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

10 ) CASE NO. FPPC NO. 09/0258

11 IN THE MATTER OF

12 )  
13 ) **REPLY BRIEF OF RESPONDENTS,**  
14 ) **RAYMOND N. HAYNES, JR.,**  
15 ) **RAYMOND P. HORSPOOL, AND**  
16 ) **HAYNES FOR ASSEMBLY 2004**

17 RAYMOND N. HAYNES, JR.  
18 RAYMOND P. HORSPOOL,  
19 HAYNES FOR ASSEMBLY 2004

20 RESPONDENTS  
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25 Respondents submit the following reply brief to the Commission in the above  
26 entitled matter.  
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## **1. FACTS**

It is important to note what is really at issue in this matter. Respondents have never denied the violation, they have only contested the fines assessed. What the Commission staff is requesting is a \$10,000.00 fine from a committee that closed out its account with just under \$200 in 2010. Haynes spent 14 years in the Legislature, without one single blemish, complaint, issue, or problem with the FPPC, leaving November 30, 2006 (while the ALJ in the matter mentioned that the last day of the session in 2006 was August 31 of that year, and that "it was unclear" when Haynes left the Legislature, it really wasn't unclear. The Constitution says the session ends on November 30 of the even number years. That was clearly Haynes last day as a Legislator.). Three years after he left the Legislature, the FPPC commenced an investigation into the committees Haynes controlled, and for which Horspool was treasurer, and after looking at the over \$1 million in contributions and receipts, discovered that the Haynes 2004 committee had not been terminated, that Haynes had not filed reports for 2008 and 2009 showing that the committee had \$200.00, and that Haynes had contributed \$2000.00 from a committee that was not entitled to give money.

There is one unexplained fact in this matter. Commission staff admits investigating the Haynes 2004 committee for close to a year. Yet, during that entire year, not once did they mention to Haynes or Horspool that the committee needed to be terminated, nor did they once mention that the semi-annual reports needed to be filed. That same staff now seeks \$6,000.00 in fines for the failures that they themselves never discovered, or mentioned. That poses the interesting question, was Commission staff sandbagging, so they would have some violation upon which to base a fine, in case they didn't find any major problems in their investigation, or did they just inadvertently overlook the violation? The most likely scenario is that through their inadvertence, they overlooked it. Yet they claim Haynes and Horspool were negligent? They would hold Haynes and Horspool to a much higher standard than they hold themselves.

1 As to the fine for the Houston donation, the decision spends considerable time  
2 talking about Haynes' time in the Legislature to say he should have known the rules about  
3 opening and closing committees. However, the practice of opening and closing  
4 committees for every election actually started towards the end of Haynes' term limits in  
5 the Legislature. It was not a common practice in the 1990's, and the early part of the first  
6 decade of this century, to require a legislator to open and close committees each time he  
7 or she ran for office. Haynes 1990 Senate Committee, and his 1992 Assembly  
8 Committee, collected and spent almost all of the money he acquired during his time in  
9 office. His last committee in the Assembly was the Haynes 2004 committee, to be sure,  
10 but the only committees he had subject to these rules were his 2002 and 2004 committee,  
11 and he was winding down his time in the Legislature, and in politics, in 2004, as  
12 evidenced by the fact that he formed no other committees (other than the committee he  
13 used for his failed run for the Board of Equalization) to gather and expend funds for any  
14 political purpose. Quite frankly, as Haynes testified, had he known it was illegal, he  
15 would have kept the money he gave to Houston to pay off the nearly \$15,000.00 in debts  
16 he had left over from his time in the Legislature. Those debts he paid from his own  
17 pocket.

18 These are important facts in evaluating the fines to be assessed for the violations.  
19 It is true that the Respondents made mistakes. The question in this proceeding is the  
20 amount of fines to be assessed.

