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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of: GAY AND LESBIAN VICTORY FUND, FRANK SELVAGGI, and KIM HOOVER, Respondent.	FPPC Case Nos. 14/1362 and 17/96 STIPULATION, DECISION AND ORDER

INTRODUCTION

This matter arose from audits performed by the Franchise Tax Board's Political Reform Audit Program for calendar years 2011 through 2014.

The Gay and Lesbian Victory Fund is a California general purpose committee. Its parent organization is a federal committee with the same name as the California committee. The purpose of the parent organization is to elect LGBT leaders to public office throughout the country. The California committee was formed to disclose the Victory Fund's activity in California. In this case, the Respondent is the California committee, and all references to the Gay and Lesbian Victory Fund or "the committee" are intended to refer to this California committee.

At different times, Frank Selvaggi and Kim Hoover served as the committee's treasurers.

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This case involves campaign reporting violations of the Political Reform Act.[1]

SUMMARY OF THE LAW

The Act and its regulations are amended from time to time. Most of the violations in this case occurred in 2012. For this reason, all legal references and discussions of law pertain to the Act's provisions as they existed at that time—unless otherwise noted.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.[2] Thus, it was decreed that the Act "should be liberally construed to accomplish its purposes."[3]

One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.[4] Along these lines, the Act includes a comprehensive campaign reporting system.[5] Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."[6]

Required Filing of Campaign Statements and Reports by Specific Deadlines

At the core of the Act's campaign reporting system is the requirement that committees must file campaign statements and reports for certain reporting periods and by certain deadlines.[7]

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[1] The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. 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. All regulatory references are to this source.

[2] Section 81001, subdivision (h).

[3] Section 81003.

[4] Section 81002, subdivision (a).

[5] Sections 84200, et seq.

[6] Section 81002, subdivision (f).

[7] Sections 84200, et seq.

Required Reporting of Receipts and Expenditures

Campaign statements are required to disclose certain information about receipts and expenditures, including the following information:[8]

- ❖ the total amount of contributions received during the period covered by the campaign statement, including loans, and the total cumulative amount of contributions received;
- ❖ the total amount of contributions received during the period from persons who gave a cumulative amount of $100 or more, including loans—along with the following additional information about each such contributor:
  - ➢ the contributor's full name;
  - ➢ his or her street address;
  - ➢ his or her occupation;
  - ➢ the name of his or her employer, or if self-employed, the name of the business;
  - ➢ the date and amount received for each contribution received during the period, and if the contribution is a loan, the interest rate for the loan;
  - ➢ the cumulative amount of contributions;
- ❖ the total amount of expenditures made during the period, including contributions/loans, and the total cumulative amount of expenditures made;
- ❖ the total amount of expenditures made during the period to persons who received $100 or more, including contributions/loans—along with the following information about each recipient of such expenditures:
  - ➢ the recipient's full name;
  - ➢ his or her street address;
  - ➢ the amount of each expenditure;
  - ➢ a brief description of the consideration for which each expenditure was made;
  - ➢ in the case of an expenditure which is a contribution to a candidate, elected officer, or committee, the date of the contribution, the cumulative amount of contributions made to that recipient, the full name of the recipient, and the office and district/jurisdiction for which he or she seeks nomination or election;
- ❖ if the cumulative amount of loans received from or made to a person is $100 or more and a loan has been received from or made to a person during the period, or is outstanding during the period, the following additional information must be reported for each such person/loan:
  - ➢ the person's full name;
  - ➢ his or her street address;
  - ➢ his or her occupation;
  - ➢ the name of his or her employer, or if self-employed, the name of the business;

[8] Sections 84211, subdivisions (a), (b), (c), (f), (g), (i), (k); and 84216.

- the original date and amount of each loan;
- the due date and interest rate of the loan;
- the cumulative payment made or received, to date, at the end of the period;
- the balance outstanding at the end of the period; and
- the cumulative amount of contributions.

Joint and Several Liability of Committee and Treasurer

It is the duty of a committee treasurer to ensure that the committee complies with the Act.[9] A treasurer may be held jointly and severally liable, along with the committee, for violations committed by the committee.[10]

SUMMARY OF THE FACTS

In 2012, the Gay and Lesbian Victory Fund reported receipts and expenditures totaling approximately $143,640 and $141,002, respectively.

VIOLATIONS

Count 1

Campaign Reporting Violation – Period Ending May 19, 2012

On or about May 24, 2012, the Gay and Lesbian Victory Fund and its then-treasurer, Frank Selvaggi, filed a pre-election campaign statement for the reporting period ending May 19, 2012, but failed to report receipt of contributions totaling approximately $31,350—and failed to report expenditures totaling $20,000, which were transfers to the committee's parent organization.

In this way, the committee and Selvaggi violated Section 84211, subdivisions (a), (b), (c), (f), (i), and (k).

