

1 GALENA WEST
Chief of Enforcement
2 CHRISTOPHER BURTON
Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3000
4 Sacramento, CA 95811
Telephone: (916) 322-5660

5 Attorneys for Complainant
6 Fair Political Practices Commission, Enforcement Division

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

10
11 In the Matter of:

12 **PRIVACY FOR ALL STUDENTS,**
13 **KAREN ENGLAND, AND JOHN**
FUGATT,

14 Respondents.

FPPC Case No. 14/1111

STIPULATION, DECISION AND ORDER

15
16 **INTRODUCTION**

17 Privacy for All Students (the “Committee”) is a primarily formed ballot measure committee
18 created to support several attempts to qualify a ballot measure that would undo Assembly Bill 1266 (“AB
19 1266”), which permits student participation based on gender identity. Karen England (“England”) is the
20 principal officer of the Committee and John Fugatt (“Fugatt”) is the treasurer of the Committee.

21 The Committee committed numerous violations of the Political Reform Act (the “Act”),¹
22 including a failure to timely file four different semiannual campaign statements and failure to timely
23 report certain contributions on three campaign statements.

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27 ¹ The Act is contained in Government Code sections 81000 through 91014. All statutory references are to the
28 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.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred
3 between 2013 and 2017. For this reason, all legal references and discussions of law pertain to the Act’s
4 provisions as they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating
7 political practices suffered from inadequate enforcement by state and local authorities.² To that end, the
8 Act is to be construed liberally to accomplish its purposes.³

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

14 Mandatory Filing of Campaign Statements

15 At the core of the Act’s campaign reporting system is the requirement that committees file
16 campaign statements and reports for certain reporting periods, by certain deadlines, and including certain
17 information.⁷

18 The Act requires a recipient committee to file semiannual campaign statements twice per year
19 disclosing its campaign contributions and expenditures. A recipient committee must file a semiannual
20 statement by January 31 for the period ending December 31 and by July 31 for the period ending June
21 30, or the next business day if the deadline falls on a weekend or holiday.⁸

22 The Act requires that committees report the total amount of contributions received during the
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25 ² Section 81001, subd. (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subd. (a).

28 ⁵ Sections 84200, *et seq.*

⁶ Section 81002, subd. (f).

⁷ Section 84200, *et seq.*

⁸ Section 84200, subd. (a); Regulation 18116, subd. (a).

1 period covered by the campaign statement from (i) persons who have given a cumulative amount of \$100
2 or more; and (ii) persons who have given a cumulative amount of less than \$100.⁹ Further, the Act
3 requires that committees report the name, address, occupation, and employer of each person that
4 contributes \$100 or more on its campaign statements.¹⁰

5 The Act also requires that committees report the total amount of expenditures made during the
6 period covered by the campaign statement to (i) persons who have received \$100 or more; and (ii)
7 persons who have received less than \$100.¹¹ For each person to whom an expenditure of \$100 or more
8 has been made, the committee must report the name and address of the recipient, the amount of the
9 expenditure, and a brief description of the consideration for which each expenditure was made.¹²

10 The Act also requires that committees report the amount and source of any miscellaneous receipt
11 on campaign statements.¹³

12 Joint and Several Liability of Committee, Principal Officer, and Treasurer

13 It is the duty of a committee treasurer to ensure that the committee complies with the reporting
14 provisions of the Act.¹⁴ It is the duty of the committee's principal officer to authorize the content of
15 communications made by the committee, authorize expenditures made by the committee, and determine
16 the committee's campaign strategy.¹⁵ A treasurer and principal officer may be held jointly and severally
17 liable, along with the committee, for violations committed by the committee.¹⁶

18 **SUMMARY OF THE FACTS**

19 The Committee qualified on or about August 28, 2013. The Committee was formed in response to
20 the passage of AB 1266, also known as the "School Success and Opportunity Act," which permits
21 students to participate in sex-segregated school programs and activities, and use facilities, consistent with
22 his or her gender identity.

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24 ⁹ Section 84211, subds. (a), (c), and (d).

25 ¹⁰ Section 84211, subd. (f).

26 ¹¹ Section 84211, subds. (b), (i), and (j).

27 ¹² Section 84211, subd. (k).

28 ¹³ Section 84211, subd. (l).

¹⁴ Sections 81004, 84100, 84104, and 84213; Regulation 18427.

¹⁵ Section 82047.6; Regulation 18402.1, subd. (b).

¹⁶ Sections 83116.5 and 91006.

