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3 **FAIR POLITICAL PRACTICES COMMISSION**
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
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12 In the Matter of) FPPC No. 12/213
13)
14 DEAN FLOREZ, DEAN FLOREZ FOR LT.) STIPULATION, DECISION and
GOVERNOR 2010, and DEAN FLOREZ FOR) ORDER
15 STATE CONTROLLER 2014,)
16 Respondents.)

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18 Complainant, the Fair Political Practices Commission, and respondents Dean Florez, Dean
19 Florez for Lt. Governor 2010, and Dean Florez for State Controller 2014 (collectively “Respondents”)
20 agree that this Stipulation will be submitted for consideration by the Fair Political Practices Commission
21 at its next regularly scheduled 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.

4 It is further stipulated and agreed that respondents Dean Florez and Dean Florez for Lt. Governor
5 2010 made campaign expenditures that were not directly or reasonably related to a political, legislative,
6 or governmental purpose, in violation of Government Code sections 89512 and 89513 (2 counts), and
7 failed to refund all general election contributions after withdrawing from a primary election, in violation
8 of Government Code section 85318 (1 count). It is further stipulated and agreed that respondents Dean
9 Florez and Dean Florez for State Controller 2014 made campaign expenditures that were not directly or
10 reasonably related to a political, legislative, or governmental purpose, in violation of Government Code
11 sections 89512 and 89513 (9 counts). All counts are described in Exhibit 1, which is attached hereto and
12 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
13 the facts in this matter.

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1 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
2 Respondents also agree to the Commission imposing an administrative penalty in the amount of \$15,000
3 upon Dean Florez and Dean Florez for Lt. Governor 2010 and \$45,000 upon Dean Florez and Dean
4 Florez for State Controller 2014. A cashier's check from Respondents in said amount, made payable to
5 the "General Fund of the State of California," is submitted with this Stipulation as full payment of the
6 administrative penalty, to be held by the State of California until the Commission issues its decision and
7 order regarding this matter. The parties agree that in the event the Commission refuses to accept this
8 Stipulation, it shall become null and void, and within fifteen (15) business days after the Commission
9 meeting at which the Stipulation is rejected, all payments tendered by Respondents in connection with
10 this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and agree that in the
11 event the Commission rejects the Stipulation, and a full evidentiary hearing before the Commission
12 becomes necessary, neither any member of the Commission, nor the Chief of Enforcement, shall be
13 disqualified because of prior consideration of this Stipulation.

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15 Dated: _____
16 Gary Winuk, Enforcement Chief,
17 On behalf of the
18 Fair Political Practices Commission

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20 Dated: _____
21 Dean Florez, Respondent,
22 Individually and on behalf of
23 Respondent Dean Florez for Lt. Governor 2010 and
24 Respondent Dean Florez for State Controller 2014
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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Dean Florez, Dean Florez for Lt. Governor 2010, and Dean Florez for State Controller 2014” FPPC No. 12/213, including all attached exhibits, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Vice Chair.

IT IS SO ORDERED.

Dated: _____

Sean Eskovitz, Vice Chair
Fair Political Practices Commission

EXHIBIT 1

INTRODUCTION

Respondent Dean Florez for Lieutenant Governor 2010 (“Respondent Lt. Governor Committee”) was the candidate controlled committee of Respondent Dean Florez (“Respondent Florez”). Respondent Florez was a candidate for a Lieutenant Governor in the June 8, 2010, primary election. Respondent Dean Florez for State Controller 2014 (“Respondent St. Controller Committee”) is Respondent Florez’s candidate controlled committee.

This case arose from the Franchise Tax Board’s (“FTB”) audit of Respondent Lt. Governor Committee for the January 1, 2007, through June 30, 2010, period. The FTB audit and subsequent investigation by the Fair Political Practices Commission’s (the “Commission”) Enforcement Division (the “Enforcement Division”) revealed that Respondent Florez, Respondent Lt. Governor Committee, and Respondent St. Controller Committee committed numerous violations the Political Reform Act (the “Act”)¹.

For the purposes of this Stipulation, Respondent Florez and Respondent Lt. Governor’s violations of the Act are stated as follows:

- COUNT 1:** On April 23, 2010, Respondents made an expenditure of campaign funds in the amount of \$5,750 that was not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 2:** On June 1 and August 18, 2010, Respondents made two expenditures of campaign funds, totaling \$684.42, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 3:** Following Respondent Florez’s withdrawal from the June 8, 2010, primary election for Lieutenant Governor, Respondents failed to refund approximately \$247,000 in general election contributions, in violation of Section 85318.

