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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

10
11 In the Matter of:

12 JOIN TRAVIS ALLEN TO REPEAL THE
13 GAS TAX BALLOT MEASURE
COMMITTEE, MAJOR FUNDING BY
14 PISF, INC.; and TRAVIS ALLEN

15 Respondents.

FPPC Case No. 18/236

STIPULATION, DECISION AND ORDER

Date Submitted to Commission: March 2023

16 INTRODUCTION

17 Join Travis Allen to Repeal the Gas Tax Ballot Measure Committee, Major Funding By PISF,
18 Inc. (the “Committee”) was a primarily formed ballot measure committee controlled by Travis Allen
19 (“Allen”), candidate for Governor in the June 5, 2018 Primary Election.

20 This case arose from a sworn complaint.

21 The Act limits the use of candidate-controlled ballot measure committee funds to expenditures
22 related to ballot measures. Respondents violated the Act in 2018 by improperly using the Committee’s
23 funds to support Allen’s candidacy for Governor.

24 SUMMARY OF THE LAW

25 The Act and its regulations are amended from time to time. The violations in this case occurred in
26 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as they
27 existed at that time.

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1 Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

2 When enacting the Act, the people of California found and declared that previous laws regulating
3 political practices suffered from inadequate enforcement by state and local authorities.¹ To that end, the
4 Act is to be construed liberally to accomplish its purposes.² Another purpose of the Act is to provide
5 adequate enforcement mechanisms so that the Act will be “vigorously enforced.”³

6 Permissible Use of Funds By Candidate-Controlled Ballot Measure Committees

7 In January 2009, the Commission adopted a regulatory scheme for general purpose ballot
8 measure committees controlled by candidates for elective state office which included rules for the
9 permissible use of funds, recordkeeping requirements, and campaign disclosure requirements.
10 Regulations 18521.5; 18401, subdivision (a)(6); and 18421.8, were approved and adopted by the
11 Commission as a comprehensive system to ensure that money given to ballot measure committees
12 controlled by candidates for elective state office is actually used to support or oppose ballot measures and
13 not used to influence candidate election campaigns, and that the public is able to identify and monitor the
14 activities of these committees.

15 Pursuant to Regulation 18521.5, subdivision (d), the Act prohibits ballot measure committees
16 controlled by candidates for elective state office from using committee funds for any purpose other than
17 to make expenditures related to a state or local measure or potential measure anticipated by the
18 committee, or to qualification or pre-qualification activities relating to such measures. Such expenditures
19 include, but are not limited to, payment of the committee's reasonable and ordinary operating costs,
20 administrative overhead, fundraising activities, travel, compliance costs, and attorney's fees incurred as a
21 result of the committee's activities.

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¹ Section 81001, subd. (h).

28 ² Section 81003.

³ Section 81002, subd. (f).

1 the conclusion of the TV ad.

2 **VIOLATIONS**

3 Count 1: Prohibited Use of Controlled Ballot Measure Committee Funds

4 The Committee and Allen improperly made expenditures of controlled ballot measure committee
5 funds for a purpose unrelated to a state or local measure or potential measure anticipated by the Committee,
6 or to qualification or pre-qualification activities relating to such measures, in violation of Regulation
7 18521.5, subdivision (d).

8 **PROPOSED PENALTY**

9 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
10 count. Thus, the maximum penalty that may be imposed is \$5,000.⁶

11 This case does not qualify for the Commission’s streamline settlement program because the type
12 of violation at issue is not included in the program.

13 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
14 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
15 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
16 considers the facts and circumstances of the violation in the context of the following factors set forth in
17 Regulation 18361.5, subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
18 by the specific violation; (2) The level of experience of the violator with the requirements of the Act;
19 (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence or absence of
20 any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate, negligent or
21 inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission staff or any
22 other governmental agency in a manner not constituting complete defense under Government Code
23 Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the violator has
24 a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the violator,
25 upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.⁷

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28 ⁶ Section 83116, subd. (c).

⁷ Regulation 18361.5, subd. (e).

