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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10
11

12 In the Matter of) FPPC No. 11/446
13)
14 EQUALITY CALIFORNIA ISSUES PAC) STIPULATION, DECISION and
AND TIMOTHY HOHMEIER,) ORDER
15)
16 Respondents.)
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18 Complainant the Enforcement Division of the Fair Political Practices Commission, and
19 Respondents Equality California Issues PAC and Timothy Hohmeier agree that this Stipulation will be
20 submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled
21 meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised in this
23 matter and to reach a final disposition without the necessity of holding an administrative hearing to
24 determine the liability of Respondents, pursuant to Section 83116 of the Government Code.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural
26 rights set forth in Sections 83115.5, 11503 and 11523 of the Government Code, and in Sections 18361.1
27 through 18361.9 of Title 2 of the California Code of Regulations. This includes, but is not limited to,
28 the right to personally appear at any administrative hearing held in this matter, to be represented by an

1 attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the
2 hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge
3 preside over the hearing as a hearing officer, and to have the matter judicially reviewed. It is further
4 stipulated and agreed that Respondents Equality California Issues PAC and Timothy Hohmeier violated
5 the Political Reform Act by: failing to file preelection campaign statements for the reporting periods
6 January 1, 2008, through March 17, 2008, and March 18, 2008 through May 17, 2008, in violation of
7 Sections 84200.5, subdivision (d), and 84200.7 of the Government Code (1 count); failing to timely file
8 late contribution reports, in violation of Sections 84203 and 84605, subdivision (a), of the Government
9 Code (4 counts); by failing to timely file \$1,000 online election cycle reports, in violation of
10 Government Code Section 85309, subdivision (b) (6 counts); and by failing to disclose certain
11 information regarding persons who contributed \$100 or more, in violation of Section 84211, subdivision
12 (f), of the Government Code (1 count). All counts are described in Exhibit 1, which is attached hereto
13 and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary
14 of the facts in this matter.

15 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
16 Respondents also agree to the Commission imposing upon them an administrative penalty in the amount
17 of Thirty One Thousand Five Hundred Dollars (\$31,500). A cashier's check from Respondents in said
18 amount, made payable to the "General Fund of the State of California," is submitted with this
19 Stipulation as full payment of the administrative penalty, to be held by the State of California until the
20 Commission issues its decision and order regarding this matter. The parties agree that in the event the
21 Commission refuses to accept this Stipulation, it shall become null and void, and within fifteen (15)
22 business days after the Commission meeting at which the Stipulation is rejected, all payments tendered
23 by Respondents in connection with this Stipulation shall be reimbursed to Respondents. Respondents
24 further stipulate and agree that in the event the Commission rejects the Stipulation, and a full evidentiary
25 hearing before the Commission becomes necessary, neither any member of the Commission, nor the
26 Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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Dated: _____

Gary Winuk, Enforcement Chief,
on behalf of the
Fair Political Practices Commission

Dated: _____

Timothy Hohmeier, Respondent,
Individually and on behalf of
Equality California Issues PAC

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Equality California Issues PAC and
3 Timothy Hohmeier,” FPPC No. 11/446, including all attached exhibits, is hereby accepted as the final
4 decision and order of the Fair Political Practices Commission, effective upon execution below by the
5 Chairman.

6
7 IT IS SO ORDERED.

8
9 Dated: _____

Ann Ravel, Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Equality California Issues PAC¹ (“Respondent Committee”) is a state primarily formed committee.² At all time relevant, Respondent Timothy Hohmeier (“Respondent Hohmeier”) served as treasurer of Respondent Committee. This case arose from Franchise Tax Board (“FTB”) audit of Respondent Committee for the period January 1, 2007 through December 31, 2008. During the period covered by the audit, Respondent Committee reported receiving contributions of approximately \$13,160,713 and making expenditures of approximately \$12,617,563.

As a primarily formed committee under the Political Reform Act³ (the “Act”), Respondents have a duty to timely file campaign statements and reports and disclose particular information. However, Respondents 1) failed to file preelection campaign statements; 2) failed to file late contribution reports; 3) failed to file election cycle reports; and 4) failed to disclose certain information regarding persons who contributed \$100 or more.

