

1 GALENA WEST (SBN 215783)
Chief of Enforcement
2 THERESA GILBERTSON (SBN 288598)
Commission Counsel
3 **FAIR POLITICAL PRACTICES COMMISSION**
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 323-6421
5 Email: tgilbertson@fppc.ca.gov

6 Attorneys for Complainant
Enforcement Division of the Fair Political Practices Commission
7

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

11 In the Matter of) OAH No. 2019030096
) FPPC No. 15/003
)
)
13 SUSAN G. SHELLEY, SUSAN) COMPLAINANT'S REPLY BRIEF IN SUPPORT
14 SHELLEY FOR ASSEMBLY 2013, and) OF THE PROPOSED DECISION
14 SUSAN SHELLEY FOR ASSEMBLY)
15 2014,)
) Hearing Judge: Deena R. Ghaly
) Hearing Date: June 19, 2019
16 Respondents.) Hearing Time: 9:00 a.m.
) Hearing Place: 320 W. Fourth Street, Suite 630
) Los Angeles, CA 90013

18 This matter came before Administrative Law Judge Deena R. Ghaly of the Office of
19 Administrative Hearings ("OAH"), on June 19, 2019, in Los Angeles, California, who issued a Proposed
20 Decision on August 9, 2019. Complainant, the Enforcement Division of the Fair Political Practices
21 Commission ("Commission"), having submitted an Opening Brief and received Respondent Susan
22 Shelley's Brief in Opposition to the Proposed Decision, submits the following Reply Brief.

23 **I. INTRODUCTION**

24 Shelley generally argues that the factors under Regulation 18361.5, subdivision (d) were not
25 correctly or reasonably applied, that the proposed decision is inaccurate, and that the proposed decision is
26

1 not consistent with the purposes of the Political Reform Act (“Act.”)¹ But, as discussed in the Enforcement
2 Division’s Opening Brief and in this Reply Brief, the Proposed Decision states findings of fact that are
3 supported by and consistent with the evidence presented at the hearing in this matter. There is no additional
4 material evidence, which could, with reasonable diligence, have been discovered and presented at the
5 administrative hearing. Thus, the Enforcement Division respectfully requests that the Commission make
6 technical and minor changes as discussed in the Opening Brief in Support of the Proposed Decision and
7 adopt it as the decision.

8 **II. DISCUSSION**

9 **A. Judge Ghaly correctly applied the factors in assessing the penalty**

10 Judge Ghaly’s analysis of the factors under Regulation 18361.5, subdivision (d) is supported by
11 and consistent with the evidence presented at the hearing and the proposed decision contains an accurate
12 statement and application of the law. Shelley, throughout her brief, argues that that the judge did not
13 consider “all the surrounding circumstances” and that several factors were not properly considered.²
14 Shelley argues that Judge Ghaly failed to provide a reasonable basis or analysis for the proposed penalties.³
15 Ultimately, Shelley maintains that she should receive a letter of warning or no enforcement action.

16 i. The Proposed Decision fairly considers all of the surrounding circumstances

17 The proposed decision fairly considers all of the surround circumstances and assesses a mid-range
18 penalty of \$2,500 for each of the five violations for failure to timely file pre-election campaign statements.
19 Shelley argues that because of the “unique circumstances” of her candidacy, owing to the necessity of
20 opening two committees during a special election, her violations should be considered “inadvertent filing
21 errors.”⁴ Shelley points out that she ultimately lost the general election in 2013 and again in 2014 during
22 the regularly scheduled general election. However, Shelley succeeded in the primary election in 2013 and
23 2014, raised approximately \$100,000 between her two open committees in 2013, and was a candidate in
24

25 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
26 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title
2 of the California Code of Regulations, and all regulatory references are to this source. See §§ 83111 and 83116.

27 ² Respondents’ Brief in Opposition to the Proposed Decision at pages 9 – 13.

28 ³ Respondents’ Brief in Opposition to the Proposed Decision at page 15, line 15.

⁴ Respondents’ Brief in Opposition to the Proposed Decision at page 9, line 27.

