

1 GALENA WEST
Enforcement Chief
2 DAVE BAINBRIDGE
Senior Commission Counsel
3 Fair Political Practices Commission
428 J Street, Suite 620
4 Sacramento, CA 95814
Telephone: (916) 322-5660
5 Facsimile: (916) 322-1932

6 Attorneys for Complainant

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

10
11 In the Matter of:

12 **GARY KREEP and CITIZENS TO**
13 **ELECT GARY KREEP TO THE**
14 **SUPERIOR COURT 2012**

15 Respondents.

FPPC No. 14/850

16 **STIPULATION, DECISION, AND ORDER**

17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
19 respondents Gary Kreep and Citizens to Elect Gary Kreep to the Superior Court 2012 (Respondents)
20 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices
21 Commission (Commission) at its next regularly-scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
23 matter and to reach a final disposition without the necessity of holding an additional administrative
24 hearing to determine the liability of Respondents.

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

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by making
5 campaign expenditures from accounts other than the campaign bank account in violation of Government
6 Code section 85201, subdivision (e), and failing to timely disclose accrued expenses of \$100 or more in
7 violation of Government Code section 84211, subdivision (k), all as described in Exhibit 1. Exhibit 1 is
8 attached hereto and incorporated by reference as though fully set forth herein. Exhibit 1 is a true and
9 accurate summary of the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing an administrative penalty in the total amount of Six
12 Thousand Dollars (\$6,000). Respondents submitted with this Stipulation a cashier's check in said
13 amount, made payable to the "General Fund of the State of California," as full payment of the
14 administrative penalty that shall be held by the State of California until the Commission issues its
15 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
16 accept this Stipulation, it shall become null and void, and within fifteen (15) business days after the
17 Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
18 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
19 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
21 shall be disqualified because of prior consideration of this Stipulation.

22
23 Dated: _____
24 Galena West, Chief, on behalf of the Enforcement
25 Division Fair Political Practices Commission

26 Dated: _____
27 Gary Kleep, individually, and on behalf of Citizens to
28 Elect Gary Kleep to the Superior Court

1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Gary Kreep and Citizens to Elect Gary
3 Kreep to the Superior Court 2012,” FPPC No. 14/850, including all attached exhibits, is hereby accepted
4 as the final decision and order of the Fair Political Practices Commission, effective upon execution
5 below by the Chair.

6
7 IT IS SO ORDERED.

8
9 Dated: _____

10 Joann Remke, Chair
11 Fair Political Practices Commission
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

INTRODUCTION

Respondent Gary Krep (“Krep”) is a judge of the Superior Court for the County of San Diego. He was elected to the bench in the 2012 primary election. Respondent Citizens to Elect Gary Krep to the Superior Court 2012 (“Committee”) was Krep’s candidate-controlled campaign committee.

Under the Political Reform Act, (the “Act”)¹ a candidate’s campaign expenditures must be made from the bank account of the candidate’s committee. Also, a committee has to disclose all campaign expenditures on its campaign statements, as well as the committee’s unpaid bills that accrued during the period. Krep and the Committee violated the Act by making expenditures from Krep’s personal bank account rather than the Committee bank account, and failing to timely disclose accrued expenses.

SUMMARY OF THE LAW

Campaign Bank Accounts

A candidate must establish a campaign bank account upon filing a statement of intention to be a candidate.² All campaign contributions and loans must be deposited into the campaign account.³ Personal funds of the candidate that will be used for the campaign must be deposited in the campaign account prior to expenditure.⁴ All campaign expenditures must be made from the campaign account.⁵

Reporting Accrued Expenses

Under the Act, an “expenditure” includes a payment or an enforceable promise to make a payment.⁶ An expenditure is considered made on the date the payment is made or on the date consideration is received, whichever is earlier.⁷ Expenditures for which a committee has received consideration but not yet paid are called accrued expenses. For each expenditure, including accrued expenses, of \$100 or more a committee must disclose on its campaign statements the recipient’s name and address, as well as the amount of the expenditure and a description of the consideration received for the expenditure.⁸ Accrued expenses owed by a committee must be reported on the committee’s campaign statements until the debt is extinguished.⁹

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

² Section 85201, subd. (a).

³ Section 85201, subd. (c).

⁴ Section 85201, subd. (d).

⁵ Section 85201, subd. (e).

⁶ Section 82025.

⁷ Section 82025

⁸ Section 84211, subd. (k).