For the purposes of this Stipulation, Respondents’ violations of the Act are stated as follows:

Preelection Campaign Statements

COUNT 1: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file a first preelection campaign statement for the reporting period January 1, 2008, through March 17, 2008 by the March 24, 2008, due date, and a second preelection campaign statement for the reporting period March 18, 2008 through May 17, 2008, by the May 22, 2008 due date, in violation of Sections 84200.5, subdivision (d), and 84200.7 of the Government Code.

Late Contribution Reports

COUNT 2: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file within 24 hours of receipt late contribution reports disclosing contributions aggregating \$1,000 or more totaling approximately \$28,185 received during the

¹ Respondent Committee has amended its name from its original name of “Equality California Marriage PAC” to “No on 8 - Equality California”, the name Respondent Committee was known as during the election (from July 1, 2008 through December 4, 2008), to its current name of “Equality California Issues PAC.”

² Respondent Committee initially qualified on September 25, 2007, as a state general purpose committee sponsored by Equality California, became a state primarily formed sponsored committee on July 1, 2008, then returned to being a state general purpose sponsored committee on December 4, 2008, after the November 4, 2008 General Election.

³ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code as it was in effect at the time of the violations, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations as in effect at the time of the violations, unless otherwise indicated.

late contribution reporting period before the November 4, 2008 General Election, due on or about October 20, 2008 through October 23, 2008, in violation of Sections 84203 and 84605, subdivision (a), of the Government Code.

COUNT 3: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file within 24 hours of receipt late contribution reports disclosing contributions aggregating \$1,000 or more totaling approximately \$27,477 received during the late contribution reporting period before the November 4, 2008 General Election, due on or about October 24, 2008 through October 29, 2008, in violation of Sections 84203 and 84605, subdivision (a), of the Government Code.

COUNT 4: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file within 24 hours of receipt late contribution reports disclosing contributions aggregating \$1,000 or more totaling approximately \$28,300 received during the late contribution reporting period before the November 4, 2008 General Election, due on or about October 30, 2008 and October 31, 2008, in violation of Sections 84203 and 84605, subdivision (a), of the Government Code.

COUNT 5: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file within 24 hours of receipt late contribution reports disclosing contributions aggregating \$1,000 or more totaling approximately \$44,350 received during the late contribution reporting period before the November 4, 2008 General Election, due on or about November 1, 2008 through November 4, 2008, in violation of Sections 84203 and 84605, subdivision (a), of the Government Code.

\$1,000 Online Reports

COUNT 6: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file online campaign reports disclosing contributions of \$1,000 or more totaling \$36,413 during the 90-day election cycle ending on November 4, 2008, due on or about August 12, 2008 through August 31, 2008, in violation of Government Code Section 85309, subdivision (b).

COUNT 7: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file online campaign reports disclosing contributions of \$1,000 or more totaling \$47,500 during the 90-day election cycle ending on November 4, 2008, due on or about September 7, 2008 through September 14, 2008, in violation of Government Code Section 85309, subdivision (b).

COUNT 8: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file online campaign reports disclosing contributions of \$1,000 or more totaling \$47,979 during the 90-day election cycle ending on November 4, 2008, due on or about September 15, 2008 through September 20, 2008, in violation of Government Code Section 85309, subdivision (b).

COUNT 9: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file online campaign reports disclosing contributions of \$1,000 or more totaling \$55,877 during the 90-day election cycle ending on November 4, 2008, due on or about September 22, 2008 through October 1, 2008, in violation of Government Code Section 85309, subdivision (b).

COUNT 10: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file online campaign reports disclosing contributions of \$1,000 or more totaling \$53,882 during the 90-day election cycle ending on November 4, 2008, due on or about October 2, 2008 through October 15, 2008, in violation of Government Code Section 85309, subdivision (b).

COUNT 11: Respondents Equality California Issues PAC and Timothy Hohmeier failed to file online campaign reports disclosing contributions of \$1,000 or more totaling \$66,500 during the 90-day election cycle ending on November 4, 2008, due on or about October 16, 2008 through November 5, 2008, in violation of Government Code Section 85309, subdivision (b).