1 a close race for a state elective office. Despite the mitigating factors, which are discussed in the Proposed
2 Decision and below, she had a duty, as a candidate who volunteered to place herself on the ballot, to learn,
3 understand, and comply with the laws that apply equally to all candidates. Shelley's suggested resolution
4 would imply that pre-election statements are merely "paperwork," rather than the primary tool of
5 transparency and disclosure for campaigns. In failing to timely file, Susan G. Shelley; Susan Shelley for
6 Assembly 2013 (the "2013 Committee"); and Susan Shelley for Assembly 2014 (the "2014 Committee")
7 are liable for violations of the Act and a monetary penalty should be imposed.

8 ii. The Seriousness of the Violation

9 Judge Ghaly properly held that the violations were serious and that "alternate forms of reporting
10 cannot provide full redress for lost opportunities to receive timely statements and compare them with
11 filings of the same type by other candidates."⁵ In her brief in opposition to the proposed decision, Shelley
12 downplays the public harm inherent in the failure to timely file pre-election campaign statements by
13 suggesting that other filings mitigate the harm of her untimely filings.⁶ At hearing and in her brief, Shelley
14 argued and presented evidence to show that some of the late reported activity was disclosed on earlier
15 campaign statements filed by the 2014 Committee and on 24-hour contribution reports. Therefore, she
16 argues, the public harm was "de [sic] minimus."⁷

17 The 2014 Committee filed two quarterly campaign statements covering the first half of 2013. She
18 then transferred the contributions she received in the first half of 2013 to the 2013 Committee. Therefore,
19 she argues, the contributors were identified and reported previously and the harm from not timely filing
20 the first pre-election campaign statement for the special primary election is mitigated because it would be
21 apparent to the public that the contributions reported by the 2014 Committee were intended for the special
22 primary election in 2013. In closing arguments, Complainant argued that this intention would not be
23 obvious to the public because Shelley filed a form indicating that she intended to be a candidate in the
24 2014 election and opened a committee called "Susan Shelley for Assembly 2014." It would be reasonable
25 to assume that any funds raised in the first half of 2013 under the vehicle of the 2014 Committee was
26

27 ⁵ Proposed Decision at page 16, paragraph 12.

⁶ Respondents' Brief in Opposition to the proposed Decision at page 5, line 23; at page 10, line 14 and line 24.

⁷ Respondents' Brief in Opposition to the Proposed Decision at page 11, line 41.

1 intended for the 2014 regularly held election. It was not until Shelley filed pre-election statements after
2 the deadline that she disclosed to the public that she transferred these funds to the 2013 Committee. More
3 importantly, the earlier filings of the 2014 Committee would not provide full disclosure of the
4 approximately \$10,000 the 2013 Committee spent during the pre-election reporting period, the total cash
5 balance, accrued expenses, nor any additional information that would ordinarily be reported in a campaign
6 statement. The Complainant argued and Judge Ghaly agreed, the disclosures of the 2014 Committee do
7 not negate the seriousness of failing to timely file subsequent pre-election statements.

8 In her brief in opposition to the proposed decision, Shelley argues that Complainant made
9 contradictory statements with respect to why Shelley opened a 2014 Committee. Specifically, Shelley
10 takes issue with a phrase from Complainant's closing argument, "Though she asserted that she was
11 instructed [to open a 2014 Committee in order to raise funds for the 2013 special election before the
12 election was called by the Governor],"⁸ and suggests that Complainant implied that Shelley was not being
13 truthful. In fact, this argument takes a line from Complainant's closing argument out of context, as this
14 sentence was part of a discussion of a public harm argument Shelley raised at hearing. Complainant agreed
15 that Shelley was likely instructed to open committees and included this as part of the narrative in prior
16 pleadings. Shelley was the source of this information and the advice was consistent with the law and past
17 advice from the Fair Political Practices Commission ("FPPC"). Subsequent pleadings do not contradict
18 this narrative. The purpose of the sentence in question was to highlight that though it was permissible for
19 Shelley to open two committees, it was not necessary and thus it would not be obvious to the public that
20 Shelley intended to use the 2014 Committee as a vehicle to raise funds for the special election. It was not
21 intended to suggest that Shelley was not instructed to open two committees.