For the purposes of this Stipulation, Respondent Florez and Respondent St. Controller Committee’s violations of the Act are stated as follows:

- COUNT 4:** Between May 12, and June 1, 2010, Respondents made three expenditures of campaign funds, totaling \$1,459.59, that were not directly or reasonably

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, 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, unless otherwise indicated.

related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

- COUNT 5:** Between May 12, and June 1, 2010, Respondents made three expenditures of campaign funds, totaling \$1,247.17, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513
- COUNT 6:** Between June 2, 2010, and February 22, 2011, Respondents made four expenditures of campaign funds, totaling \$1,396.32, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 7:** Between June 10, 2010, and September 12, 2011, Respondents made four expenditures of campaign funds, totaling \$1,415.15, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 8:** Between November 27, 2011, and January 1, 2012, Respondents made six expenditures of campaign funds, totaling \$2,608.15, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 9:** Between November 22, 2010, and August 3, 2011, Respondents made seven expenditures of campaign funds, totaling \$2,610, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 10:** On September 3, 2011, and February 4, 2012, Respondents made six expenditures of campaign funds, totaling \$2,590, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 11:** Between December 27, 2010, and June 30, 2011, Respondents made 69 expenditures of campaign funds, totaling \$3,495.96, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.
- COUNT 12:** Between July 1, 2011, and June 30, 2012, Respondents made 64 expenditures of campaign funds, totaling \$3,285.13, that were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act's provisions as they

existed at the time of the violations.

Prohibition Against Personal Use of Campaign Funds

All contributions to a campaign are held by the committee in trust for expenses associated with the election of the candidate or for expenses associated with holding office. (Section 89510, subd. (b).) An expenditure to seek office is within the lawful execution of that trust if it is reasonably related to a political, legislative, or governmental purpose. (Section 89512.) Expenditures that confer a substantial personal benefit to the candidate must be directly related to a political, legislative, or governmental purpose. (Id.) An expenditure confers a substantial personal benefit if it results in a direct personal benefit with a value of \$200 or more. (Section 89511, subd. (b)(3).)

Requirement to Refund General Election Contributions

A candidate for elective state office may raise contributions for a general election prior to the primary election if the candidate sets aside such contributions and uses these contributions for the general election. If the candidate is defeated in or withdraws from the primary election, the general election funds must be refunded to the contributors on a pro-rata basis less allowable expenses associated with raising and administration of the contributions. (Section 85318.)

SUMMARY OF THE FACTS

On March 12, 2010, Respondent Florez withdrew from the June 8, 2010, primary election for Lt. Governor. At that time, his campaign, Respondent Lt. Governor Committee, had raised approximately \$347,000 in contributions towards the general election. After withdrawing from the general election, Respondent Lt. Governor Committee refunded general election contributions, totaling approximately \$72,500, to all contributors who requested a refund. Then, on August 16, 2010, Respondent Florez transferred \$437,000 from his Lt. Governor Committee, including approximately \$247,000 remaining in general election contributions, to his St. Controller Committee.

Between April 23, 2010, and June 30, 2012, Respondent Florez used \$26,541.89 in campaign funds from Respondent Lt. Governor Committee and Respondent St. Controller Committee to make 168 personal purchases that were unrelated to either campaign.

Count 1

Personal Use of Committee Funds

On April 23, 2010, Respondent Florez deposited \$5,750 of Respondent Lt. Governor Committee funds into a bank account unrelated to the campaign, and the funds were never used for campaign-related expenditures. The campaign expenditure was not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 2

Personal Use of Committee Funds

On June 1 and August 18, 2010, Respondent Florez used Respondent Lt. Governor Committee funds, totaling \$684.42, to pay monthly internet/phone/cable bills. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 3

Failure to Refund General Election Contributions

Respondent Florez failed to refund approximately \$247,000 in general election contributions remaining in Respondent Lt. Governor Committee after he withdrew from the general election, in violation of Section 85318.

Count 4

Personal Use of Committee Funds

Between May 11 and June 13, Respondent Florez used Respondent St. Controller funds, totaling \$1,459.59, to pay for three personal purchases at Ikea and Beck's Furniture. The campaign expenditures were not directly or reasonable related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 5

Personal Use of Committee Funds

Between May 12, and June 1, 2010, Respondent Florez used Respondent St. Controller funds in the amount of \$1,247.17 to pay for three personal purchases at Wal-Mart and Home Depot. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 6

Personal Use of Committee Funds

Between June 2, 2010, and February 22, 2011, Respondent Florez used Respondent St. Controller funds, totaling \$1,396.32, four times for personal purchases of concert tickets, a golf shirt, fireworks, and a year-long subscription to SiriusXM satellite radio. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 7

Personal Use of Committee Funds

Between June 10, 2010, and September 12, 2011, Respondent Florez used Respondent St. Controller funds, totaling \$1,415.15, to pay for four personal purchases at Bed, Bath & Beyond,

a bookstore, and Best Buy. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 8

Personal Use of Committee Funds

Between November 27, 2011, and January 1, 2012, Respondent Florez used Respondent St. Controller funds six times, totaling \$2,608.15, to pay for personal travel, including airfare, a rental car, and dining. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 9