\$100 or More Contributor Information

COUNT 12: Respondents Equality California Issues PAC and Timothy Hohmeier failed to disclose occupation and/or employer information for persons who contributed \$100 or more on campaign statements for 330 individual contributors for contributions received totaling \$66,650, in violation of Section 84211, subdivision (f), of the Government Code.

SUMMARY OF THE LAW

An express purpose of the Act, as set forth in Section 81002, subdivision (a), is to ensure that receipts and expenditures in election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper practices may be inhibited. The Act, therefore, establishes a campaign reporting system designed to accomplish this purpose of disclosure.

Duty to File Campaign Statements

Section 82013, subdivision (a), defines a “committee” as any person or combination of persons who directly or indirectly receives contributions totaling \$1,000 or more in a calendar year. This type of committee is commonly known as a “recipient committee.” Section 82047.5 defines a “primarily formed committee” to include “a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose... [a] single measure....” Under the Act’s campaign reporting system, state primarily formed ballot measure committees are required to file specified campaign statements and reports disclosing contributions received and expenditures made by certain deadlines with the Secretary of State’s office (“SOS”). (See Sections 84200 – 84209.) A “contribution” is a payment made for political purposes. (Section 82015.)

Duty to File Preelection Campaign Statements

In addition to the semiannual campaign statements, Section 84200.5, subdivision (d), requires state general purpose committees to file preelection campaign statements (in accordance with the timelines in Section 84200.7) “if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more during the period covered by the preelection statement.”

For elections held in June of an even number year, Section 84200.7 specifies the time for filing the preelection statements. The two preelection reporting periods are: (1) For the period ending March 17, a statement to be filed no later than March 22; and (2) For the period ending 17 days before the election, a statement to be filed no later than 12 days before the election. Therefore, the filing deadlines for the June 3, 2008 election were as follows: for the first preelection campaign statement for the period January 1, 2008 – March 17, 2008 was due March 24, 2008;⁴ and for the second preelection campaign statement the due date was May 22, 2008, for the period March 18, 2008 through May 17, 2008.

Duty to File Late Contribution Reports

Under Section 84203, subdivisions (a) and (b), when a committee makes or receives a late contribution, the committee must disclose the contribution in a late contribution report within 24 hours of making or receiving the contribution. Section 82036, subdivision (b), defines a “late contribution,” in relevant part, as a contribution which totals in the aggregate one thousand dollars (\$1,000) or more that is made to or received by a committee formed or existing primarily to support or oppose a candidate or measure before the date of any state election but after the closing date of the last campaign statement required to be filed before the election. Under Sections 84200.7 and 84200.8, the late contribution reporting period of an election covers the last 16 days before the election. Section 84203, subdivision (e), provides that paper copies are not required when this information has been disclosed online pursuant to Section 85309, subdivisions (a) or (b).

Duty to File Reports Online

In order to maximize the availability of information regarding campaign disclosure to the public, the Act requires any candidate, officeholder, committee, or other person who is required to file statements, reports, or other documents in connection with a state elective office to file them *online* or *electronically* when the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is \$50,000 or more⁵. (Section 84605, subd. (a).) Once a person or entity is required to file online or electronically, the person or entity is required to file all subsequent reports online or electronically as well. (Section 84605, subd. (g).) Persons filing online or electronically are also required to continue to file required disclosure statements

⁴ Because the March 22 deadline falls on Saturday, this filing deadline is extended to March 24, 2008.

⁵ Although the current threshold to qualify as an electronic filer is \$25,000 under Section 84605, in 2008, the qualifying threshold was \$50,000. All law sections referred to in this Exhibit reflect the law as it was in effect at the time of the violation.

and reports in paper format, which continue to be the official filing for audit and other legal purposes until the Secretary of State determines the online or electronic disclosure system is operating securely and effectively. (Section 84605, subd. (i).)