22 Shelley now argues that she should be given the opportunity to present additional evidence to show
23 this. However, Shelley made this argument at hearing and had the opportunity to present relevant evidence
24 at the hearing.⁹ When given the opportunity to testify at the hearing, Shelley declined.¹⁰ There is no new
25

26 ⁸ Complainant's Closing Argument at page 17, line 8-18.

27 ⁹ See transcript at page 75, line 16 and Respondents' Closing Arguments at page 3, line 1.

28 ¹⁰ See transcript at page 162, line 1.

1 evidence that could not have been discovered prior to the hearing. Therefore, there is no justification for
2 reopening the evidentiary record.

3 In her opposition to the proposed decision brief, Shelley argues that Complainant wrongly failed
4 to submit evidence regarding the 2013 Committee's filing of 24-hour contribution reports and wrongly
5 objected to their admission as evidence. In fact, documentation of the 2013 Committee's 24-hour reports
6 was submitted by Shelley and marked as Exhibit "W." The evidence was admitted as administrative
7 hearsay evidence because the records were not certified and were not otherwise admissible. Shelley's
8 expert witness also testified as to the amount of activity that was disclosed by the reports, as was
9 appropriate in an adversarial proceeding.

10 Shelley argued that the 24-hour contribution reports were adequate disclosure as they were timely
11 filed, electronically accessible, and disclosed a significant portion of the contributions received by the
12 2013 Committee. Therefore, she argues, the harm from her failure to file pre-election campaign statements
13 for the two Committees is mitigated. However, as these reports disclose only contributions received of
14 \$1,000 or more, these reports do not capture the full information required to be disclosed in a pre-election
15 campaign statement. By failing to file the pre-election campaign statements before the general election,
16 the harm was serious because it deprived the public of valuable information about Shelley's raising and
17 spending of committee funds just before a closely contested election, such as how campaign funds were
18 expended, how many small donations were received, and the total cash balance remaining in the final
19 sixteen days before the election.

20 The evidence on the alternate forms of reporting was admitted and considered by Judge Ghaly, as
21 referenced in the Proposed Decision on page 13, paragraph 22 and page 16, paragraph 12. The
22 Complainant argued and Judge Ghaly agreed, this disclosure did not adequately address the harm inherent
23 in failing to file the full disclosure statements required by law in anticipation of an election.

24 iii. Intention to Conceal, Deceive, or Mislead

25 The Proposed Decision properly finds that there was no evidence to show that the violations were
26 committed with an intent to conceal, deceive, or mislead. Throughout her brief, Shelley emphasizes that
27

1 she was a first-time candidate and that she made a good faith effort to comply with complicated legal
2 requirements as her own treasurer while managing two committees for a special primary and special
3 general election. In fact, Complainant raised these facts and presented the findings of the Franchise Tax
4 Board audits to show that Shelley's violations did not appear to be made with the intent to conceal,
5 deceive, or mislead. Complainant weighed these facts when determining the number of counts to present
6 to the Commission for prosecution. Though the Report in Support of a Finding of Probable Cause and the
7 corresponding order from the Hearing Officer found for eleven violations of the Act, the Complainant
8 considered these facts, as well as others, as mitigation and dropped six counts when preparing the
9 Accusation, only moving forward with the five counts before you today.

10 iv. Whether the Violations were Deliberate, Negligent or Inadvertent

11 The proposed decision found that Shelley's conduct constituted negligence and specifically
12 referred to Shelley's communication with the FPPC requesting informal advice wherein Shelley admitted
13 that she was aware that she had missed a deadline to file a campaign statement¹¹ and was told to file for
14 each committee "each time any committee statement is due."¹² This evidence shows that Shelley knew or
15 should have known of the filing deadlines for the two open committees, though Shelley repeatedly denies
16 this. The finding that Shelley was aware of the filing schedule on August 16, 2013 or at minimum knew
17 that there was a schedule is a reasonable inference based on the evidence as considered by Judge Ghaly.
18 In light of her acknowledgment that she was missing a deadline, her continued late filing constituted
19 negligence.

