in this case occurred in 2018, and all legal references and discussions of law pertain  
3 to the Act’s provisions as they existed at that time.

4 Need for Liberal Construction and Vigorous Enforcement of the Act

5 When enacting the Act, the people of California found and declared that previous laws regulating  
6 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> Thus, it was  
7 decreed that the Act “should be liberally construed to accomplish its purposes.”<sup>3</sup> One purpose of the Act  
8 is to provide adequate enforcement mechanisms so that the Act will be “vigorously enforced.”<sup>4</sup>

9 General Purpose Committee

10 One of the ways a committee qualifies as a committee under the Act is by receiving \$2,000 or  
11 more in contributions during a single calendar year.<sup>5</sup> Such a committee is considered a “general purpose  
12 committee” when it is formed or exists primarily to support or oppose more than one candidate or ballot  
13 measure.<sup>6</sup>

14 Advertisement Disclosure

15 An advertisement is any general or public communication that is authorized and paid for by a  
16 committee for the purpose of supporting or opposing one or more candidates for elective office or one or  
17 more ballot measures.<sup>7</sup> Any advertisement paid for by a general purpose committee must include the words  
18 “Paid for by” followed by the name of the committee as it appears on the most recent Statement of  
19 Organization filed with the Secretary of State.<sup>8</sup> An advertisement supporting or opposing a candidate that  
20 is paid for by an independent expenditure must also include a statement that it was not authorized by a  
21 candidate or a candidate-controlled committee.<sup>9</sup>

22 For print advertisements, these disclosures must appear in a printed or drawn box with a solid  
23 white background on the bottom of at least one page, set apart from other printed matter, and must use  
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25 <sup>2</sup> Section 81001, subd. (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subd. (f).

28 <sup>5</sup> Section 82013, subd. (a).

<sup>6</sup> Section 82027.5, subd. (a).

<sup>7</sup> Section 84501.

<sup>8</sup> Section 84502, subd. (a)(1).

<sup>9</sup> Section 84506.5.

1 text that is in a contrasting color.<sup>10</sup> Disclosures on print advertisements individually distributed, including  
2 mailers, must use text that is in Arial-equivalent type and 10-point font.<sup>11</sup>

3 Joint and Several Liability

4 Any person who violates, causes any other person to violate, or aids and abets any other person in  
5 the violation of the Act may be held jointly and severally liable, along with the committee, for violations  
6 committed by the committee.<sup>12</sup>

7 **SUMMARY OF THE FACTS**

8 The Committee qualified as a committee on December 31, 2013 and was sponsored by The Lincoln  
9 Club of San Diego County since its inception. The Committee received \$430,000.00 in contributions and  
10 made \$466,643.78 in expenditures during the period of January 1, 2018 through December 31, 2018.

11 In May 2018, the Committee paid for 7 mailers opposing Nathan Fletcher, a successful candidate  
12 for the San Diego County Board of Supervisors for the November 6, 2018 General Election. One of the  
13 mailers failed to comply with the advertising disclosure rules of the Act. For disclosure, the mailer showed  
14 only a post office box as an address. It did not include the words “Paid for by” followed by the  
15 Committee’s name, it did not identify the Committee’s name, and it did not include a statement that the  
16 mailer was not authorized by a candidate or a candidate-controlled committee.

17 The Committee’s treasurer reported this violation to the Enforcement Division. Evidence showed  
18 that the Committee paid for 75,933 copies of the mailer for a total of \$41,298.77. Of that cost, \$750.00  
19 paid for design, \$18,834.98 paid for printing, and \$16,326.56 paid for postage. Evidence also showed that  
20 Pepin approved the design of advertisements disseminated by the Committee.

21 The Committee was terminated on December 7, 2018.

22 **VIOLATION**

23 Count 1: Failure to Comply with Disclosure Requirements for Political Advertisements

24 The Committee and Pepin failed to print the language “Paid for by,” disclose the name of the  
25 Committee, or include a “not authorized” disclaimer on a print advertisement, in violation of Government  
26 Code Sections 84502, subdivision (a)(1); 84504.2, subdivision (a); and 84506.5.

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28 <sup>10</sup> Section 84504.2, subd. (a)(1).

<sup>11</sup> Section 84504.2, subd. (a)(2).

<sup>12</sup> Sections 83116.5 and 91006.

1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per count.