Duty to Report Contributions of \$1,000 or More Received During the Election Cycle

A primarily formed ballot measure committee who is required to file reports pursuant to Section 84605 shall file online or electronically with the SOS a report disclosing receipt of a contribution of \$1,000 or more received during an election cycle. This campaign report shall disclose the same information required by subdivision (a) of Section 84203⁶ and shall be filed within 24 hours of receipt of the contribution. (Section 85309, subd. (b).) “Election cycle” for the purposes of Section 85309 means the period of time commencing 90 days prior to an election and ending on the date of the election. (Section 85204.)

Duty to Disclose Contributor Information on Campaign Statements

Section 82015 defines a contribution as a payment made for political purposes. A monetary contribution is “received” on the date the committee, or the agent of the committee, obtains possession or control of the check or other negotiable instrument by which the contribution is made. (Regulation 18421.1, subd. (c).) Section 84211, subdivision (f), requires a committee to report on each of its campaign statements the following information about a person if the cumulative amount of contributions received from that person is \$100 or more and a contribution has been received from that person during the reporting period covered by the campaign statement: (1) the contributor’s full name; (2) the contributor’s street address; (3) the contributor’s occupation; (4) the name of the contributor’s employer, or if self-employed, the name of the contributor’s business; (5) the date and amount of each contribution received from the contributor during the reporting period; and (6) the cumulative amount of contributions received from the contributor. Section 84211, subdivision (g), includes these same requirements for a person if the cumulative amount of loans received from that person is \$100 or more. “Cumulative amount” means the amount of contributions received in the calendar year. (Section 82018, subd. (a).)

Liability of Committee Treasurers

As provided in Section 84100, every committee shall have a treasurer. Under Section 84100 and Regulation 18427, subdivision (a), it is the duty of a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act concerning the receipt and expenditure of funds and the reporting of such funds. Under Sections 83116.5 and 91006, a committee’s treasurer may be held jointly and severally liable, along with the committee, for any reporting violations committed by the committee.

⁶ Section 84203, subdivision (a), requires that recipients of contributions must report “his or her full name and street address, the date and amount of the late contribution, and whether the contribution was made in the form of a loan. The recipient shall also report the full name of the contributor, his or her street address, occupation, and the name of his or her employer, or if self-employed, the name of the business.”

SUMMARY OF THE FACTS

Respondent Committee was a state general purpose committee sponsored by Equality California until its activity caused Respondents to change Respondent Committee's status on July 1, 2008, to state primarily formed committee formed to oppose Proposition 8 in the November 4, 2008 General Election in adherence to the Act. At all time relevant, Respondent Hohmeier served as treasurer of Respondent Committee.

COUNT 1

Failure to File Preelection Campaign Statements

In addition to the semi-annual campaign statements, Section 84200.5, subdivision (d), requires state general purpose committees to file preelection campaign statements "if it makes contributions or independent expenditures totaling five hundred dollars (\$500) or more during the period covered by the preelection statement." Committee records and campaign statements show that during the first preelection reporting period (January 1, 2008 – March 17, 2008), Respondents made contributions totaling \$130,309 to the No on 8, Equality for All committee and during the second preelection reporting period (March 18, 2008 through May 17, 2008), Respondents made \$418,365 in contributions to the No on 8, Equality for All committee, triggering preelection campaign statements to be filed for those reporting periods. The deadlines for these statements were March 24, 2008, and May 22, 2008, respectively. Records from the Secretary of State's office revealed that Respondents did not file these statements.

By failing to file a first and second preelection campaign statement by the filing due date, Respondents violated Sections 84200.5, subdivision (d), and 84200.7 of the Government Code.

COUNTS 2-5

Failure to File Late Contribution Reports

For the November 4, 2008 General Election, Respondents were required to file late contribution reports within 24 hours of receiving or making contributions of \$1,000 or more during the late reporting period, October 19, 2008 through November 3, 2008. Respondents failed to timely file 16 late contribution reports for that election for 80 contributions *received* aggregating \$1,000 or more from a single source totaling \$128,312.