21  
22 **2. APPLYING THE FACTORS IT IS CLEAR THAT**  
23 **A \$10,000.00 FINE FOR THESE VIOLATIONS IS**  
24 **EXCESSIVE**  
25

26 The regulations of the Fair Political Practices Commission, Title 2, Division 6 of  
27 the California Code of Regulations, Section 18361.5(d) sets forth the factors to be  
28 considered in assessment of the fines for violations of the act. Those factors are:

1  
2 (d) Factors to be Considered by the Commission. In framing a  
3 proposed order following a finding of a violation pursuant to Government  
4 Code section 83116, the Commission and the administrative law judge shall  
5 consider all the surrounding circumstances including but not limited to:

- 6 (1) The seriousness of the violation;
- 7 (2) The presence or absence of any intention to conceal, deceive or mislead;
- 8 (3) Whether the violation was deliberate, negligent or inadvertent;
- 9 (4) Whether the violator demonstrated good faith by consulting the  
10 Commission staff or any other government agency in a manner not  
11 constituting a complete defense under Government Code section 83114(b);
- 12 (5) Whether the violation was isolated or part of a pattern and whether the  
13 violator has a prior record of violations of the Political Reform Act or  
14 similar laws; and
- 15 (6) Whether the violator, upon learning of a reporting violation, voluntarily  
16 filed amendments to provide full disclosure.

17  
18 The question is the application of this factors in this matter. The staff and the  
19 judge applied these factors, but have appeared to exalt form over substance in applying  
20 them. There has never been any question that the violations occurred, but they were an  
21 inadvertent mistake, nothing more. A \$10,000.00 fine for these violations is beyond the  
22 pale.

23 (a) The seriousness of the violations. There are two separate types of violations  
24 that occurred in this matter. The first was the failure to file the two reports and to  
25 terminate the committee, and the second was the donation to Guy Houston.

26 (1) As for the failure to file and to terminate the committee,  
27 the important factor is that the committee had less than \$200.00 in its  
28 account at all times relevant to this complaint, collected no money, spent  
only its last \$200 on accountant's fees, involved no elections, no

1 officeholders, and was simply "left over" from the time Haynes was in the  
2 Legislature. While it is true that Haynes and Horspool had an obligation to  
3 file all the right forms in a timely fashion, is a \$6,000.00 fine appropriate  
4 for a committee with less than \$200 in its account? No one was deceived  
5 by this mistake. What important "public protection" is promoted by such a  
6 fine? Haynes is not an officeholder, can no longer be a Legislator by law,  
7 and collected and spent no money, didn't try to deceive anyone about the  
8 committees, didn't try to hide anything from anyone. He and Horspool  
9 quite simply forgot to close out a committee. Did they have a duty to close  
10 it out? Of course they did. But to ascribe some evil intent, and assess a  
11 penalty of such an exorbitant amount of a fine for such a violation seems  
12 excessive. This was a mistake, nothing more, and one that could easily  
13 occur given the small amounts of money involved.

14 As important, the staff investigated the committee for nearly a year,  
15 had to know the rules, and said nothing to Haynes or Horspool about the  
16 status of the committee. What was their motive in staying silent? Were  
17 they sandbagging? or did they, like Haynes and Horspool, simply overlook  
18 the mistake? The latter is the most likely answer, yet they would assess  
19 \$6,000.00 in fines for something they also just didn't see. If they were  
20 interested in enforcing the law, as opposed to just collecting a fine, they  
21 would have said something if they noticed it.

22 (2) The donation to Houston was also just such a mistake.  
23 For over 10 years of Haynes's 14 years in the Legislature, the rules did not  
24 require the officeholder to open and close his accounts after each separate  
25 election. Haynes opened an account for his Senate races in his  
26 unsuccessful run for the Senate in 1990, and used that same committee for  
27 his 1994 and 1998 runs. During that time, and up to 2002, he donated  
28 substantial amounts of money to other federal, state, and local candidates  
and to party operations at the state and local levels from that one

1 committee. It was the only committee he ever maintained for the Senate.  
2 He formed an Assembly Committee for his successful 1992 run, and that  
3 was the only committee he used for donations to party operations and  
4 candidates until 2002. It was then that the rules changed, and a new  
5 committee for his 2002 run had to be formed, then another committee for  
6 his 2004 run. In fact, Haynes had donated well in excess of \$400,000.00 to  
7 candidates from his two 1990 committees, and less than \$15,000.00 from  
8 the other committees. In 2004, Houston was the only donation he made.  
9 He disclosed it, and, quite frankly, had no idea that it was made from a  
10 committee that was not entitled to make such a contribution. Given how  
11 the old system operated, it was a mistake, not an intent to make an "illegal"  
12 contribution. (In fact, given the fact that Haynes had to pay over \$14,000.00  
13 in unpaid campaign debts from his own pocket, he definitely would not  
14 have given the money if he thought it was illegal).