20 v. Whether Shelley Demonstrated Good Faith by Consulting the Commission Staff

21 The proposed decision found that Shelley demonstrated good faith by asking for informal advice
22 and that this factor was already weighed as the "FPPC declined to charge all possible violations."¹³ The
23 proposed decision properly weighed this factor when determining a penalty.
24
25

26 _____
27 ¹¹ Proposed Decision at page 17, second paragraph.

28 ¹² Proposed Decision at page 10, paragraph 14.

¹³ Proposed Decision at page 17, 3rd paragraph.

1 vi. Whether Shelley's Violations were Isolated or Part of a Pattern and Whether Shelley
2 has a Prior Record of Violations of the Political Reform Act or Similar Laws

3 The proposed decision found that Shelley's violations constitute a pattern because Shelley
4 repeatedly made the same filing mistake, a finding that is consistent with past Commission findings.
5 Shelley argues that her violations do not constitute a pattern because "all the errors stemmed from the
6 same lack of timely knowledge of the filing schedule." However, Shelley admits that she is familiar with
7 the concept of filing schedules, having previously run in a federal election.¹⁴ She admits to knowing the
8 California filing deadline in her email to the FPPC wherein she acknowledged that she was late in filing
9 the first pre-election statement in 2013 and would address the mistake soon.¹⁵ Her filing history shows
10 that she consistently filed for both committees on the same day and consistently reported the correct
11 reporting periods, indicating that she understood the filing schedule requirements. Shelley knew or should
12 have known of the filing deadline for the two open committees. By continuing to file late, Shelley's
13 violations are a pattern of behavior taking place over several months and not an isolated mistake.

14 vii. Whether Shelley Voluntarily Filed Amendments to Provide Full Disclosure

15 The proposed decision found that this criterion was not applicable. Shelley raises the fact that she
16 did eventually file the required statements, however, this is not relevant where the violation at issue is
17 failure to timely file.

18 **B. The proposed decision accurately states the facts, with a minor technical correction**

19 The proposed decision accurately states the facts, absent the technical correction recommended in
20 Complainant's Opening Brief in Support of the Proposed Decision. Shelley argues that there are
21 inaccuracies in the proposed decision. Shelley states that there was no evidence that Shelley was aware of
22 the filing schedule and much evidence that she was not. As evidence, she points to after-the-fact assertions
23 she made to the Secretary of State when she asked for a waiver from late fees for filing campaign
24

25
26
27 ¹⁴ Respondents' Brief in Opposition to the Proposed Decision at page 14, line 8.

28 ¹⁵ Proposed Decision at page 9, paragraph 13.

1 statements late. However, contemporaneous evidence submitted at hearing shows that she knew or should
2 have known of the filing schedule, as discussed above.¹⁶

3 Shelley also points to the number of filings she made for the two committees, arguing that the
4 filing requirements were onerous and demanding for a first-time candidate with no professional treasurer.
5 This is not evidence of Shelley not knowing the filing schedule but rather suggests an excuse as to why
6 she was delayed in filing on time. Her filing history and emails exchanged with the FPPC's informal
7 advice staff demonstrate that she understood the need to file for the correct reporting periods and was
8 aware of the schedule, but was unable to handle the demands of reporting for a nearly \$100,000 campaign
9 while also actively advocating in support of her candidacy. This was taken into consideration in the
10 proposed decision properly when considering "all surrounding circumstances," as discussed earlier.
11 Ultimately, the finding in the Proposed Decision that Shelley was negligent in her continued late filings
12 is grounded in the evidence.

13 The Complainant's recommended amendments are consistent with the evidence presented. In
14 response to Shelley's objection to Complainant's recommended amendments:

- 15 1. Complainant recommended: On page 12, paragraph 18, there is a misstatement of fact and
16 omission of a reference to an exhibit. Amend as follows: "[Franchise Tax Board's] auditors
17 found that Respondents Shelley and the 2013 Committee had not substantially complied with
18 the PRA's disclosure and record-keeping requirements and found that Shelley and the 2014
19 Committee had substantially complied with the PRA's disclosure and record-keeping
20 requirements but also noted findings of non-filings, late filings, and failure to attribute certain
21 contributions to their contributors by the 2013 Committee, and of non-filings and late filings
22 by the 2014 Committee. (See, Exh. 16 and 17.)

