

1 Kenneth C. Hardy
2 COLANTUONO & LEVIN, PC
3 555 West 5th Street, 31st Floor
4 Los Angeles, California 90013
5 Telephone: (213) 533-4206
6 Facsimile: (213) 533-4191
7 khardy@cllaw.us

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Investigator/Petitioner

8 **BEFORE THE CAMPAIGN FINANCE ETHICS COMMISSION**
9 **COUNTY OF VENTURA**

11 In the Matter of:

12 FRIENDS OF JUDY MIKELS,

13
14 Respondent.

CASE NO. 2006-10

NOTICE OF MOTION AND MOTION TO
DISMISS COMPLAINT; MEMORANDUM
OF POINTS AND AUTHORITIES;
PROPOSED DECISION AND ORDER

16 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD HEREIN:

17 PLEASE TAKE NOTICE that at the next regularly scheduled meeting of the Ventura County
18 Campaign Finance Ethics Commission (the "Commission"), which meeting shall take place at the
19 County Government Center, Hall of Administration, Board of Supervisors Hearing Room, 800 South
20 Victoria Avenue, California 93009, Petitioner will move the Commission to dismiss Complaint No.
21 2006-10 in its entirety. Petitioner files this motion pursuant to Section 13.03 of the Ventura County
22 Campaign Finance Ethics Commission Operating Policies (the "Operating Policies"), revised and
23 adopted July 11, 2007.
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1 The motion to dismiss is based on the memorandum of points and authorities filed
2 concurrently herewith and any oral argument and additional material presented to the Commission at
3 the hearing on the matter.

4 DATED: August 22, 2007

COLANTUONO & LEVIN, PC

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7 KENNETH C. HARDY
8 Investigator & Petitioner

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Colantuono & Levin, PC
555 West 5th Street, 31st Floor
Los Angeles, CA 90013

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MEMORANDUM OF
POINTS AND AUTHORITIES

I.
FACTS

Judy Mikels ran for a seat on the County of Ventura Board of Supervisors. The primary election was held on June 6, 2006. Ms. Mikels' controlled committee was called "Friends of Judy Mikels." Ms. Mikels had a website promoting her candidacy. As of April 27, 2006, the website did not contain an express written statement that Ms. Mikels approved of the website's contents.¹ As of May 3, 2006, the website contained the statement "Paid for by Friends of Judy Mikels, ID# 940900" but did not contain an express written statement that Ms. Mikels approved of the website's contents.²

Carroll Dean Williams filed a complaint with the Ventura County Campaign Finance Commission and alleged that the above-described website violated Section 1289 of the Ventura County Campaign Finance Reform Ordinance (the "Ordinance").³ Section 1289 provides: "All broadcast and print advertisements placed by county candidates or their controlled committees shall include a clear written or spoken statement indicating that the candidate has approved of the contents of the advertisement." The complaint does not describe the facts constituting the alleged violation. Presumably Mr. Williams believes the website is an advertisement for purposes of Section 1289 and that the statement required by Section 1289 was not included on the website and is required.

II.
ANALYSIS

For the website in question to come within the scope of Section 1289, it must first be considered an "advertisement." The ordinance does not define "advertisement" and thus we turn to the Political Reform Act (the "PRA") for guidance.⁴ The PRA provides: " 'Advertisement' means

¹ See Exhibit 1. The documents consisting of Exhibits 1 and 2 were submitted by the complaining party.

² See Exhibit 2.

³ See Complaint No. 2006-10.

⁴ Section 1263 of the Ordinance provides: "This ordinance is intended to supplement the Political Reform Act as amended. Unless a word or term is specifically defined in this ordinance or the contrary is stated or clearly appears from the context, words and terms shall have the same meaning as when they are used in Title 9 of the California Government

1 any general or public advertisement which is authorized and paid for by a person or committee for
2 the purpose of supporting or opposing a candidate for elective office or a ballot measure or ballot
3 measures.”⁵ It appears that the website in question falls within this general definition of
4 advertisement.