Respondents, as electronic filers, were required to file these reports electronically. The following late contribution reports were not timely filed on paper⁷ or electronically:

⁷ Pursuant to Section 84203, subdivision (e), paper copies are not required when this information has been disclosed online pursuant to Section 85309, subdivisions (a) or (b).

| Count | Name of Contributor | Amount Not Disclosed on LCR | Date LCR Threshold Reached | Total Amount Not Reported |
|---------------|---------------------------------|------------------------------------|-----------------------------------|----------------------------------|
| 2 | Roger Sheeks | \$2,500 | 10/19/2008 | \$28,185 |
| | Samuel Thurber | \$1,000 | 10/19/2008 | |
| | Marisa Hormel | \$10,000 | 10/20/2008 | |
| | Thomas Hormel | \$10,000 | 10/20/2008 | |
| | Tod Burnett | \$1,185 | 10/20/2008 | |
| | Horace Kenney | \$1,000 | 10/21/2008 | |
| | Dennis Frezzo | \$1,000 | 10/22/2008 | |
| | Jan Little | \$1,500 | 10/22/2008 | |
| 3 | Antronette Yancey | \$1,000 | 10/23/2008 | \$27,477 |
| | California Capitol PAC | \$2,000 | 10/23/2008 | |
| | Jared Huffman for Assembly 2008 | \$1,000 | 10/23/2008 | |
| | Michael Kieschnick | \$5,000 | 10/23/2008 | |
| | David Lawson | \$1,000 | 10/24/2008 | |
| | Luke Bellandi | \$1,500 | 10/24/2008 | |
| | Savannah Dooley | \$2,000 | 10/24/2008 | |
| | Dennis Hall | \$1,050 | 10/25/2008 | |
| | Tom Sudinsky | \$1,000 | 10/26/2008 | |
| | Cameron Ward | \$1,000 | 10/27/2008 | |
| | Joel Kushner | \$1,000 | 10/27/2008 | |
| | Andrew Camp | \$1,100 | 10/28/2008 | |
| | James Weis | \$1,000 | 10/28/2008 | |
| | Jeffrey Van Hoosear | \$1,250 | 10/28/2008 | |
| | Kevin Voelcker | \$1,000 | 10/28/2008 | |
| | Marcelline Saunders | \$1,000 | 10/28/2008 | |
| | Raymond Hixson | \$1,330 | 10/28/2008 | |
| | Robert Bodzin | \$1,000 | 10/28/2008 | |
| Robert Thomas | \$1,000 | 10/28/2008 | | |
| IN Magazine* | \$1,247 | 10/28/2008 | | |
| | Carole McCluskey | \$1,000 | 10/29/2008 | |
| | Deborah Hensler | \$1,000 | 10/29/2008 | |
| | Denis Cagna | \$1,250 | 10/29/2008 | |

| | | | | |
|------------------|---------------------|------------|------------|----------|
| 4 | Edward Haertel | \$1,000 | 10/29/2008 | \$28,300 |
| | Eric Trefelner | \$2,500 | 10/29/2008 | |
| | Mark Cole | \$5,000 | 10/29/2008 | |
| | Mathew Dos Santos | \$1,500 | 10/29/2008 | |
| | Melissa Davidson | \$1,000 | 10/29/2008 | |
| | Rodney Thornton | \$1,150 | 10/29/2008 | |
| | Andrew Fung | \$1,000 | 10/30/2008 | |
| | Angelica Metz | \$1,000 | 10/30/2008 | |
| | Ben Patrick Johnson | \$2,500 | 10/30/2008 | |
| | Bradley Johnson | \$1,000 | 10/30/2008 | |
| | Calvin Chou | \$1,000 | 10/30/2008 | |
| | David Bress | \$1,000 | 10/30/2008 | |
| | Edward Hardie | \$1,400 | 10/30/2008 | |
| | Elizabeth Smith | \$1,000 | 10/30/2008 | |
| | Jon Hall | \$1,000 | 10/30/2008 | |
| | Mark Halacy | \$1,000 | 10/30/2008 | |
| Philip Boyer | \$1,000 | 10/30/2008 | | |
| 5 | Amin Rahimi | \$1,000 | 10/31/2008 | \$44,350 |
| | Bradley Johnson | \$1,500 | 10/31/2008 | |
| | Carlton Thomas | \$1,000 | 10/31/2008 | |
| | Cav Pt Wines, LLC | \$1,000 | 10/31/2008 | |
| | Danielle Fairlee | \$1,000 | 10/31/2008 | |
| | David Daniels | \$1,000 | 10/31/2008 | |
| | David Dawson | \$1,000 | 10/31/2008 | |
| | David Lawson | \$1,000 | 10/31/2008 | |
| | Donald Bird | \$1,000 | 10/31/2008 | |
| | G. Fitzgerald | \$5,000 | 10/31/2008 | |
| | Jeff Patterson | \$1,000 | 10/31/2008 | |
| | Jeffrey Osteen | \$1,000 | 10/31/2008 | |
| | Jeffrey Ruda | \$1,000 | 10/31/2008 | |
| | Joseph O'Mealy | \$1,350 | 10/31/2008 | |
| | Pauley Perrette | \$3,000 | 10/31/2008 | |
| | Richard Poppen | \$2,500 | 10/31/2008 | |
| | Robert Bates | \$1,000 | 10/31/2008 | |
| | Robert MacLaughlin | \$1,000 | 10/31/2008 | |
| Andrew Sendall | \$1,000 | 11/01/2008 | | |
| Kim Kruse | \$1,000 | 11/01/2008 | | |
| Richard Been | \$1,000 | 11/01/2008 | | |
| Sebastien Mancel | \$1,000 | 11/01/2008 | | |

