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7

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

11 In the Matter of) FPPC Case No. 17/607
12)
13)

13 MARC LEVINE, ELEVATE) **STIPULATION, DECISION AND ORDER**
14 CALIFORNIA: YES ON 2, MARC)
14 LEVINE BALLOT ISSUE COMMITTEE)
15 (ID# 1356004) and PHILIP BRUCE)
15 RAFUL,)
16)
17)

17 Respondents.

18 **INTRODUCTION**

19 Respondent Marc Levine was an incumbent candidate for California State Assembly,
20 District 10, in the November 4, 2014 General Election. Respondent Elevate California: Yes on 2, Marc
21 Levine Ballot Issue Committee (ID# 1356004) was initially registered in 2013 as Levine’s candidate-
22 controlled general purpose ballot measure committee, and for the 2014 General Election, the Committee
23 became Levine’s primarily formed ballot measure committee supporting Proposition 2. At all relevant
24 times, Respondent Philip Bruce Raful was treasurer of the Committee.

25 This matter arose out of an audit performed by the Political Reform Audit Program of the
26 Franchise Tax Board (FTB) for the period of July 1, 2014 through December 31, 2014. During the period
27 covered by the audit, the Committee reported receiving total contributions of approximately \$118,000,
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1 and making total expenditures of approximately \$106,491. The Audit Report was submitted to the
2 Enforcement Division on May 31, 2017.

3 Under the Political Reform Act (Act),¹ Levine, the Committee and Raful had a duty to file
4 campaign statements and reports and disclose particular information, including the receipt of
5 contributions of \$5,000 or more outside of an election cycle. And the Act prohibited Levine, the
6 Committee and Raful from making payments for communications made at the behest of Levine, a state
7 candidate, when the contributions previously received by the Committee were in excess of the calendar
8 year limit.

9 In this case, Levine, the Committee and Raful failed to timely file a \$5,000 report for two
10 contributions totaling \$100,000 received outside of the 90-day election cycle for the November 4, 2014
11 election. And Levine, the Committee and Raful made a prohibited \$50,000 payment in October 2014
12 for a cable TV advertisement because 1) they previously received contributions which were over the
13 \$34,000 calendar year contribution limit, 2) the communication was made at the behest of Levine, a
14 candidate for elective state office, 3) the communication featured Levine, and 4) the communication was
15 broadcast within 45 days of Levine's election.

16 SUMMARY OF THE LAW

17 All legal references and discussions of the law refer to the Act's provisions as they existed in
18 2014.

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

20 When enacting the Political Reform Act, the people of the state of California found and declared
21 that previous laws regulating political practices suffered from inadequate enforcement by state and local
22 authorities.² To that end, the Act must be liberally construed to achieve its purposes.³

23 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
24 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper

25 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
26 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title
27 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 81001, subd. (h).

³ § 81003.

1 practices are inhibited.⁴ Another is to provide adequate enforcement mechanisms so that the Act will be
2 “vigorously enforced.”⁵

3 **Definition of Controlled Committee**

4 A candidate includes, in relevant part, an individual who is listed on the ballot for election to any
5 elective office.⁶ A “committee” includes any person or combination of persons who receives
6 contributions totaling \$1,000 or more in a calendar year,⁷ commonly known as a “recipient committee.”
7 A recipient committee which is controlled directly or indirectly by a candidate, or which acts jointly with
8 a candidate in connection with the making of expenditures, is a “controlled committee.”⁸ A candidate
9 controls a committee if he or she, his or her agent, or any other committee he or she controls has a
10 significant influence on the actions or decisions of the committee.⁹ A committee may be controlled by
11 one or more candidates.¹⁰

12 **Duty to File Campaign Statements**

13 The Act requires candidates and their controlled committees to file campaign statements at
14 specific times disclosing information regarding contributions received and expenditures made by the
15 campaign committees.¹¹ A candidate for elective state office and all of his controlled committees whose
16 total cumulative contributions received, expenditures made, loans made, or loans received was \$25,000
17 or more are all required to file their campaign statements online or electronically as well as in paper
18 format with the Secretary of State.¹²

19 **Duty to Report Contributions of \$5,000 or More**

20 Once qualified as an electronic filer, a candidate for elective state office and all of his controlled
21 committees are required to report to the Secretary of State within 10 business days of receipt of every
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23 ⁴ § 81002, subd. (a).

24 ⁵ § 81002, subd. (f).

25 ⁶ § 82007.

26 ⁷ § 82013, subd. (a).