5 Section 1289 is limited to “broadcast” advertisements and “print” advertisements. The
6 website in question appears to be neither. Broadcast advertisements refer to those advertisements
7 that are conveyed through the means of television or radio. That is not the case here. The website in
8 question, furthermore, involves no video. Print advertisements are limited to mailings, door hangers,
9 printed handouts, communications set forth in newspapers, magazine, newsletters, billboards, and
10 other print media. A website is not print media.

11 Notwithstanding the literal reading of Section 1289, can Section 1289 be interpreted in good
12 faith to include website advertisements? This question need not be answered in this case because the
13 PRA provides for an exemption applicable to this case.

14 The Campaign Manual for local candidates published by the California Fair Political
15 Practices Commission, in a section that reviews identification requirements for advertisements,
16 provides: “No identification or disclosure is required by the Political Reform Act on the following
17 items when paid for by a candidate in support of his or her own campaign: . . . E-mails, faxes, or web
18 site pages.”⁶ The Manual refers to, among other sources, California Code of Regulations title 2,
19 section 18450.1, which provides in part: “In addition to the exempted communications in
20 subdivision (b) of Government Code section 84501, the following are not an ‘advertisement’: . . .
21 (3) A web-based or Internet-based communication.”

22 Absent any express specific provisions of the Ordinance that contradict this exemption of the
23 PRA – and none exist – this exemption controls. Consequently, the website in question is not an
24 advertisement for purposes of the PRA or Section 1289 of the Ordinance.

26 Code, in which the Political Reform Act is codified, and as supplemented by the Regulations of the Fair Political
27 Practices Commission as set forth in Title 2, Division 6 of the California Code of Regulations, as well as any
28 amendments to the Act or to the Regulations of the Fair Political Practices Commission.”

⁵ Government Code section 84501(a).

⁶ Exhibit 3, which is a copy of FPPC Campaign Manual 2, May 2007, p. 3-8.

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Conclusion

Based on the foregoing, we respectfully request that the Campaign Finance Ethics Commission dismiss Case No. 2006-10 in its entirety.

DATED: August 22, 2007

COLANTUONO & LEVIN, PC


KENNETH C. HARDY
Investigator & Petitioner

Colantuono & Levin, PC
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Los Angeles, CA 90013

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DECISION AND ORDER

The Ventura County Campaign Finance Ethics Commission, having reviewed the Motion for Dismissal, supporting papers, any opposition, and oral arguments, at its meeting on _____, hereby grants the Motion for Dismissal in its entirety. It is hereby ordered that all complaints and charges in Case No. 2006-10 are dismissed.

DATE: _____

Honorable William L. Peck
Chair, Campaign Finance Ethics Commission

Colantuono & Levin, PC
555 West 5th Street, 31st Floor
Los Angeles, CA 90013

PROOF OF SERVICE
In the Matter of: Friends of Judy Mikels
Case No. 2006-10

I, Paul A. McConnell, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 555 West 5th Street, 30th Floor, Los Angeles, California 90013. On August 22, 2007, I served the document(s) described as **NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES; PROPOSED DECISION AND ORDER** on the interested parties in this action as follows:

By placing the original a true copy thereof enclosed in a sealed envelope addressed as follows:

Carroll Dean Williams
2851 Apache Avenue
Ventura, CA 93001

BY MAIL: The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after service of deposit for mailing in affidavit.

OVERNIGHT DELIVERY: I deposited such envelope in a facility regularly maintained by FEDERAL EXPRESS UPS Overnight Delivery [specify name of service:] with delivery fees fully provided for or delivered the envelope to a courier or driver of FEDERAL EXPRESS UPS OVERNIGHT DELIVERY [specify name of service:] authorized to receive documents at 555 West 5th Street, 30th Floor, Los Angeles, California 90013 with delivery fees fully provided for.

BY FACSIMILE: The foregoing document was transmitted to the above-named persons by facsimile transmission from (213) 533-4191 before 5:00 p.m. on said date and the transmission was reported as complete and without error.

[State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

[Federal] I declare that I am employed in the offices of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 22, 2007, at Los Angeles, California



Paul A. McConnell