15 (b) The absence or presence of any intention to conceal, deceive or  
16 mislead. Respondents agree with the finding of NO intent to conceal,  
17 deceive or mislead, and given the fact that this was a mistake made more  
18 than two years after Haynes left office, Respondents believe this is a factor  
19 that should weigh heavily in favor of a smaller fine.

20 (c) Whether the violation was deliberate, negligent or inadvertent.

21 (1) The ALJ spends a lot of time describing the violations as  
22 negligent. Respondents would argue they were inadvertent. The factor that  
23 weighs in Respondents favor on this issue for the failure to file issues is the  
24 size of the money left in the committee. A committee with less than  
25 \$200.00 would get lost in the shuffle of day to day business. It is stretching  
26 things a bit to believe that Horspool "placed the importance of his overseas  
27 business" above the importance of his obligations to file. Interestingly  
28 enough, the FPPC investigated the committee for a full year prior to  
notifying either Horspool or Haynes of the failure to close out the

1 committee. During that time, Horspool and Haynes spent dozens of hours  
2 digging out checks, receipts, and hundreds of documents for the FPPC (all  
3 this while Horspool attended to his overseas business), and Committee staff  
4 completely failed to notice Haynes or Horspool hadn't terminated the  
5 committee or filed the reports. Why didn't Commission staff say anything  
6 about it during this time? Was the Commission staff sandbagging Haynes  
7 and Horspool, hoping to sock them with big fines for the failure to file? Is  
8 that why the investigators and staff said nothing about the failure to file  
9 during this entire time? Probably not. It was more likely that the  
10 Commission Staff, like Haynes and Horspool, simply didn't see the  
11 mistake. Commission staff wasn't negligent, nor were they sandbagging  
12 Haynes and Horspool. The failure of the Staff to tell Haynes and Horspool  
13 about the failure to terminate the committee was the result of the same  
14 inadvertent oversight that caused Haynes and Horspool to commit the  
15 failure. It wasn't negligence on the part of Haynes and Horspool, any more  
16 than it was sandbagging by the Commission staff. It was inadvertence.

17 (2) The same with the Houston donation. For over 10 years  
18 of Haynes time in the Legislature, he donated out of two different  
19 committees, committees that didn't have to be started and terminated every  
20 two years. Once again, while the change in rules had occurred, the mistake  
21 was not one to try and divert illegal money to a candidate. It was simply a  
22 mistake.

23 (d) Whether the violator demonstrated good faith by consulting the  
24 Commission staff or any other government agency in a manner not  
25 constituting a complete defense under Government Code section 83114(b).

26 Haynes and Horspool didn't ask anyone anything because they  
27 didn't know they had a problem. This is a nonfactor.  
28

1           (e) Whether the violation was isolated or part of a pattern and  
2 whether the violator has a prior record of violations of the Political Reform  
3 Act or similar laws. The ALJ spends a great deal of time in her opinion  
4 discussing previous late filings. This is not an issue of late filings, this is a  
5 failure to file problem. The other filings were two, five, seven, or ten days  
6 late, and were late to ensure the accuracy of the reports (a \$10.00 per day  
7 late fee is better than a \$5,000.00 inaccuracy fine is what Horspool said). It  
8 is a common practice among treasurers in nonelection filings to be a couple  
9 of days late just to make sure they are accurate. That practice is not  
10 evidence in aggravation of the fine. This matter however involves a failure  
11 to file, a two year delay, not a ten day delay. The circumstances are not  
12 comparable, and to use the previous ten day late filings to justify an  
13 aggravation of the fine in this proceeding is inappropriate.

14           The fact is neither Haynes nor Horspool ever violated any other  
15 FPPC laws or regulations, and given Haynes 14 years in the Legislature  
16 without a single violation, and only a few filings, that were a few days late,  
17 that record is remarkable. It is not evidence in aggravation, it is evidence in  
18 mitigation, and to assess a committee with only \$200.00 in its account with  
19 a \$6,000.00 fine seems excessive, given the record of the officeholder and  
20 his treasurer.

21           As to the Houston matter, this was the only "illegal" donation to a  
22 fellow legislator, despite hundreds of thousands of dollars of such donations  
23 over his 14 years in the Legislature.