Personal Use of Committee Funds

Between November 22, 2010, and August 3, 2011, Respondent Florez used Respondent St. Controller funds seven times, totaling \$2,610, to pay for a monthly parking passes for his personal use. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 10

Personal Use of Committee Funds

On September 3, 2011, and February 4, 2012, Respondent Florez used Respondent St. Controller funds six times, totaling \$2,590, to pay for a monthly parking passes for his personal use. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 11

Personal Use of Committee Funds

Between December 27, 2010, and June 30, 2011, Respondent Florez used Respondent St. Controller funds 69 times, totaling \$3,495.96, for personal gasoline purchases. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

Count 12

Personal Use of Committee Funds

Between July 1, 2011, and June 30, 2012, Respondent Florez used Respondent St. Controller funds 64 times, totaling \$3,285.13, for personal gasoline purchases. The campaign expenditures were not directly or reasonably related to a political, legislative, or governmental purpose, in violation of Sections 89512 and 89513.

This matter consists of 12 counts of violating the Act, which carry a maximum administrative penalty of \$5,000 per count for a total of \$60,000.

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division 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 Enforcement Division 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(s) demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether upon learning of the violation the respondent voluntarily filed amendments to provide full disclosure. The facts are required to be considered by the Commission under Regulation 18361.5.

Counts 1-2, and 4-12: Making an expenditure of campaign funds for purposes other than related to a political, legislative, or governmental purpose is a serious violation of the Act. This type of violations undermines the basic purpose of the Act.

In December of 2012, the Commission fined a candidate \$3,000 per count for two counts of improper personal use of campaign funds. The respondent made two expenditures totaling \$4,000 for personal legal fees unrelated to any political, legislative, or governmental purpose. The respondent cooperated with the investigation, had no prior history of violating the Act, and agreed to an early settlement of the matter. (*In the Matter of Martin Bertram*, FPPC No. 10/1093.)

In August of 2012, the Commission fined a county general purpose committee \$3,000 for one count of improper personal use of committee funds unrelated to any political, legislative, or governmental purpose. The respondents cooperated with the investigation and agreed to an early settlement of the matter. (*In the Matter of Lynwood Teachers Association PAC and Michael Jochum*, FPPC No. 11/337.)

In this matter, Respondent Florez violated the Act by using \$26,541.89 in campaign funds to make 168 personal purchases that were unrelated to a political, governmental, or legislative purpose. However, Respondent cooperated with the investigation and agreed to an early settlement of the matter.

Based on the aforementioned facts, imposition of an administrative penalty in the amount of \$5,000 per count for Counts 1 through 2 and 4 through 12 is recommended.

Count 3: The failure by a candidate to refund contributions meant for a campaign that the candidate never participated in is a serious violation of the Act, as it undermines the public's trust that their contributions will be used appropriately.

In October of 2011, the Commission fined a candidate and her controlled committee \$2,500 for one count of failing to refund a contribution of \$5,000 in excess of the \$3,600 contribution limit. The respondents were uncooperative with the investigation and had a prior history of violating the Act. (*In the Matter of Maxine Sherard, Sherard for Assembly 2006, and Sherard for Assembly 2008*, FPPC No. 10/26 (Default Decision).)

In April of 2011, the Commission fined a candidate and his controlled committee \$2,500 for one count of failing to refund contributions to general election contributors. Respondent was an unsuccessful candidate in the primary election for Board of Equalization and did not advance to the general election. He was thus required to refund approximately \$110,923 to general election contributors on a pro rata basis and failed to do so. Respondents cooperated with the investigation, agreed to an early settlement, and, as part of the settlement, refunded all \$110,923 in general election contributions to the contributors. (*In the Matter of Jerome Horton, Democrat Jerome Horton for Board of Equalization, Citizens to Elect Honest Officials, and Kinde Durkee*, FPPC No. 08/286.)

In this matter, Respondent Florez and Respondent Lt. Governor Committee failed to refund approximately \$247,000 of general election contributions. The money is no longer available for Respondents to refund to the contributors. However, Respondents cooperated in the investigation and have agreed to an early settlement of the matter. Also, Respondent Florez claims that his bookkeeper sought advice from the Commission prior to transferring the general election contributions from Respondent Lt. Governor Committee to Respondent St. Controller Committee, but now understands that Respondent Lt. Governor Committee was required to refund all general election contributions remaining after he withdrew from the primary election.

Based on the aforementioned facts, imposition of an administrative penalty in the amount of \$5,000 for Count 3 is recommended.

After consideration of the factors of Regulation 18361.5, and consideration of penalties in prior enforcement actions, the imposition of a \$15,000 penalty on Respondent Dean Florez and Respondent Dean Florez for Lieutenant Governor 2010, and the imposition of a \$45,000 penalty on Respondent Dean Florez and Respondent Dean Florez for State Controller 2014 are recommended.

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