Count 2

Campaign Reporting Violation – Period Ending December 31, 2012

On or about January 28, 2013, the Gay and Lesbian Victory Fund and its then-treasurer, Kim Hoover, filed a semi-annual campaign statement for the reporting period ending December 31, 2012, but

[9] Sections 81004, 84100, and Regulation 18427.
[10] Sections 83116.5 and 91006.

failed to report receipt of contributions totaling approximately $64,641 and failed to report expenditures totaling approximately $64,286. This included payments for mailing, transfers to the parent organization, bank service fees, and "get out the vote auto calls" for Assembly candidate Luis Lopez.

In this way, the committee and Hoover violated Section 84211, subdivisions (a), (b), (c), (f), (i), and (k).

PROPOSED PENALTY

This matter consists of two counts. The maximum penalty that may be imposed is $5,000 per count. Thus, the maximum penalty that may be imposed is $10,000.[11]

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations.[12] Additionally, the Commission considers penalties in prior cases with comparable violations.

Regarding Counts 1 and 2, the public harm inherent in campaign reporting violations is that the public is deprived of important, time-sensitive information regarding political contributions and expenditures.

Recently, the Commission approved a settlement involving this type of violation. See *In the Matter of Students for Sensible Drug Policy, David Bronner, Adam Eidinger, and Alan Amsterdam Committee to Regulate Cannabis – Yes on 19 and Aaron Houston*; FPPC Case No. 14/603 (approved Dec. 17, 2015), where the Commission imposed a penalty in the amount of $2,500 against a state ballot measure committee for failure to report expenditures totaling approximately $31,021 on a semi-annual

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[11] See Section 83116, subdivision (c).

[12] Regulation 18361.5, subdivision (d).

campaign statement. (This was approximately 46% of the expenditures that were made during the period in question.)

A higher penalty is warranted in the current case because it involves failure to report both receipts *and* expenditures—not just expenditures. Also, the current case involves a greater amount of unreported activity. (Count 1 involves failure to report receipts and expenditures totaling approximately $31,350 and $20,000, respectively. This equates to approximately 34% of the total receipts for the reporting period in question—and 30% of the expenditures that were made during the period. Count 2 involves failure to report receipts and expenditures totaling approximately $64,641 and $64,286, respectively. This equates to approximately 80% of the total receipts for the reporting period in question—and 79% of the expenditures that were made during the period.)

Additionally, a higher penalty is warranted in the current case because of the presence of other, minor violations, which were noted in two different Franchise Tax Board audit reports for calendar years 2011 through 2014 (including some reporting violations, failure to keep proper records, and issues regarding the committee's "restricted use" and "all purpose" accounts). For settlement purposes, these are being noted as aggravating factors—but they are not being charged as additional counts.

Under these circumstances, penalties in the amounts of $3,000 for Count 1 and $3,500 for Count 2 are warranted. (A lower penalty is being recommended for Count 1 because it involves less unreported activity than Count 2.)

Higher penalties are not being sought because the parties cooperated with the Enforcement Division by agreeing to an early settlement, by entering into a tolling agreement with respect to the statute of limitations, and the parties do not have a history of prior violations of the Act. Also, the Enforcement Division investigation did not reveal any evidence that the committee intended to conceal information from the public, and the committee and its treasurers contend that the violations were unintentional. Additionally, a substantial portion of the committee's unreported receipts were reported on statements filed by the contributors, and in the case of Count 2, roughly half of the unreported expenditures were reported by the committee on other filings—so there was some public disclosure. Finally, the Gay and Lesbian Victory Fund was active in several elections in several states at the same

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time, and relied on an outside law firm located in Washington, D.C. to comply with the various reporting requirements. The California committee was terminated in September 2014.

For the foregoing reasons, the total penalty that is being recommended in this case is as follows:

Count	Respondents	Penalty
1	Gay and Lesbian Victory Fund Frank Selvaggi	$3,000
2	Gay and Lesbian Victory Fund Kim Hoover	$3,500
		Total: $6,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents Gay and Lesbian Victory Fund, Frank Selvaggi, and Kim Hoover hereby agree as follows:

1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.

2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.

3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents pursuant to Section 83116.

4. Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.

5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of $6,500. One or more cashier's checks or money orders totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the

administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding this matter.

6. If the Commission refuses to approve this stipulation—then this stipulation shall become null and void, and within fifteen business days after the Commission meeting at which the stipulation is rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

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7. The parties to this agreement may execute their respective signature pages separately. A copy of any party's executed signature page including a hardcopy of a signature page transmitted via fax or as a PDF email attachment is as effective and binding as the original.

Dated: ______________________

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Galena West, Chief of Enforcement
Fair Political Practices Commission

Dated: ______________________

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Kim Hoover, individually and on behalf of Gay and Lesbian Victory Fund, Respondents

Dated: ______________________

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Frank Selvaggi, Respondent

The foregoing stipulation of the parties "In the Matter of Gay and Lesbian Victory Fund, Frank Selvaggi, and Kim Hoover," FPPC Case Nos. 14/1362 and 17/96, is hereby accepted as the final decision and order of the Fair Political Practices Commission, effective upon execution below by the Chair.

IT IS SO ORDERED.

Dated: __________________

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Joann Remke, Chair
Fair Political Practices Commission