1 The Committee was initially formed to support a referendum to repeal AB 1266. However,
2 proponents of the measure failed to gather enough valid signatures to place the referendum on the
3 November 4, 2014 General Election ballot. On April 22, 2015, the Committee filed an amendment to its
4 statement of organization, providing that it was primarily formed to support the “Personal Privacy
5 Protection Act,” a ballot measure that eventually failed to garner enough valid signatures to make the
6 ballot in the November 8, 2016 General Election.

7 Late Semiannual Statements

8 In 2013, the Committee reported a total of \$516,282.88 in contributions and \$494,587.14 in
9 expenditures. Despite this significant activity, the Committee failed to timely file semiannual campaign
10 statements covering the reporting periods of October 1, 2013 to December 31, 2013; July 1, 2015 to
11 December 31, 2015; January 1, 2016 to June 30, 2016; and July 1, 2016 to December 31, 2016. The
12 Committee filed the statement covering the period of October 1, 2013 to December 31, 2013, on October
13 17, 2014 (259) days late; and the statements covering the periods of July 1, 2015 to December 31, 2015;
14 January 1, 2016 to June 30, 2016; and July 1, 2016 to December 31, 2016, in conjunction with this
15 settlement. The following financial activity occurred during the four pertinent reporting periods:

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Reporting Period	Total Contributions	Total Expenditures
10/1/2013 - 12/31/2013	\$419,942	\$405,367
17 7/1/2015 - 12/31/2015	\$84,610.03	\$78,044.12
18 1/1/2016 - 6/30/2016	\$2,958.47	\$8,907.31
19 7/1/2016 – 12/31/2016	\$1,357.98	\$2,514.40

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22 Late Reporting of Financial Activity

23 The Committee also failed to timely report certain contributions, expenditures, and miscellaneous
24 receipts on its campaign statements for the reporting periods of July 1, 2013 to September 30, 2013;
25 October 1, 2013 to December 31, 2013; and January 1, 2015 to June 30, 2015.

26 July 1 to September 30, 2013: The Committee filed its original campaign statement for the period
27 of July 1 to September 30, 2013, on November 1, 2013; and later filed an amendment to the statement on
28 October 17, 2014. The Committee failed to timely report \$3,850 in contributions of \$100 or more on

1 either the original or amended statement. The Committee failed to timely report 24 contributions of \$100
2 or more totaling \$19,588 on its original statement but then the amended statement was missing
3 information originally reported causing a higher number of contributions to be missing from the
4 amendment that was missing from the original statement. In total, the amended statement was missing 30
5 contributions of \$100 or more totaling \$10,700, six more than what was missing from the original
6 statement.

7 October 1 to December 31, 2013: As to the Committee's late-filed semiannual campaign
8 statement for the period of October 1 to December 31, 2013, the Committee failed to timely report 36
9 contributions of \$100 or more totaling \$18,919 on the statement, as well as a misreporting of a refund of
10 \$55,088.50 that was received from Bader & Associates Inc. The refund should have been reported as a
11 miscellaneous increase to cash, but was instead applied against other payments made to Bader &
12 Associates during that period, resulting in \$55,088.50 in unreported expenditures made to Bader &
13 Associates during the reporting period.

14 January 1 to June 30, 2015: The Committee failed to timely report \$900 in contributions of \$100
15 or more received during the reporting period of January 1 to June 30, 2015.

16 VIOLATIONS

17 Count 1: Failure to Timely File Semiannual Campaign Statements

18 The Committee, England, and Fugatt failed to timely file four semiannual campaign statements
19 for the reporting periods of October 1, 2013 to December 31, 2013; July 1, 2015 to December 31, 2015;
20 January 1, 2016 to June 30, 2016; and July 1, 2016 to December 31, 2016, in violation of Section 84200,
21 subdivision (a).

22 Count 2: Failure to Timely Report Financial Activity on Campaign Statements

23 The Committee, England, and Fugatt failed to timely report \$23,438 in contributions on the
24 Committee's quarterly campaign statement for the period of July 1, 2013 to September 30, 2013; \$18,919
25 in contributions, \$55,088.50 in expenditures, and a \$55,088.50 miscellaneous increase to cash, on the
26 Committee's semiannual campaign statement for the period of October 1, 2013 to December 31, 2013;
27 and \$900 in contributions on the Committee's semiannual campaign statement for the period of January
28 1, 2015 to June 30, 2015, in violation of Section 84211, subdivisions (a), (b), (c), (f), (i), (k), and (l).

1 **PROPOSED PENALTY**

2 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed is \$10,000.¹⁷

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent, or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.¹⁸ The Commission also considers penalties in prior cases involving similar
11 violations.

12 In this case, the Enforcement Division did not discover any evidence displaying an intention by
13 Respondents to conceal, deceive, or mislead the public. Further, Respondents voluntarily filed the
14 missing campaign statements and corrective amendments disclosing the missing financial activity in
15 conjunction with this settlement. However, although the Committee does not have a prior enforcement
16 history, Fugatt has a prior history of violating the Act and has received streamline fines for failing to
17 timely file for his committees.