23 Shelley objects to this change on the grounds that it is not accurate but cites to the Complainant's
24 prior filings as evidence. The Amended Probable Cause Report that Shelley references was not admitted
25 as evidence to prove the facts of the case but to support procedural and due process requirements.
26

27
28 ¹⁶ Proposed Decision at page 17, 2nd paragraph. See Exhibit 18, B, and C.

1 Furthermore, the statement in the Proposed Decision refers specifically to the Franchise Tax Board's
2 audits, which is the original source of the information. The audit report for the 2013 Committee clearly
3 states that it was the opinion of auditors that there was not substantial compliance, attached as Exhibit 1.¹⁷

4 2. Complainant recommended: On page 17, first paragraph, there is a sentence fragment. Amend
5 as follows: "There was no evidence admitted that the Respondents committed the violations
6 with an intent to conceal, deceive or mislead."

7 Shelley objects to this change on the grounds that it implies that such evidence may have been
8 presented. She suggests that the change should read, "There was no evidence presented...". Complainant
9 disagrees with Shelley's characterization of the amendment and finds that her suggestion is a change
10 without a difference. Complainant defers to the Commission to amend this sentence as it sees fit.

11 **C. The proposed decision is reasonable and based on sound analysis**

12 The proposed decision holds that "In the course of the hearing, Shelley demonstrated important
13 mitigating factors supporting a reduced penalty. The mitigating factors, balanced against equally
14 important public interests in protecting the democratic process, warrant a penalty at the mid-point of the
15 range, \$2,500 per violation."¹⁸ Shelley raises concern about the penalty being the same for each violation,
16 "disregarding even the evidence and recommendations presented by the Enforcement Division and her
17 own view that some of the violations were more 'troubling' than others. (Proposed decision, p. 16, number
18 12)".

19 Complainant recommended a moderate penalty for the counts where the statement was filed prior
20 to the election and a moderate to high penalty for the counts where the statement was filed after the
21 election.¹⁹ The decision clearly states the reasoning upon which the penalty was decided, weighing the
22 mitigating factors and the seriousness of untimely pre-election statements, as quoted above and in the
23 analysis of the factors on pages 16-17 of the Proposed Decision. The fact that the penalty is the same for
24

25
26 ¹⁷ See page 2 under the "Opinion" heading.

27 ¹⁸ Proposed Decision at page 5, 1st paragraph.

28 ¹⁹ Complainant's Closing Argument at page 4, line 22.

1 all counts demonstrates that Judge Ghaly did not find that the failure to file prior to an election was
2 aggravation sufficient to justify a higher penalty.

3 **D. The proposed decision is consistent with the purpose and language of the Political Reform**
4 **Act**

5 In her opposition to the proposed decision, Shelley argues that the decision does not adequately
6 consider purposes of the Act, such as making the political process more accessible to those without great
7 wealth.²⁰ Her conclusion is that the Commission should not hold her, a first-time candidate who acted as
8 her own treasurer, to the same standard as others who have been held liable for the same violation.

9 Shelley's argument ignores the text of the Act itself which states that, "Previous laws regulating
10 political practices have suffered from inadequate enforcement."²¹ The voters, in passing the Act, sought
11 to ensure that receipts and expenditures would be "fully and truthfully disclosed in order that the voters
12 may be fully informed and improper practices may be inhibited" and that "adequate enforcement
13 mechanisms should be provided... in order that this title will be vigorously enforced."²² The proposed
14 decision is consistent with these purposes and adequately weighs the mitigating factors, such as Shelley's
15 good faith efforts to comply with the Act without a professional treasurer and as a first time California
16 state candidate.

17 **E. The penalties in the Proposed Decision are consistent with prior relevant Commission**
18 **cases.**

19 Shelley argues that the proposed decision is not consistent with other enforcement actions.
20 However, she fails to provide an analysis of how her case is similar to the warning letters and no-action
21 letters she references. Broadly, the current regulations for determining whether a case qualifies for a
22 warning letter involves considering all relevant facts and surrounding circumstances. As demonstrated by
23 the letters cited by Shelley, warning letters and no-action letters are typically issued for isolated violations,
24 committees/statements/reports with low levels of activity, and filings that took place near the deadline and
25

26 ²⁰ Respondent's Brief in Opposition to the Proposed Decision at page 18, lines 16-24.