⁹ Regulation 18421.6

For the 2012 primary election, candidate-controlled committees had to file a pre-election statement for the period from January 1st through March 17th no later than March 22nd, a second pre-election statement for the March 18th through May 19th period by May 24th, and a semi-annual statement for the period ending on June 30th no later than July 31st.¹⁰

SUMMARY OF THE FACTS

This case arose from the Franchise Tax Board (“FTB”) audit of Respondent Committee for the period from January 1, 2012 through June 30, 2012. All subsequent dates in this exhibit refer to the year 2012 unless otherwise indicated. During the audit period, the Committee reported receiving contributions totaling \$42,808 and making expenditures totaling \$51,215. The FTB audit revealed a couple of significant violations that are discussed below.

Expenditures from Personal Bank Account

During the campaign, Kreep made fourteen campaign expenditures the he either charged to his personal credit card or made from his personal bank account. Kreep made three of these expenditures before creating the Committee. Kreep filed a Candidate Intention Statement (Form 501) on February 16th but did not file a Statement of Organization (Form 410) to create the Committee until March 19th. However, the Secretary of State rejected the initial Form 410 because it did not include a campaign bank account number. Kreep filed a second Form 410 to establish the Committee on March 26th that did include a bank account number.

The following table details those expenditures made from Kreep’s personal bank account or with his personal credit card that the Committee disclosed on its campaign statements as campaign expenditures:

Date of Payment	Payee	Description	Amount
March 13	Continuing the Republican Revolution	campaign literature & mailings	\$6,500
March 15	California Voter Guide	campaign literature & mailings	\$4,100
March 23	Budget Watchdogs	campaign literature & mailings	\$4,660
April 12	COPS Voter Guide	campaign literature & mailings	\$2,269
April 12	Darshan Brahmhatt	information technology	\$2,000
April 17	COPS Voter Guide	campaign literature & mailings	\$2,269
April 20	James Sills	polling & survey research	\$250
April 20	Budget Watchdogs	campaign literature & mailings	\$4,660
April 24	Election Digest 12	campaign literature & mailings	\$2,000
May 29	Landslide Communications	campaign literature & mailings	\$2,700
June 1	Billy Kramer	delivery of campaign signs	\$57
June 17	Landslide Communications	campaign literature & mailings	\$10,331
unknown	California Voter Guide, Budget	information technology	\$1,000
unknown	Betty Doomey	postage, delivery, messenger services	\$127

¹⁰ Section 84200 and 84200.7.

Total: \$41,796

Accrued Expenses

The Committee reported an accrued expense in the amount of \$10,331 owed to Landslide Communications (“Landslide”) on its semi-annual campaign statement for May 20th through June 30th. The accrued expense owed to Landslide was actually for payments made by Landslide on the Committee’s behalf to seven different sub-vendors for slate mailers and phone banking services. Four of the sub-vendor payments accrued between March 18th and May 19th but were not reported on the Committee’s pre-election statement for that period. The Committee also failed to disclose an additional accrued expense of \$2,700 owed to Landslide Communications of Nevada on its semi-annual statement.

Those undisclosed accrued expenses consisted of the following:

Payee	Statement Accrued	Period	Description	Amount
Woman’s Voice	March 18 – May 19		mailers	\$965
National Tax Limitation Committee	March 18 – May 19		mailers	\$2,050
Save Proposition 13 Separate Segregated Fund	March 18 – May 19		mailers	\$1,820
Joel Fox’s Small Business Action Committee	March 18 – May 19		mailers	\$1,300
Landslide Communications of Nevada	May 20 – June 30		telephone calls	\$2,700
Total:				\$8,835

The Committee amended its pre-election statement for March 20th through May 19th and semi-annual statement for May 20th through June 30th almost a year later on June 28, 2013. The amended statements reported the accrued expenses listed above for that statement period in which each accrued.

The Committee’s total amount of expenditures for March 18th through May 19th statement period was \$26,619. The Committee’s total amount of expenditures for the May 20, 2012 through June 30, 2012 was \$4,162.

Keep received a warning letter from the Commission’s Enforcement Division in October of 2013 that concerned, in part, his failure to disclose the payments to sub-vendors detailed above. The warning letter was sent before the FTB completed its audit so the Enforcement Division was not aware at that time of the other violations detailed herein.

VIOLATIONS

Count 1 – Making expenditures from a personal bank account

Keep made campaign expenditures totaling \$41,796 from his personal bank account rather than the Committee bank account in violation of Section 85201, subdivision (e).