27 ⁸ § 82016, subd. (a).

28 ⁹ § 82016, subd. (a).

¹⁰ § 84102, subd. (e); Reg. 18402 subd. (c), and 18430.

¹¹ See § 84200, *et seq.*

¹² See §§ 84215, subd. (a), and 84605.

1 contribution of \$5,000 or more that is received at any time other than the election cycle.¹³ The election
2 cycle is the period of time commencing 90 days prior to an election and ending on the date of the
3 election.¹⁴ The 90-day election cycle for the November 4, 2014 election was August 6 through
4 November 4, 2014.

5 **Payment for Communication Identifying State Candidate**

6 When a committee makes a payment of \$50,000 or more for a communication, any contributions
7 received by the committee are subject to the calendar year contribution limits applicable to political
8 party committees who receive contributions for the purpose of supporting or defeating candidates for
9 elective state office if the communication: 1) clearly identifies a candidate for elective state office,
10 2) does not expressly advocate the election or defeat of the candidate, 3) is disseminated, broadcast, or
11 otherwise published within 45 days of an election and 4) was made at the behest of the clearly identified
12 candidate for elective state office.¹⁵ In 2014, the limit was \$34,000.¹⁶ “Made at the behest” of a candidate
13 for elective state office means made under the control or at the direction of, in cooperation, consultation,
14 coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the
15 candidate.¹⁷

16 In 2014, the \$34,000 contribution limit applied to all contributions received by a committee that
17 made or promised to make payments at the behest of a candidate for elective state office for a
18 communication that clearly identified the candidate within 45 days of an election, regardless of whether
19 the contributions were used to fund the communication at issue.¹⁸ And once a committee received
20 contributions in excess of the \$34,000 limit, the committee was prohibited from making or promising to
21 make any payment at the behest of a candidate for elective state office for a communication that clearly
22 identified the candidate within 45 days of an election.¹⁹

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24 ¹³ § 85309, subd. (c).

25 ¹⁴ § 85204.

26 ¹⁵ § 85310, subd. (a) and (c) referencing § 85303, subd. (b).

27 ¹⁶ § 83124; Reg. 18545, subd. (a)(8).

28 ¹⁷ Regs. 18225.7, subd. (b), and 18531.10, subd. (a)(3).

¹⁸ Reg. 18531.10, subd. (d).

¹⁹ *Ibid.*

1 **Joint and Several Liability of Candidate, Committee, and Treasurer**

2 Every committee must have a treasurer.²⁰ It is the duty of a committee's treasurer to ensure that
3 the committee complies with the Act.²¹ A committee's treasurer may be held jointly and severally liable
4 with the candidate and the committee for violations committed by the committee.²²

5 **SUMMARY OF THE FACTS**

6 Levine first ran for election to the Assembly District 10 seat in 2012 and was re-elected in the
7 November elections in 2014, 2016 and 2018. He currently has a re-election committee open for the 2020
8 election. Levine was a member of the San Rafael City Council from 2009 through his election to the state
9 Assembly. The Committee remains open and active, and Raful remains the Committee's treasurer.

10 **\$5,000 Reports**

11 On or about July 24, 2014, Levine, the Committee and Raful received two \$50,000 contributions
12 from John H. Scully and Regina K. Scully. This amounted to approximately 85% of the Committee's
13 total contributions received. At the time, the Committee was an electronic filer. As such, Levine, the
14 Committee and Raful were required to report receipt of these contributions within 10 business days of
15 receipt by filing a \$5,000 Report with the Secretary of State, but they failed to do so. These contributions
16 were reported before the election on the Committee's timely filed preelection campaign statement for the
17 reporting period July 1, 2014 through September 30, 2014, which was filed on October 6, 2014.²³

18 **Prohibited Payment for Communication Identifying State Candidate**

19 On or about July 24, 2014, the Committee received two \$50,000 contributions from
20 John H. Scully and Regina K. Scully.

21 After receiving these contributions, the Committee made, at the behest of Levine, a \$50,000
22 payment to Sadler Strategic Media on October 1, 2014, for a cable TV advertisement. The communication
23 supported Proposition 2, and it featured and identified Levine, but it did not expressly advocate his
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25 ²⁰ § 84100.

26 ²¹ § 84104 and Reg. 18427, subd. (a).

27 ²² §§ 83116.5 and 91006.

28 ²³ When the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for preelection and semi-annual statements is extended to the next regular business day. See Reg. 18116.

1 candidacy.²⁴ The advertisement began airing on October 6, 2014, which was within 45 days of Levine's
2 election.