27 ²¹ Section 81001, subdivision (h).

28 ²² Section 81002, subdivisions (a) and (f).

1 before the election. In contrast, this case involves a pattern of violations, significant levels of activity at
2 both the committee level and the individual statements at issue, and filings that were not filed until after
3 the election.

4 At hearing, Shelley's expert witness, Amber Maltbie, suggested that this matter could possibly
5 qualify for the streamline settlement program or get a warning letter, however, she admitted at hearing
6 that she "didn't know if it precisely fits into the current regulation."²³ Additionally, an amicus curiae letter
7 submitted to the Commission argued that the penalty should be compared to the penalties issued through
8 the streamline settlement program.²⁴ However, to qualify for a streamline settlement under the current
9 regulations, the late campaign statements were required to report contributions or expenditures totaling
10 not more than \$23,900, according to the population of her district.²⁵ Under the previous streamline policy,
11 Shelley had to raise or spend less than \$25,000 in each late statement to qualify. This matter was
12 disqualified from streamline – under both the former policy and under the new regulations – because the
13 2013 Committee reported \$36,580 in receipts and \$28,663 in expenditures on a pre-election campaign
14 statement filed after the election.

15 Complainant submitted and Judge Ghaly took official notice of comparable cases approved by the
16 Commission to provide guidance in assessing a penalty in this matter:²⁶

17 *In the Matter of Committee to Re-Elect David L. Boyd Orange County Board of Education Trustee*
18 *Area Two – 2018, David L. Boyd*, FPPC Case No. 18/713. Boyd, an unsuccessful candidate, failed to
19 timely file a pre-election campaign statement. The statement was filed 8 days late and before the election.
20 Subsequent statements were filed timely. In aggravation, Boyd failed to report addresses for contributors
21 and payees. The Commission approved a stipulated penalty of \$2,500.

22 Unlike *Boyd*, Shelley demonstrated a pattern of failing to timely file pre-election campaign
23 statements, culminating in filing the second pre-election campaign statement 85 days late, however,
24

²³ Transcript at page 154, line 14-21.

²⁴ Amicus curiae letter, submitted by Charles H. Bell, Jr., dated September 10, 2019.

²⁵ Regulation 18360.1 subdivision (d)(1)(B)(ii). Under this section, streamline participation is limited based on the
26 population of the jurisdiction of the committee. According to the 2010 Census report, the total population of Assembly
27 District 45 was 406,694. Therefore, for the committee to qualify, the committee must not have raised or spent more than
\$23,900 on any report or statement at issue.

²⁶ See Exhibits 36-39.

1 Shelley was a first-time candidate. Like *Boyd*, Shelley had other violations that were not pursued as a
2 separate charge, such as additional non-filing counts, failure to attribute transferred contributions, etc.

3 *In the Matter of Angel Santiago, Friends of Angel Santiago for Inland Empire Utilities Agency*
4 *Director Division 4, and Valerie Santiago*, FPPC Case No. 13/547. Santiago was a successful candidate
5 for re-election and failed to timely file two pre-election statements until nearly three years after the
6 election. The statement with the most activity reported \$14,129 in contributions. The Commission
7 approved a penalty of \$4,000 per pre-election statement, in addition to other counts, as part of a default,
8 decision, and order.

9 Both cases involve the failure to timely file pre-election statements prior to an election. Though
10 Shelley raised considerably more funds in her campaign. In mitigation, Shelley filed the late campaign
11 statements prior to contact from an enforcement agency. Additionally, Shelley was a first-time candidate,
12 unlike *Santiago*.

