

1 GALENA WEST  
Chief of Enforcement  
2 JENNA C. RINEHART  
Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
4 Telephone: (916) 323-6302  
5 Email: JRinehart@fppc.ca.gov

6 Attorneys for Complainant  
7 Enforcement Division of the Fair Political Practices Commission

8  
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 18/867

12 VERGNE FOR LMUSD TRUSTEE  
13 AREA 3 2018 AND ANDREA  
14 VERGNE,

**STIPULATION, DECISION AND ORDER**

15 Respondents.

16  
17 **INTRODUCTION**

18 Respondent, Andrea Vergne (“Vergne”), was unsuccessful in her bid for Trustee of Area 3 for  
19 the Lucia Mar Unified School District in the November 6, 2018, General Election. Respondent, Vergne  
20 for LMUSD Trustee Area 3 2018 (the “Committee”) was Vergne’s controlled committee.

21 The Political Reform Act (the “Act”)<sup>1</sup> requires candidates and committees to source all  
22 campaign contributions and expenditures through a single designated campaign bank account. Vergne  
23 and the Committee violated the Act by failing to source all contributions and expenditures through a  
24 designated campaign bank account.

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28 <sup>1</sup> 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.

1 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred  
3 in 2018. For this reason, all legal references and discussions of law pertain to the Act’s provisions as  
4 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.<sup>2</sup> Thus, it was  
8 decreed the Act “should be liberally construed to accomplish its purposes.”<sup>3</sup> A central purpose of the  
9 Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are  
10 fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.<sup>4</sup>  
11 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be  
12 “vigorously enforced.”<sup>5</sup>

13 **Controlled Committee**

14 A controlled committee means a committee that is controlled directly or indirectly by a  
15 candidate.<sup>6</sup> A candidate controls a committee if he has a significant influence on the actions or decisions  
16 of the committee.<sup>7</sup>

17 **One Designated Campaign Bank Account**

18 Upon the filing of a statement of intention to run for office, a candidate must establish one  
19 designated campaign bank account.<sup>8</sup> All campaign contributions, made to the candidate, must be  
20 deposited in the designated campaign bank account.<sup>9</sup> All personal funds of the candidate, which the  
21 candidate intends to use to promote her election, must be deposited into the designated campaign bank  
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25 <sup>2</sup> Section 81001, subdivision (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subdivision (a).

28 <sup>5</sup> Section 81002, subdivision (f).

<sup>6</sup> Section 82016, subdivision (a).

<sup>7</sup> *Id.*

<sup>8</sup> Section 85201, subdivision (a).

<sup>9</sup> Section 85201, subdivision (c).

1 account prior to expenditure.<sup>10</sup> All campaign expenditures must be made from the committee's  
2 designated campaign bank account.<sup>11</sup>

### 3 **Statement of Organization**

4 A recipient committee shall file the original of the statement of organization with the Secretary  
5 of State and shall also file a copy of the statement of organization with the local filing officer.<sup>12</sup> If there  
6 is a change in any of the information contained in a statement of organization, an amendment shall be  
7 filed within 10 days to reflect the change.<sup>13</sup> The committee shall file the original of the amendment with  
8 the Secretary of State and shall also file a copy of the amendment with the local filing officer.<sup>14</sup>

### 9 **Mandatory Filing of Campaign Statements**

10 The Act requires a recipient committee to file semi-annual campaign statements twice per year  
11 disclosing its campaign contributions and expenditures.<sup>15</sup> A recipient committee must file a semi-annual  
12 campaign statement by January 31 for the period ending December 31, and by July 31 for the period  
13 ending June 30, or the next business day if the deadline falls on a weekend or holiday.<sup>16</sup>

14 In addition to semi-annual campaign statements, the Act requires all candidates appearing on the  
15 ballot to be voted on at the next election to file pre-election campaign statements as follows: (1) for the  
16 period ending 45 days before the election, the statement shall be filed no later than 40 days before the  
17 election, and (2) for the period ending 17 days before the election the statement shall be filed no later  
18 than 12 days before the election.<sup>17</sup>

19 "Period covered" by a campaign statement means the period beginning the day after the closing  
20 date of the most recent campaign statement which was required to be filed and ending with the closing  
21 date of the statement in question.<sup>18</sup> If a person has not previously filed a campaign statement, the period  
22 covered begins on January 1.<sup>19</sup>

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24 <sup>10</sup> Section 85201, subdivision (d).