3 In determining the appropriate penalty for a particular violation of the Act, the Commission  
4 considers the facts of the case, the public harm involved, and the purpose of the Act. Also, the Commission  
5 considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention  
6 to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or inadvertent; (d)  
7 whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily  
8 were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.<sup>13</sup>

9 This violation resulted in a lack of transparency for the public regarding who funded and  
10 distributed the subject mailer. However, the Enforcement Division did not find evidence of any intention  
11 to conceal, deceive, or mislead, particularly since the Committee self-reported the violation. The violation  
12 was negligent and an isolated occurrence. Finally, the Committee and Pepin both do not have prior  
13 enforcement history.

14 The Commission also considers penalties in prior cases with comparable violations. Recent cases  
15 with a similar violation include the following:

16 *In the Matter of Mark Foster*; FPPC No. 18/349. (The Commission approved a stipulated  
17 agreement on September 19, 2019.) Respondent made an independent expenditure in the amount of  
18 \$2,225.00 to print and distribute flyers that expressly advocated against two local ballot measures. The  
19 flyers failed to include the “Paid for by” phrase with the Committee’s name but instead listed the website  
20 address [www.PasadenaVoteNo.com](http://www.PasadenaVoteNo.com). The website appeared to be created by “Pasadena Vote No – Against  
21 Pot Shops in Pasadena” or “Pasadena Against Pot Shops,” neither of which was a registered committee.  
22 The Commission approved a penalty of \$2,000.

23 The violation in this case deserves a penalty higher than that approved in *Foster*. Unlike in *Foster*,  
24 the Committee and Pepin are experienced respondents that have engaged in campaign activities for many  
25 years. Although they included proper disclosures in 6 other mailers, they failed to include any disclosure  
26 in the subject mailer. Therefore, they knew or should have known to include proper disclosures in the  
27 subject mailer. The Committee and Pepin also paid significantly more to print and disseminate their  
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<sup>13</sup> Regulation 18361.5, subd. (d).

1 mailer, by almost 20 times what was spent in *Foster*. Additionally, the Committee and Pepin failed to  
2 include the “not authorized” disclaimer, which might have caused confusion about who had funded the  
3 subject mailer. In mitigation, the Committee’s treasurer self-reported this violation to the Enforcement  
4 Division, and the mailer was properly reported on all campaign reports and campaign statements.

5 Based on the foregoing, the following penalty is recommended:

<b>Count #</b>	<b>Violation</b>	<b>Penalty Amount</b>
1	Failure to Comply with Disclosure Requirements for Political Advertisements	\$2,500

8 **CONCLUSION**

9 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
10 Respondents Job Creators for a Strong Economy, opposed to Nathan Fletcher for Supervisor 2018,  
11 sponsored by The Lincoln Club of San Diego County and Brian Pepin hereby agree as follows:

12 1. Respondents violated the Act as described in the foregoing pages, which are a true and  
13 accurate summary of the facts in this matter.

14 2. This stipulation will be submitted for consideration by the Fair Political Practices  
15 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

16 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose  
17 of reaching a final disposition without the necessity of holding an administrative hearing to determine the  
18 liability of the Respondents pursuant to Section 83116.

19 4. The Respondents understand, and hereby knowingly and voluntarily waive, any and all  
20 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.  
21 This includes, but is not limited to the right to appear personally at any administrative hearing held in this  
22 matter, to be represented by an attorney at the Respondents’ own expense, to confront and cross-examine  
23 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial  
24 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially  
25 reviewed.

26 5. The Respondents agree to the issuance of the decision and order set forth below. Also, the  
27 Respondents agree to the Commission imposing against it an administrative penalty in the amount of  
28 \$2,500. One or more cashier’s checks or money orders totaling said amount—to be paid to the General

1 Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative  
2 penalty described above, and same shall be held by the State of California until the Commission issues its  
3 decision and order regarding the matter.

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

10 7. The parties to this agreement may execute their respective signature pages separately. A  
11 copy of any party’s executed signature page including a hardcopy of a signature page transmitted via fax  
12 or as a PDF email attachment is as effective and binding as the original.

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15 Dated: \_\_\_\_\_  
16 Galena West, Chief of Enforcement  
17 Fair Political Practices Commission

18 Dated: \_\_\_\_\_  
19 Brian Pepin, individually and on behalf of Job Creators  
20 for a Strong Economy, opposed to Nathan Fletcher for  
21 Supervisor 2018, sponsored by The Lincoln Club of San  
22 Diego County

1 The foregoing stipulation of the parties “In the Matter of Job Creators for a Strong Economy, opposed to  
2 Nathan Fletcher for Supervisor 2018, sponsored by The Lincoln Club of San Diego County and Brian  
3 Pepin,” FPPC No. 18/320, is hereby accepted as the final decision and order of the Fair Political Practices  
4 Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: \_\_\_\_\_

\_\_\_\_\_ Richard C. Miadich, Chair  
Fair Political Practices Commission