13 One comparable case suggested by the amicus letter involves a streamline penalty issued to a major
14 donor for failure to timely file semiannual campaign statements and 24-hour contribution reports;
15 however, neither violation is relevant to the case at hand. The other matter cited by the letter, *In the Matter*
16 *of Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa Supervisor John Gioia*
17 *2014 Officeholder Account, John Gioia, and Jennifer Peck*, FPPC Case No. 17/84 ad 17/86, involves a
18 successful, experienced incumbent with two open committees and a pattern of failing to timely file.
19 However, the majority of the counts for both committees were for post-election semiannual statements
20 with low to no activity and the filings for a calendar year were combined into a single count. There was a
21 total of eight counts against the two committees and the total penalty imposed was \$14,000. The
22 respondent paid a penalty of \$3,000 for a combined count of two pre-election campaign statements in
23 which one statement had nearly \$26,000 in contributions and \$14,706 in expenditures and the second
24 statement had just over \$2,400 in contributions and \$583 in expenditures.

25 Here, unlike *Gioia*, despite Shelley having numerous late filings throughout 2013 and 2014 that
26 reported significant activity, only select statements are presented here as violations. For the 2013
27 Committee's charged violations, the amount of activity that was not timely reported ranged from \$5,479
28

1 to \$36,580 per statement. For the 2014 Committee's charged violations, the amount of activity that was
2 not timely reported ranged from \$0 to \$13,597. The total amount of activity between the two committees
3 was approximately three times what the respondents in *Gioia* raised during an election year. These facts
4 distinguish the mater at hand from *Gioia*.

5 The Proposed Decision properly balanced all relevant factors, including balancing the public harm
6 and the important mitigating factors, and concluded that a mid-range penalty of \$2,500 was appropriate
7 for each failure to timely file pre-election campaign statements. The Proposed Decision is consistent with
8 relevant comparable cases approved by the Commission, as demonstrated by the cases officially noticed
9 by Judge Ghaly, including *Boyd* and *Santiago*.

10 **F. The Proposed Decision considered evidence regarding the SOS late fees.**

11 Shelley presented evidence, and the proposed decision made a finding, that Shelley was subject to
12 fines for late campaign statements under the Secretary of State's authority. Shelley applied to the Secretary
13 of State for a waiver of liability, which was granted in part and denied in part.²⁷ Shelley presented this
14 evidence as part of her argument that she should not receive a fine from the FPPC, as she argued that the
15 Secretary of State found "good cause" to waive some of the fees. However, the fines Shelley paid to the
16 Secretary of State were already considered when the Enforcement Division reduced the counts from eleven
17 to five in the Accusation.

18 The Secretary of State's authority to assess and waive late filing fees is based on their role as the
19 filing officer and is distinct from the Commission's authority to impose penalties. The Commission is
20 mandated with the responsibility to vigorously enforce the rules of the Act and impose an administrative
21 penalty.²⁸ Furthermore, payment of late fees to another agency is not a factor by which the penalty is to
22 be assessed,²⁹ nor does it mitigate the public harm. In fact, though Shelley was fined by the filing officer
23 and assessed late fees beginning in January of 2014, campaign filing records for the 2014 Committee show
24 that Shelly continued to file late in 2014. For example, the 2014 Committee filed in electronic and paper
25 formats in connection with a primary and general election in 2014. For the electronic filings, some were
26

27 ²⁷ Proposed Decision at page 11, paragraph 17.

28 ²⁸ § 83116, subdivision (c).

²⁹ Reg. § 18361.5, subdivision (d).

1 on time or a day late and others were up to four days late. For the paper filings, all were filed between one
2 and five days late.

3 **III. CONCLUSION**

4 As stated in the Enforcement Division's Opening Brief, the Enforcement Division recommends
5 that the Commission make technical and minor changes in the proposed decision and adopt the Proposed
6 Decision as the decision because the Proposed Decision states findings of fact that are supported by and
7 consistent with the evidence presented at the hearing in this matter. There is no additional material
8 evidence, which could, with reasonable diligence, have been discovered and presented at the
9 administrative hearing. Thus, the Enforcement Division respectfully requests that the Commission make
10 technical and minor changes as discussed in the Opening Brief in Support of the Proposed Decision and
11 adopt it as the decision.