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|--|------------------|---------|------------|--|
| | Tim Garner | \$1,000 | 11/01/2008 | |
| | William Rouse | \$1,000 | 11/01/2008 | |
| | Michael Blubaugh | \$1,000 | 11/02/2008 | |
| | Richard Denatale | \$1,000 | 11/02/2008 | |
| | Todd Heringer | \$1,000 | 11/02/2008 | |
| | Craig Kliger | \$1,000 | 11/03/2008 | |
| | Frederick Briggs | \$1,000 | 11/03/2008 | |
| | Hayward Maben | \$1,000 | 11/03/2008 | |
| | Julie Fischer | \$1,000 | 11/03/2008 | |
| | Stevon Swig | \$5,000 | 11/03/2008 | |

By failing to file within 24 hours of receipt late contribution reports disclosing contributions aggregating \$1,000 or more, Respondents violated Sections 84203 and 84605, subdivision (a), four times.

COUNTS 6-11
Failure to Report Contributions of \$1,000 or More Online

During the 90-day period before the November 4, 2008 General Election, from August 6, 2008, through November 4, 2008, Respondents were required to disclose each contribution of \$1,000 or more in an online campaign report filed within 24 hours of receipt.

In this matter, Respondents failed to disclose 56 contributions of \$1,000 or more totaling \$308,151 during this reporting period within 24 hours of receipt in online campaign reports. The following contributions were not reported in 33 separate online reports:

| Count | Number of Contributions Received | Date Received (33 Dates) | Amount of Contributions | Total Amount Not Reported |
|--------------|---|---------------------------------|--------------------------------|----------------------------------|
| 6 | 1 | 08/11/08 | \$1,300 | \$36,413 |
| | 1 | 08/12/08 | \$1,800 | |
| | 1 | 08/13/08 | \$1,000 | |
| | 1 | 08/14/08 | \$19,149 | |
| | 1 | 08/27/08 | \$1,000 | |
| | 1 | 08/30/08 | \$12,164 | |
| 7 | 1 | 09/06/08 | \$1,000 | \$47,500 |
| | 2 | 09/10/08 | \$2,000 | |
| | 1 | 09/11/08 | \$2,000 | |
| | 4 | 09/12/08 | \$38,000 | |
| | 3 | 09/13/08 | \$4,500 | |
| 8 | 3 | 09/14/08 | \$22,979 | \$47,979 |