25 <sup>11</sup> Section 85201, subdivision (e).

26 <sup>12</sup> Section 84101, subdivision (a).

27 <sup>13</sup> Section 84103, subdivision (a).

28 <sup>14</sup> *Id.*

<sup>15</sup> Section 84200.

<sup>16</sup> Section 84200, subdivision (a) and Regulation 18116, subdivision (a).

<sup>17</sup> Section 84200.5 and 84200.8.

<sup>18</sup> Section 82046, subdivision (b).

<sup>19</sup> *Id.*

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

2 It is the duty of a committee treasurer to ensure the committee complies with the Act.<sup>20</sup> A  
3 treasurer may be held jointly and severally liable, along with the committee and candidate, for violations  
4 committed by the committee.<sup>21</sup>

5 **Liability for Violations**

6 Any person who violates any provision of the Act, who purposely or negligently causes any  
7 other person to violate any provision of the Act, or who aids and abets any other person in the violation  
8 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.<sup>22</sup>

9 **SUMMARY OF THE FACTS**

10 Vergne was unsuccessful in her bid for Trustee of Area 3 for the Lucia Mar Unified School  
11 District in the November 6, 2018, General Election. The Committee reported receiving a total of  
12 approximately \$200 in contributions and spending approximately \$2,293 in expenditures. The \$200  
13 contribution was received from a single contributor and the expenditures were paid for by Vergne  
14 herself, outside the Committee’s campaign bank account.

15 This case was opened in response to a referral from the local filing officer, San Luis Obispo  
16 County Clerk-Recorder, for failing to timely file required campaign statements. Vergne failed to file the  
17 first pre-election campaign statement for the reporting period of January 1, 2018 to September 22, 2018,  
18 due September 27, 2018, and failed to report the contributions the Committee received from her on a  
19 pre-election campaign statement, however, these violations are not being charged separately for  
20 settlement purposes and the statements have been filed and amended as part of this settlement  
21 agreement.

22 Vergne timely filed the second pre-election campaign statement for the reporting period of  
23 January 1, 2018 to October 20, 2018, due October 25, 2018, reporting the contributions and expenditures  
24 discussed above.

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28 <sup>20</sup> Sections 81004, 84100, and Regulation 18427.

<sup>21</sup> Sections 83116. 5 and 91006.

<sup>22</sup> Sections 83116 and 83116. 5.

1 **Failure to Source all Contributions and Expenditures through Campaign Bank Account**

2 On August 21, 2018, Vergne filed an initial statement of organization for the Committee and  
3 reported Wells Fargo Bank, in Grover Beach, CA, as the financial institution where the campaign bank  
4 account was located. During discussions with the Enforcement Division, Vergne admitted she did not  
5 open a campaign bank account but instead used her personal credit card to pay for the Committee’s  
6 campaign expenditures. Vergne provided the Enforcement Division with the invoices for the  
7 Committee’s campaign expenditures, they are as follows:

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Date	Description	Amount
08/20/2018	Elite Consulting Specialists	\$1,090.00
08/21/2018	Print Shop - invite flyer	\$35.72
09/07/2018	Print Shop - posters	\$175.01
09/07/2018	Print Shop - buttons	\$464.70
09/07/2018	Print Shop - yard sign	\$495.45
<b>TOTAL:</b>		<b>\$2,260.88</b>

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16 **VIOLATIONS**

17 **Count 1: Failure to Source all Contributions and Expenditures through Campaign Bank Account**

18 Vergne and the Committee failed to deposit approximately \$2,260 in contributions into a  
19 designated campaign bank account and failed to pay approximately \$2,260 in expenditures from a  
20 designated campaign bank account, in violation of Government Code Section 85201, subdivisions (c),  
21 (d) and (e).