Count 2 – Failure to timely disclose accrued expenses

The Committee accrued expenses totaling \$6,135 during the March 20th through May 19th pre-election statement period, and \$2,700 during the May 20th through June 30th semi-annual statement period that it failed to timely disclose on the Committee's campaign statements in violation of Section 84211, subdivision (k).

CONCLUSION

This matter consists of two counts of violating the Act, which carry a maximum administrative penalty of five thousand dollars (\$5,000) per count, and \$10,000 total.

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 conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.¹¹ In this case, the vast majority of the campaign expenditures came out of Kreep's personal accounts thereby circumventing the campaign bank account requirement, which exist to facilitate tracking and verification of campaign financial activity and ensure campaign funds are used for campaign-related activities. Also, the Committee accrued expenses for slate mailers that went out before the election that the Committee did not disclose until after the election. This denied the public timely and complete information about the Committee's expenditures on those mailers.

To their credit, Kreep and the Committee cooperated with FTB's audit and with Commission staff in reaching this resolution. The Committee voluntarily amended its campaign filings upon learning of its violations and there is no evidence the Committee intended to conceal those expenditures made from Kreep's personal accounts since the Committee disclosed them on its campaign statements. Kreep asserts that his violations were inadvertent and due to his lack of familiarity with the Act's requirements having not previously run for public office in California. The Enforcement Division found no evidence indicating that Kreep or the Committee intended to violate the Act.

In addition to the factors listed above, the Commission also considers penalties in prior cases involving similar violations in determining the appropriate penalty for a violation. Recent similar cases where the respondents made campaign expenditures from a personal bank account include:

¹¹ Section 81002, subdivision (a)

- *In the Matter of Ben Kalasho and Ben Kalasho Committee to Elect for El Cajon City Council 2012*, FPPC No. 14/048. (The Commission approved a stipulated decision on October 16, 2014.) The respondents, a city council candidate and his controlled committee, made campaign expenditures totaling \$7,979 from the candidate's business and personal bank accounts. Those expenditures were approximately 35% of the committee's expenditures for that election. The respondents paid a penalty of \$3,000 for the violation.
- *In the Matter of Dan Hamburg, Dan Hamburg for Supervisor 2010 and Geoffrey Baugher*, FPPC Nos. 10/751 and 10/981. (The Commission approved a stipulated decision on April 25, 2013.) The respondents, a candidate for the county board of supervisors, his controlled committee, and the committee treasurer, made campaign expenditures from the candidate's personal bank account and with his personal credit card that totaled \$16,276. This represented approximately 23% of the campaign's total expenditures for the election. The respondents paid a penalty of \$3,000 for the violation.

The fact pattern in this case is similar to the comparable cases above. But the expenditures from Kreed's personal accounts were significantly higher both in total dollar amount (\$41,796), and as a percentage of the campaign's total expenditures (approximately 82%) than the comparable cases. This justifies a moderate increase in the penalty over the comparable cases.

Similar cases involving violations for failure to timely report accrued expenses include the following:

- *In the Matter of Green Technology Leadership Group PAC, No on Prop 23, and Rita Copeland, Treasurer*, FPPC No. 14/258 (The Commission approved a stipulated decision on January 15, 2015.) The respondents failed to timely report expenses totaling \$33,820.50, accrued during a pre-election period. The expenses were not reported until after the election, and accounted for approximately 21% of that committee's expenditures for the year. The respondents paid a penalty of \$2,500 for the violation.
- *In the Matter of Kathleen DeRosa and Committee to Elect Kathleen DeRosa for Mayor*, FPPC No. 12/867. (The Commission approved a stipulated decision on April 17, 2014.) The respondents failed to timely disclose expenditures and accrued expenses totaling \$13,383 that accrued over three statement periods. The expenditures not timely disclosed were approximately 51% of the campaigns total expenditures for the year. Most of these expenditures were not disclosed until after the election. The respondents paid a penalty of \$2,500 for the violation.

In this case, the accrued expenses the Committee did not timely report totaled \$8,835, which was approximately 17% of its total expenditures for the year. This total amount is similar to the *DeRosa* case and the percentage of total expenditures is similar to the *Green Technology Leadership Group* case. Also, similar to the comparable cases, while the Committee eventually amended its statements to disclose the accrued expenses, it did not do so until after the election.

PROPOSED PENALTY

After considering the central purposes of the Act, the factors of Regulation 18361.5, and the penalties imposed in prior cases, we propose a penalty of \$3,500 for Count 1 and \$2,500 for Count 2, resulting in a total penalty of \$6,000.