| | | | | |
|----|---|----------|----------|----------|
| | 1 | 09/19/08 | \$25,000 | |
| 9 | 1 | 09/21/08 | \$1,000 | \$55,877 |
| | 2 | 09/22/08 | \$25,728 | |
| | 1 | 09/25/08 | \$1,000 | |
| | 1 | 09/29/08 | \$4,000 | |
| | 3 | 09/30/08 | \$24,149 | |
| 10 | 1 | 10/01/08 | \$1,000 | \$53,882 |
| | 1 | 10/02/08 | \$10,000 | |
| | 1 | 10/03/08 | \$1,000 | |
| | 1 | 10/05/08 | \$4,999 | |
| | 1 | 10/08/08 | \$2,000 | |
| | 1 | 10/09/08 | \$1,000 | |
| | 1 | 10/11/08 | \$1,000 | |
| | 2 | 10/12/08 | \$28,383 | |
| | 1 | 10/13/08 | \$1,000 | |
| | 3 | 10/14/08 | \$4,500 | |
| 11 | 5 | 10/15/08 | \$29,000 | \$66,500 |
| | 5 | 10/16/08 | \$5,000 | |
| | 2 | 10/17/08 | \$2,000 | |
| | 1 | 10/18/08 | \$1,000 | |
| | 1 | 11/04/08 | \$29,500 | |

By failing to file online campaign reports disclosing contributions of \$1,000 or more received during the election cycle, as set forth above, Respondents committed six violations of Government Code Section 85309, subdivision (b).

COUNT 12
Failure to Disclose Required Contributor Information

Respondents had a duty to disclose occupation and employer information for persons who contributed \$100 or more in a calendar year. However, Respondents failed to disclose occupation and/or employer information for 330 individuals for the following four reporting periods: January 1, 2008 – June 30, 2008; July 1, 2008 – September 30, 2008; October 1, 2008 – October 18, 2008; and October 19, 2008 – December 31, 2008. The total amount of contributions made by these 330 individuals totaled approximately \$66,650, which is less than 1% of the total contributions received by Respondent Committee during these four reporting periods surrounding the election. Also, these contributions should have been returned since the records for this information was not obtained within 60 days of the receipt by Respondents. According to records maintained by the Secretary of State, Respondents filed these campaign statements, but did not disclose the required information for the 330 contributors. Respondents filed amendments after the election disclosing some of the information for the contributors and refunded the contributions of the others.

By failing to disclose required contributor information for contributions of \$100 or more, Respondents violated Section 84211, subdivisions (f), of the Government Code.

CONCLUSION

This matter consists of twelve counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count.

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to deceive the voting public; whether the violation was deliberate, negligent, or inadvertent; whether the Respondent demonstrated good faith in consulting with Commission staff; and whether there was a pattern of violations.

Preelection Campaign Statements: The typical administrative penalty for failing to timely file a preelection campaign statement has been in the middle of the penalty range, depending on the circumstances.

Committee records and campaign statements show that during the first preelection reporting period, Respondents made contributions totaling \$130,309 to the No on 8, Equality for All, a state primarily formed ballot measure committee, and during the second preelection reporting period, Respondents made \$418,365 in contributions to the No on 8, Equality for All committee, triggering preelection campaign statements to be filed for those reporting periods. The deadlines for these statements were March 24, 2008, and May 22, 2008, respectively. Records from the Secretary of State's office revealed that Respondents did not file these statements. Bank records show that Respondents had receipts and expenditures for these periods totaled \$541,290 and \$552,545, respectively. The state committee receiving the contributions from Respondent Committee timely filed the appropriate statements and Respondents disclosed the information on the semi-annual campaign statement for the period ending June 30, 2008 and various electronic reports filed prior to the preelection statement due dates, lessening the public harm.

Other similar cases approved recently by the Commission regarding the late filing or non-filing of pre-election campaign statements include a \$2,500 penalty per count for similar campaign statements missed (See *In the Matter of Yolo County Democratic Central Committee Local Account, Bob Bockwinkel and William Julian II*, FPPC No. 08/357, approved January 28, 2011, and *In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652, approved February 10, 2011). Both of these previous cases also dealt with multiple other reporting violations, and the *Yolo County* case also combined two pre-election campaign statements per count. After taking the specific facts of this case into consideration, a fine amount of \$2,500 per violation is appropriate and recommended combining the two preelection campaign statements into one violation.