22 **PROPOSED PENALTY**

23 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per  
24 count. Thus, the maximum penalty that may be imposed here is \$5,000.<sup>23</sup>

25 In determining the appropriate penalty for a particular violation of the Act, the Commission  
26 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the  
27 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of

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<sup>23</sup> Section 83116, subdivision (c).

1 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
2 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
3 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
4 record of violations.<sup>24</sup>

5 A violation of the designated campaign bank account rule is considered inherently serious as the  
6 rule is considered key to ensuring committees accurately disclose their contributions and expenditures.  
7 In this case, the evidence supports there was no intent to conceal, deceive or mislead the public as to the  
8 Committee's contributions and expenditures because the Committee and Vergne filed a pre-election  
9 campaign statement prior to the election reporting the Committee's campaign expenditures. Here, the  
10 violation appears to be negligent, not deliberate, as Vergne was not sophisticated with the Act. The  
11 violation committed here was an isolated incident as Vergne has not had prior campaign experience or  
12 enforcement history.

13 The Commission considers penalties in prior cases with the same or similar violations and  
14 comparable facts.

15 *In the Matter of Andrew Valencia for Sweetwater School Board 2016 and Andrew Valencia;*  
16 FPPC Case No. 16/20043. Respondent, an unsuccessful candidate for the Board of Trustees for a school  
17 district and his controlled committee, failed to make all expenditures from and deposit all contributions  
18 into the designated campaign bank account. Many expenditures were paid for directly from the  
19 Respondent candidate or his family. This was Respondents second unsuccessful attempt to run for this  
20 Board and there were multiple other violations. On September 20, 2018, the Commission approved a  
21 penalty of \$2,500 for this count.

22 A lesser penalty than that approved in the *Valencia* case is recommended. Like *Valencia*, the  
23 Committee and Vergne failed to make all expenditures from and deposit all contributions into a  
24 designated campaign bank account. Vergne, like *Valencia*, paid for the majority of the Committee's  
25 expenditures with her personal funds, neglecting to source the funds through a designated campaign  
26 bank account first. In mitigation, unlike *Valencia*, who raised at least \$25,000, the Committee and  
27 Vergne ran a very small campaign raising and spending approximately \$2,260. Also, unlike *Valencia*,

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<sup>24</sup> Regulation 18361. 5, subdivision (d).

1 Vergne was not sophisticated or familiar with the Act as she did not have any prior campaign  
2 experience. Further, Vergne does not have prior enforcement history.

3 Based on the foregoing, a penalty in the amount of \$2,000 is recommended.

#### 4 CONCLUSION

5 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
6 Respondents, Vergne for LMUSD Trustee Area 3 2018 and Andrea Vergne hereby agree as follows:

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

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

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

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

21 5. Respondents agree to the issuance of the decision and orders set forth below. Also, Respondents  
22 agree to the Commission imposing against them an administrative penalty in the amount of \$2,000. One  
23 or more cashier's checks or money orders totaling said amount – to be paid to the General Fund of the  
24 State of California – is/are submitted with this stipulation as full payment of the administrative penalty  
25 described above, and same shall be held by the State of California until the Commission issues its  
26 decision and order regarding this matter.

27 6. If the Commission refuses to approve this stipulation – then this stipulation shall become null  
28 and void, and within fifteen business days after the Commission meeting at which the stipulation is

1 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed  
2 to Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing  
3 before the Commission becomes necessary, neither any member of the Commission, nor the Executive  
4 Director, shall be disqualified because of prior consideration of this stipulation.

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

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9 Dated: \_\_\_\_\_  
10 Galena West, Chief of Enforcement  
11 Fair Political Practices Commission

12 Dated: \_\_\_\_\_  
13 Andrea Vergne, individually and on behalf of  
14 Vergne for LMUSD Trustee Area 3 2018,  
15 Respondents

16 The foregoing stipulation of the parties "In the Matter of Vergne for LMUSD Trustee Area 3  
17 2018 and Andrea Vergne," FPPC Case No. 18/867, is hereby accepted as the final decision and order of  
18 the Fair Political Practices Commission, effective upon execution by the Chair.

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20 IT IS SO ORDERED.

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22 Dated: \_\_\_\_\_  
23 Richard C. Miadich, Chair  
24 Fair Political Practices Commission