1 The use of committee funds for a prohibited purpose carries a high degree of public harm. The
2 use of funds by ballot measure committees controlled by candidates for elective state office is restricted
3 to ballot measure advocacy because contributions to such committees are not subject to contribution
4 limits. By using ballot measure committee funds to support Allen's candidacy for Governor, Respondents
5 were able to circumvent this important protection.

6 Respondents were experienced with the Act, with Allen serving in the State Assembly since
7 2012.

8 The investigation in this matter did not reveal any evidence indicating that Respondents intended
9 to conceal, deceive or mislead in conjunction with the violating activity. Further, the investigation did not
10 show whether the violations were deliberate, negligent or inadvertent.

11 There is no evidence that Respondents consulted with Commission staff or any other
12 governmental agency about the activity underlying the subject violations.

13 This particular violation appears to be isolated and not part of a pattern of similar violations by
14 Respondents. Further, Allen does not have a prior record of violations of the Act.

15 Additionally, the Commission considers penalties in prior cases involving similar violations.
16 Similar cases involving prohibited use of controlled ballot measure committee funds include the
17 following:

18 • *In the Matter of Arnold Schwarzenegger, and Governor Schwarzenegger's California Dream*
19 *Team, a Ballot Measure Committee*; FPPC No. 09/539. Respondents, the Governor and his controlled
20 ballot measure committee, improperly used committee funds to spend \$1.1 million for a
21 television/Internet advertisement that related to state budget negotiations. The purpose of this use of
22 funds was unrelated to a state or local measure or potential measure anticipated by the Committee, or to
23 qualification or pre-qualification activities relating to such measures, in violation of Regulation 18521.5,
24 subdivision (d). In March 2012, the Commission approved a fine of \$5,000 on each of six counts.

25 As to the present case, a lower number of counts and a lower per-count penalty than that awarded
26 in the *Schwarzenegger* case is warranted because the improper use of committee funds is not as
27 egregious here. Whereas, in the comparable case, the entirety of the subject advertisements related to
28 prohibited topics, only a portion of the ads at issue here delved into subjects unrelated to ballot measures.

1 Further, the Committee here spent only about 20 percent of the amount in the *Schwarzenegger* case, in
2 total, on the subject advertisements, and even less if considering a proration of the associated costs given
3 only a share of the ads contained violating content.

4 Respondents committed additional violations of the Act that are not being charged herein, in the
5 interest of settlement. In particular, the pertinent video advertisement failed to meet the advertising
6 disclosure requirements of the Act. Although the language used in the disclaimer was correct, it did not
7 meet the applicable display requirements. Further, the Committee made nonmonetary contributions to
8 Allen’s gubernatorial campaign committee when it made expenditures for the subject advertisements, and
9 failed to timely report them on campaign statements.

10 Based on the foregoing, a proposed penalty of \$3,500 is recommend as to Count 1.

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
12 Respondents, Join Travis Allen to Repeal the Gas Tax Ballot Measure Committee, Major Funding By
13 PISF, Inc.; and Travis Allen, hereby agree as follows:

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

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

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

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

28 5. Respondents agree to the issuance of the decision and order set forth below. Also,

1 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
2 \$3,500. One or more payments totaling this amount, to be paid to the General Fund of the State of
3 California, is/are submitted with this stipulation as full payment of the administrative penalty described
4 above, and they will be held by the State of California until the Commission issues its decision and order
5 regarding this matter.

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

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

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16 Dated: _____
17 Angela J. Brereton, Chief of Enforcement
18 Fair Political Practices Commission

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20 Dated: _____
21 Travis Allen, individually and on behalf of Join Travis
22 Allen to Repeal the Gas Tax Ballot Measure
23 Committee, Major Funding By PISF, Inc.

1 The foregoing stipulation of the parties “In the Matter of Join Travis Allen to Repeal the Gas Tax Ballot
2 Measure Committee, Major Funding By PISF, Inc.; and Travis Allen,” FPPC Case No. 18/236 is hereby
3 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
4 execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

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10 Richard C. Miadich, Chair
11 Fair Political Practices Commission
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