Late Contribution Reports: The public harm inherent in disclosure violations is that the public is deprived of important information prior to the election, such as the sources and amounts of contributions to a campaign and the expenditures of the committee. In this case, Respondents failed to file 16 late contribution reports for that election for contributions received aggregating \$1,000 or more from a single source. The total amount of contributions not timely reported on these reports is approximately \$128,312, which is approximately 1% of the total contributions received by Respondent Committee during the audit period. The amounts not reported vary and the majority of these contributions were not reported by the contributors since most were received from individuals, not other committees.

Although there are no cases that are similar in size and amount of contributions received that have been considered by the Commission in the recent past, *In the Matter of Abel Maldonado, Abel Maldonado for Senate, Christopher J. Raymer, and Chris Steinbruner*, FPPC No. 10/070, a two million dollar campaign for State Controller, the Commission approved a \$2,000 penalty per count for \$75,000 in late contributions received, which totaled almost 4% of the total contributions received by that committee during the audit period. The Commission also approved a \$3,000 penalty for contributions of smaller amounts, though they made up a large percentage of the amount raised by that committee (*In the Matter of Arturo Chacon and Art Chacon for Water Board 2010*, FPPC No. 08/652). Both of these previous cases also dealt with multiple other reporting violations. After taking the specific facts of this case into consideration, including the fact that the 16 required reports have been compressed into these four counts, a fine amount of \$3,000 per violation is recommended for these late contribution reports not filed for contributions received.

\$1,000 Reports: Respondents failed to disclose 56 contributions of \$1,000 or more totaling \$308,151 during 90-day period before the November 4, 2008 General Election within 24 hours of receipt in online campaign reports. Contributions were not reported in 33 separate online reports. With regard to the \$1,000 online reporting violations, the typical administrative penalty for failing to file online reports within 24 hours disclosing contributions of \$1,000 or more received during the election cycle have historically resulted in penalties around \$2,000, depending on the facts of the case. *In the Matter of Abel Maldonado, et al*, FPPC No. 10/070, mentioned above, the Commission adopted a penalty of \$2,000 per count for failing to report 40 contributions in eight separate online campaign election cycle reports, totaling \$61,600. The counts were charged per day. *In the Matter of No on 54: Teachers, Workers, Healthcare, Civil Liberties & Entertainment Groups and Abdi Soltani*, FPPC No. 05/527, the Commission, at the September 11, 2008 Commission meeting, imposed penalties ranging from \$1,500 - \$2,500 on a committee that raised and spent over \$5.2 million and failed to report seven contributions totaling \$90,282 within 24 hours of receipt in an online report. The counts were charged per day and the penalty amount varied based on the amount not reported that day. In this matter, 33 required reports have been combined into these six counts totaling between \$36,413 and \$66,500. Therefore, a penalty amount of \$2,500 per count is recommended.

Occupation and Employer Information: Penalties for violations regarding disclosure of contributor information have varied widely based on the circumstances. *In the Matter of San Bernardino County Safety Employees' Benefit Association, Local PAC; Colin McKenzie; and William Abernathie*, FPPC No. 08/113, a \$3,000 fine was levied by the Commission at the

February 11, 2010 meeting regarding the non-reporting of a large amount of members who reached the \$100 threshold through dues payments to the committee. At that same meeting, *In the Matter of Marco Robles, Committee to Elect Marco A. Robles, and Rosa Lira*, FPPC No. 08/329, was approved with a \$1,000 penalty for missing occupation and employer information for a less sophisticated committee who failed to disclose multiple contributors over several reporting periods but amended promptly when requested to do so. Here, Respondents failed to disclose occupation and/or employer information for 330 individuals for four reporting periods who contributed \$100 or more, totaling \$66,650, which is less than 1% of the total contributions received by Respondent Committee during these four reporting periods surrounding the election. In light of the multiple reporting periods included in this count but taking into consideration the relatively low total amount and percentage of all contributions received during these periods, a penalty of \$2,000 is proposed for this lack of reporting.

Accordingly, the facts of this case justify imposition of a total administrative penalty of \$31,500.