3 Because the Scully family contributions were over the \$34,000 calendar year contribution limit,
4 and the communication was made at the behest of Levine, the \$50,000 payment for the communication
5 featuring Levine within 45 days of his election was a prohibited expenditure.

6 VIOLATIONS

7 **Count 1: Failure to Timely File \$5,000 Report**

8 Levine, the Committee and Raful failed to timely file a \$5,000 report for two \$50,000
9 contributions received on or about July 24, 2014, from John H. Scully and Regina K. Scully, violating
10 Government Code section 85309, subdivision (c).

11 **Count 2: Prohibited Payment for Communication Identifying State Candidate**

12 On or about October 1, 2014, Levine, the Committee and Raful made a prohibited \$50,000
13 payment for a cable TV advertisement because they previously received contributions which were over
14 the \$34,000 calendar year contribution limit, the communication was made at the behest of Levine, who
15 was a candidate for elective state office, the communication featured Levine, and the communication was
16 broadcast within 45 days of Levine's election, violating Government Code section 85310,
17 subdivision (c), and Regulation 18531.10.

18 PROPOSED PENALTY

19 This matter consists of two counts of violating the Act, which carries a maximum administrative
20 penalty of \$5,000 per count, totaling \$10,000.²⁵

21 In determining the appropriate penalty for a particular violation of the Act, the Commission
22 considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis
23 on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and
24 circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d):
25 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3)

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27 ²⁴ The advertisement can be found at <https://vimeo.com/106979282>.

²⁵ § 83116, subd. (c).

1 whether the violation was deliberate, negligent, or inadvertent; 4) whether the Respondent demonstrated
2 good faith in consulting with Commission staff; 5) whether there was a pattern of violations and whether
3 the violator has a prior record of violations of the Act or similar laws; and 6) whether, upon learning of
4 the violation, the violator voluntarily provided amendments to provide full disclosure.²⁶

5 Applying the factors to this case, Levine, the Committee and Raful failed to timely file a \$5,000
6 report which would have disclosed nearly 85% of the total contributions received. Levine, the Committee
7 and Raful also made a prohibited payment, at Levine's behest, for a communication featuring Levine
8 within 45 days of his election. But no evidence indicated an intent to deceive the voting public since the
9 Committee's preelection campaign statements, filed before the election, reported the Scully family
10 contributions and the payment for the communication.

11 And the evidence supports that the violations were inadvertent. Levine, the Committee and Raful
12 were generally aware that the Act required disclosure of the Committee's campaign activity, as shown
13 by their history of filing of campaign statements and reports. But Levine was serving in his first term as
14 a state officeholder, Raful was a volunteer treasurer, and Levine, the Committee and Raful were unaware
15 of the requirements for communications under Section 85310 and Regulation 18531.10 before the FTB
16 audit.

17 Levine, the Committee and Raful do not have a prior record of campaign reporting violations of
18 the Act, and the FTB Audit Report determined that Levine, the Committee and Raful substantially
19 complied with the disclosure and recordkeeping provisions of the Act. All of the campaign activity related
20 to these violations was disclosed before the November 4, 2014 election, and the required disclosures on
21 the television advertisement featuring Levine were accurate and timely.

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27 ²⁶ Reg. 18361.5, subd. (d).

1 The Commission also considers penalties in prior cases involving similar violations. Recent cases
2 with similar violations include:

3 Count 1: Failure to Timely File \$5,000 Report

4 *In the Matter of Daniel C. Schnur, Dan Schnur for Secretary of State 2014, and Kelly Lawler;*
5 *FPPC No. 16/186.* This matter arose from an audit performed by the Franchise Tax Board’s Political
6 Reform Audit Program. Respondents, a candidate for California Secretary of State in the June 3, 2014
7 Primary Election, his candidate-controlled committee and the committee’s treasurer, failed to file a
8 \$5,000 Report for a \$125,000 contribution received outside of the election cycle, in violation of
9 Government Code section 85309, subdivision (c) (1 count) In May 2017, the Commission approved a
10 penalty of \$2,000 for this violation.

11 In this case, Levine, the Committee and Raful failed to timely file a \$5,000 Report for
12 contributions totaling \$100,000 received outside of the election cycle. Their failure to timely file this
13 report resulted in a lack of timely information for the voting public regarding Levine’s, the Committee’s
14 and Raful’s campaign activity.