12
13 Dated: Sept. 23, 2019

FAIR POLITICAL PRACTICES COMMISSION

14 By: Galena West
15 Chief of Enforcement

16 

17 Theresa Gilbertson
18 Commission Counsel

EXHIBIT 1



State of California
Franchise Tax Board

POLITICAL REFORM AUDIT PROGRAM MS F387
PO BOX 651
SACRAMENTO CA 95812-0651

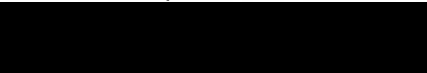
RECEIVED AND FILED
in the office of the Secretary of State
of the State of California

DEC 31 2014

1-28

AUDIT REPORT OF THE POLITICAL REFORM AUDIT PROGRAM FOR:

Susan G. Shelley
Susan Shelley for Assembly 2013 (1358945)



January 1, 2013 through December 31, 2013

AUDIT AUTHORITY AND SCOPE

This audit is authorized under Section 90001 of the California Government Code. Legislative candidates in a special primary or special runoff election who raised or spent \$15,000 or more were subject to audit.

The audit was performed by the Political Reform Audit Program of the Franchise Tax Board using generally accepted auditing standards and the auditing standards set by the Fair Political Practices Commission. This included tests of disclosure, accounting records, and other auditing procedures considered necessary.

This report was submitted to the Fair Political Practices Commission, the Secretary of State, and the Attorney General on December 31, 2014.

ABOUT THE COMMITTEE

BACKGROUND INFORMATION

The Committee was formed on August 14, 2013, and is controlled by Susan G. Shelley, a candidate for Assembly, Forty-fifth District, in the November 19, 2013, Special General Election. Ms. Shelley was also a candidate for the same office in the 2014 General Election.

TREASURER: Susan G. Shelley

FINANCIAL ACTIVITY

Total Contributions Received: \$ 99,091

Total Expenditures: \$ 104,940

The totals for contributions received and expenditures were taken from the unaudited statements as filed with the Secretary of State for the period indicated above.

FINDINGS AND RESPONSES

OPINION

The filers, in our opinion, have not substantially complied with the disclosure and recordkeeping provisions of the Political Reform Act (Government Code Section 81000 et seq.) and related rules and regulations of the Fair Political Practices Commission.

REPORTS AND STATEMENTS

A Preelection Statement for the period October 6 through November 2, 2013, was not filed with the Secretary of State (SOS). Receipts and expenditures during this period totaled \$36,580 and \$28,663, respectively. The activity for this period was reported on the Semi-annual Statement filed for the period ending December 31, 2013.

Three Preelection Statements were not timely filed with the SOS.

Reference Exhibit A

MONETARY CONTRIBUTIONS RECEIVED

Funds totaling \$30,900 received via transfers from Susan Shelley for Assembly 2014 (1355796) were not attributed to specific contributors. These transfers were received between July 8 and November 7, 2013. Funds available for attribution included contributions and loans totaling \$30,500 from the candidate and contributions totaling \$7,229 from 20 other contributors. These amounts were received by Susan Shelley for Assembly 2014 (1355796) during the period January 18 through July 12, 2013.

CANDIDATE'S COMMENT

Ms. Shelley stated that, as a first-time candidate for state office acting as her own campaign treasurer, she made a good-faith effort to familiarize herself with and comply with all the complex and compressed reporting requirements for a special election. She added that there was no intent to conceal information or to evade reporting. She further stated that contribution limits were carefully observed.

EXHIBIT A - PREELECTION STATEMENTS NOT TIMELY FILED

<u>Statement Period</u>	<u>Receipt \$</u>	<u>Disbursement \$</u>	<u>Due Date</u>	<u>Date Filed in Paper Format</u>	<u>Days Late</u>	<u>Date Filed Electronically</u>
01/01/13 - 08/03/13 *	\$ 18,230	\$ 10,133	08/08/13	10/02/13	55	08/19/13
08/04/13 - 08/31/13 *	\$ 4,969	\$ 10,214	09/05/13	10/02/13	27	09/06/13
09/01/13 - 10/05/13	\$ 23,682	\$ 19,817	10/10/13	02/06/14	119	10/21/13

* Required for the September 17, 2013 Special Primary Election