18 The public harm inherent in campaign reporting violations is that the public is deprived of
19 important, time-sensitive information regarding political contributions. Generally, these types of
20 violations are considered to be more serious where the public is deprived of information that was
21 required to be disclosed before an election because this has the potential to affect how votes are cast—so
22 greater public harm is involved, and a higher penalty is warranted. Another factor that influences the
23 amount of the penalty is whether the public harm was mitigated because some of the reportable activity
24 was disclosed to the public on another campaign filing. Of the \$419,942 in contributions received during
25 the reporting period of October 1 to December 31, 2013, \$324,954 was otherwise reported on \$5,000
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¹⁷ Section 83116, subd. (c).

28 ¹⁸ Regulation 18361.5, subd. (d).

1 reports filed by the Committee. Of the \$84,610.03 in contributions received during the reporting period
2 of July 1 to December 31, 2015, \$45,000 was otherwise reported on \$5,000 reports.

3 Comparable cases in which penalties were charged for violating Sections 84200 and 84211
4 include the following:

5 • *In the Matter of Elk Grove Education Association Political Action Committee, Kathleen Tijan,*
6 *Lee Ramaley and Jeremy Roberts*; FPPC No. 16/19974. Respondents, a general purpose committees and
7 its principal officers and treasurers, failed to timely file two semiannual campaign statements, which
8 encompassed \$71,092 in financial activity, and one pre-election campaign statement, and failed to timely
9 report \$13,214 in contributions on one semiannual campaign statement and \$6,582 in contributions on
10 one pre-election campaign statement, in addition to 24-hour reporting violations. In December 2017, the
11 Commission approved a fine of \$2,500 on one count for failure to timely file semiannual campaign
12 statements, and \$2,500 on each of two counts for failure to timely report financial activity on campaign
13 statements, amongst other fines.

14 • *In the Matter of Gay and Lesbian Victory Fund, Frank Selvaggi, and Kim Hoover*; FPPC Nos.
15 14/1362 and 17/96. Respondents, a general purpose committee and its treasurers, failed to timely report
16 \$31,350 in contributions and \$20,000 in expenditures on a pre-election campaign statement; and \$64,641
17 in contributions and \$64,286 in expenditures on a semiannual statement, in violation of Section 84211. In
18 May 2017, the Commission approved a fine of \$3,000 on one count involving the pre-election statement,
19 and \$3,500 on one count involving the semiannual statement.

20 As to Count 1, Respondents are deserving of a penalty higher than that approved in *Elk Grove*
21 *Education Association*. In this case, even taking into consideration the amount of financial activity that
22 was otherwise reported by the Committee on \$5,000 reports, the amount of unreported financial activity
23 on semiannual campaign statements (\$633,747.31) is significantly higher than in the comparable case
24 (\$71,092).

25 As to Count 2, a penalty similar to those approved in the comparable cases is warranted, since the
26 amount of financial activity at issue here falls in the middle of the activity that went unreported in each
27 count of *Gay and Lesbian Victory Fund*, and is higher than the unreported activity in *Elk Grove*
28 *Education Association*.

1 In aggravation of all counts, Respondents committed additional minor violations of the Act
2 during the same time period, including a failure to timely file two additional semiannual campaign
3 statements, a failure to timely file two \$5,000 reports, and acceptance of eight cash contributions of \$100
4 or more, totaling \$1,154. In the interest of settlement, these additional violations are not being charged
5 herein.

6 Based on the foregoing, the following penalties are recommended:

Count	Violation	Proposed Penalty
1	Failure to Timely File Semiannual Campaign Statements	\$3,500
2	Failure to Timely Report Financial Activity on Campaign Statements	\$3,000
TOTAL:		\$6,500

CONCLUSION

13 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
14 Respondents, Privacy for All Students, Karen England, and John Fugatt, hereby agree as follows:

- 15 1. Respondents violated the Act as described in the foregoing pages, which are a true and
16 accurate summary of the facts in this matter.
- 17 2. This stipulation will be submitted for consideration by the Fair Political Practices
18 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 19 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
20 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
21 liability of Respondents pursuant to Section 83116.
- 22 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
23 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
24 This includes, but is not limited to, the right to appear personally at any administrative hearing held in
25 this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine
26 all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
27 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
28 reviewed.

1 The foregoing stipulation of the parties “In the Matter of Privacy for All Students, Karen England, and
2 John Fugatt,” FPPC Case No. 14/1111 is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution below by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: _____
8 Alice T. Germond, Chair
9 Fair Political Practices Commission
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