15 But Levine, the Committee and Raful have no prior history of violating campaign reporting
16 provisions of the Act, and the evidence supports that the violation was inadvertent. Additionally, the
17 amount not timely disclosed – which was similar to the amount in the comparable case – was disclosed
18 before the election in the Committee’s first preelection campaign statement. For the foregoing reasons, a
19 penalty of \$2,000 for Count 1 is recommended.

20 Count 2: Prohibited Payment for Communication Identifying State Candidate

21 There are no prior enforcement matters involving Section 85310. But the prohibition in
22 Section 85310 is similar to other contribution limit provisions of the Act. Specifically, in 2014,
23 committees were prohibited from accepting any contributions in excess of the calendar year contribution
24 limit for the purpose of making contributions to candidates for elective state office.²⁷ Penalties for
25 contribution limit violations are typically in the higher range: \$3,500 – \$5,000. But *In the Matter of*
26 *Independent Coalition of Educators Sponsored by the California Association of Private Postsecondary*

27 ²⁷ § 85303, subd. (a).

1 *Schools and Robert Johnson, Treasurer*, FPPC No. 12/559, the Commission approved a penalty of \$2,500
2 for a violation of Section 85303 (December 2012). The matter originated as a Franchise Tax Board audit.
3 Respondents, a state general purpose committee and its treasurer, impermissibly accepted a contribution
4 in excess of the \$6,500 contribution limit from a person for the purpose of making contributions to
5 candidates for elective state office, in violation of Government Code section 85303, subdivision (a) (1
6 count). The contribution the respondents accepted totaled \$10,000, which was 53% above the applicable
7 contribution limit, the respondents did not make any contributions to state candidates over the
8 contribution limit which mitigated the impact of the violation, and the respondents had no prior violations
9 of the Act.

10 Making a payment for an advertisement at an incumbent candidate's behest, which features the
11 incumbent candidate within 45 days of his election gives the candidate unfair exposure to the public,
12 even though the advertisement does not expressly advocate for his election. In this case, Levine, the
13 Committee and Raful made a prohibited \$50,000 payment for a cable TV advertisement because 1) they
14 previously received contributions which were over the \$34,000 calendar year contribution limit, 2) the
15 communication was made at the behest of Levine, a candidate for elective state office, 3) the
16 communication featured Levine, and 4) the communication was broadcast within 45 days of Levine's
17 election.

18 But several mitigating factors justify a similar penalty to the penalty imposed in *Independent*
19 *Coalition*. The payment in this matter totaled \$50,000, which was 47% above the applicable contribution
20 limit – a similar percentage above the limit to that in *Independent Coalition*. And like *Independent*
21 *Coalition*, Levine, the Committee and Raful did not make the \$50,000 payment directly to Levine for his
22 election to state office, so the public harm was less than for a direct contribution limit violation. Levine,
23 the Committee and Raful were not aware of the Section 85310 prohibition, and Levine, the Committee
24 and Raful have no prior history of violating campaign reporting provisions of the Act. Additionally, the
25 prohibited \$50,000 payment was fully disclosed before the November 4, 2014 election, and the required
26 disclosures on the television advertisement featuring Levine were accurate and timely, including the
27 major donor information. For the foregoing reasons, a penalty of \$2,500 for Count 2 is recommended.

For the foregoing reasons, a total administrative penalty is recommended as follows:

Count	Description	Penalty per count
1	Failure to File \$5,000 Report	\$2,000
2	Prohibited Payment for Communication Identifying State Candidate	\$2,500
	Total Agreed Upon Penalty	\$4,500

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, Respondents, Marc Levine, Elevate California: Yes On 2, Marc Levine Ballot Issue Committee (ID# 1356004) and Philip Bruce Raful, 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 \$4,500. One or more payments 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

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

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

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

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13 Dated: _____
14 Galena West, Chief, on Behalf of the Enforcement Division
15 Fair Political Practices Commission

16 Dated: _____
17 Marc Levine, Respondent, individually and on behalf of
18 Elevate California: Yes On 2, Marc Levine Ballot Issue
Committee (ID# 1356004), Respondent

19 Dated: _____
20 Philip Bruce Raful, Respondent

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1 The foregoing Stipulation of the parties “In the Matter of Marc Levine, Elevate California: Yes
2 On 2, Marc Levine Ballot Issue Committee (ID# 1356004) and Philip Bruce Raful,” FPPC Case
3 No. 17/607, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
4 effective upon execution below by the Chair.

5 IT IS SO ORDERED.

6 Dated: _____

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8 Richard C. Miadich, Chair
9 Fair Political Practices Commission
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