24           (f) Whether the violator, upon learning of a reporting violation,  
25 voluntarily filed amendments to provide full disclosure. The ALJ  
26 acknowledged that the documents were filed, but made a comment that it  
27 was unclear whether the filed "because of the probable cause hearing." As  
28 the evidence showed, from the time Haynes was notified of the issues, to



1 the time of the filing of the documents, Horspool, the treasurer was out of  
2 the country. Obtaining his signature was problematic. Haynes finally  
3 obtained Horspool's authorization to use Horspool's signature stamp to file  
4 the documents, in order to close out the matter. No other factor was  
5 involved in any delay in filing after disclosure.  
6

7 In the end, this matter involves an investigation commenced two years after  
8 Haynes left office, a committee with less than \$200.00 in its account, an attempt to fine  
9 Haynes and Horspool with violations that even Commission staff didn't notice while the  
10 investigation was proceeding, and a mistaken contribution that would have been legal for  
11 most of the time Haynes was in the legislature. The violations occurred. Haynes and  
12 Horspool have always acknowledged that fact. They have only contested the size of the  
13 fine. For 14 years in the legislature, Haynes collected well over a million dollars, and  
14 Horspool reported it accurately, completely, and without blemish. In the four years  
15 following Haynes departure from the Legislature, they overlooked \$200.00, and forgot to  
16 file the termination documents. They also made one \$2,000.00 contribution mistake  
17 (which would have been legal just a few years before). For that the Commission staff has  
18 asked the Commission to levy a \$10,000.00 fine.

19 This fine will not ensure future compliance with laws and regulations by this  
20 officeholder and the treasurer. It will not increase the public's confidence in the  
21 regulation of honesty, ethics and fairness in the political system. It will not "send a  
22 message" to current officeholders or candidates about this Commission's desire to ensure  
23 honesty, ethics, or fairness in our political system. In short, a \$10,000.00 fine for these  
24 violations will do little or nothing to further the Commission's purpose. The violations  
25 were mistakes anyone could make under the circumstances. A dormant committee, with  
26 little money, and an officeholder and treasurer distracted by the press of business in other  
27 areas, long after their political activity is over, while not an excuse for not closing out the  
28 committee and filing the necessary papers, is certainly an explanation of an

1 understandable oversight. Assessing a \$10,000.00 fine in this case exalts form over  
2 substance, making it seem that it is more important to file the right forms than it is to  
3 pursue fundraising and campaign spending in an honest and ethical fashion. There is no  
4 question of deceit, dishonesty, or concealment in this matter. It is simply a case of  
5 inadvertence, an oversight committed two and three years after the officeholder left  
6 office.

7 For these reasons, Respondents request that the Commission re-evaluate this  
8 matter, assess a more reasonable fine for the violations, in the range of \$200 to \$500 per  
9 violation, a fine more reflective of the actual import of the violations, or, in the  
10 alternative, issue a cease and desist order. The ALJ indicated that the cease and desist  
11 order would be of little effect. That is not true. Haynes may pursue some office in the  
12 future, and the cease and desist order would be of great import, should that occur. It is  
13 the most fair outcome in this case, however, given the insignificance of the violations at  
14 issue here.

15 Dated: March 4, 2011

16  
17 by: 

18 Raymond N. Haynes  
19 Attorney for Respondents  
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## PROOF OF SERVICE

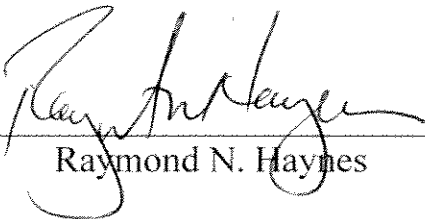
Raymond N. Haynes says:

I am over the age of eighteen and not a party to this action. I am a resident of Riverside County, California.

My residence or business address is 27475 Ynez Road #635. On March 4, 2011, I served the Respondent's Reply brief by personally delivering it to:

Gary Winuk  
Fair Political Practices Commission  
428 J Street  
Suite 620  
Sacramento, Ca. 95814

I declare under penalty of perjury the foregoing is true and correct.  
Executed in Sacramento, Ca. on March 4, 2011.

  
\_\_\_\_\_  
Raymond N. Haynes