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9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION  
10 STATE OF CALIFORNIA

11 In the Matter of:

12 JOHN COX FOR GOVERNOR 2018,  
13 JOHN COX, AND MCLAYN RYAN,

14 Respondents.

FPPC Case No. 2021/01092

STIPULATION, DECISION AND ORDER

15  
16 **INTRODUCTION**

17 John Cox for Governor 2018 (the “Committee”) was a candidate-controlled committee formed to  
18 support candidate John Cox (“Cox”) for Governor in the November 6, 2018 General Election. The  
19 treasurer for the Committee was Mclayn Ryan (“Ryan”), until August 21, 2018 when Cox took over as  
20 treasurer. This case arose from audits conducted by the Franchise Tax Board (“FTB”). The FTB audit  
21 report covered the audit period of January 1, 2017 through December 31, 2018. During the audit period,  
22 the Committee reported receiving contributions of approximately \$16,512,316 and making expenditures  
23 of approximately \$16,595,420. The FTB’s audit found, and the Enforcement Division of the Fair  
24 Political Practices Commission confirmed, that the Committee, Cox, and Ryan violated the Political  
25 Reform Act<sup>1</sup> (“Act”) by failing to disclose the occupation and/or employer information for contributions  
26 totaling \$233,761 received from 1,123 individuals.

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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 between 2017 and 2019. For this reason, all legal references and discussions of law pertain to the Act’s  
4 provisions as they existed at that time. The applicable statute of limitations has been tolled by a tolling  
5 agreement executed by Respondents.

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

7 When enacting the Political Reform Act, the people of California found and declared that  
8 previous laws regulating political practices suffered from inadequate enforcement by state and local  
9 authorities.<sup>2</sup> Thus, it was decreed that the Act “should be liberally construed to accomplish its  
10 purposes.”<sup>3</sup>

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

16 **Disclosure of Contributor Information**

17 For each campaign statement that a committee is required to file, the committee must disclose  
18 certain information about contributors who contribute a cumulative amount of \$100 or more.<sup>7</sup> Under  
19 Section 84211, subdivision (f), the committee must disclose the following about these contributors: (1)  
20 the contributor’s full name; (2) the contributor's street address; (3) the contributor’s occupation; (4) the  
21 name of the contributor’s employer, of if he or she is self-employed, the name of the business; (5) the  
22 date and amount received during the period covered by the campaign statement; and (6) the cumulative  
23 amount of contributions.

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<sup>2</sup> Section 81001, subd. (h).

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

28 <sup>4</sup> Section 81002, subd. (a).

<sup>5</sup> Sections 84200, *et seq.*

<sup>6</sup> Section 81002, subd. (f).

<sup>7</sup> Section 84211, subd. (f).

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

2 It is the duty of a committee treasurer and the candidate to ensure that the committee complies  
3 with the Act’s campaign reporting system.<sup>8</sup> A treasurer and candidate may be held jointly and severally  
4 liable with the committee for violations committed by the committee.<sup>9</sup>

5 **SUMMARY OF THE FACTS**

6 Cox was an unsuccessful candidate for Governor during the November 6, 2018 General Election  
7 receiving 4,742,825 (38.1%) votes. The Committee raised a total of \$16,512,316 contributions and spent  
8 \$16,595,420 in expenditures in connection to the 2018 General Election.

9 Campaign Reporting – Occupation and Employer Information

10 For the period of May 22, 2017 through November 6, 2018, the FTB discovered in an audit that  
11 the Committee failed to timely disclose the occupation and/or employer information for contributions  
12 totaling \$233,761 received from 1,123 individuals. The Committee failed to timely disclose the  
13 contributor’s occupation and/or employer information for 1.4% of the Committee’s total contributions by  
14 dollar amount, and 5.2% of total contributions by number of contributors.

15 In mitigation, some of the deficient occupation/employer disclosures arose when contributors  
16 listed an abbreviation as their employer. Further, some of the abbreviations were considered well known,  
17 but Section 84211 requires the full name of the employer to be reported.

18 The following campaign statements contained the missing contributor information:

19

<b>Campaign Statement</b>	<b>Missing Occupation/Employer Activity</b>
Semi-annual 1/1/17 – 6/30/17	\$300
Semi-annual 7/1/17 – 12/31/17	\$100
Pre-election 1/1/18 – 4/21/18	\$4,208
Pre-election 4/22/18 – 5/19/18	\$2,300
Semi-annual 5/20/18 – 6/30/18	\$2,440
Pre-election 7/1/18 – 9/22/18	\$115,369
Pre-election 9/23/18 – 10/20/18	\$102,800
Semi-annual 10/21/18 – 12/31/18	\$6,243

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25 Additionally, for \$129,131 of the contributions, a record of this information was not maintained,  
26 and the contributions were not returned as required under Section 85700. However, in the interest of  
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28 <sup>8</sup> Sections 81004, 84100, 84104, and Regulation 1842.

<sup>9</sup> Sections 83116.5 and 91006.

1 settlement, the Enforcement Division recommends not charging this violation separately, and considering  
2 it as aggravation for the count charged.

3 **VIOLATIONS**

4 **Count 1**

5 **Failure to Timely Disclose Contributor Occupation and Employer**

6 The Committee, Cox, and Ryan failed to timely disclose the occupations and/or employer  
7 information for 1,123 contributors contributing a total of \$233,761, in violation of Government Code  
8 Section 84211, subdivisions (f)(3) and (f)(4).

9 **PROPOSED PENALTY**

10 This matter consists of one proposed count. The maximum penalty that may be imposed is \$5,000  
11 per count.<sup>10</sup> Thus, the maximum penalty that may be imposed for the count charged here is \$5,000.

12 This matter does not qualify for the streamline settlement program. The amount of unreported  
13 information for the campaign statements at issue fails the population limit test. Specifically, the  
14 unreported activity associated with the Committee’s pre-election campaign statements for the reporting  
15 periods ending on September 22, 2018 and October 20, 2018 exceeds the \$100,000 threshold necessary  
16 for Tier Two treatment.

17 In determining the appropriate penalty for a particular violation of the Act, the Enforcement  
18 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an  
19 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division  
20 considers the facts and circumstances of the violation in the context of the following factors set forth in  
21 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused  
22 by the specific violation; (2) The level of experience of the violator with the requirements of the Political  
23 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence  
24 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,  
25 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission  
26 staff or any other governmental agency in a manner not constituting complete defense under Government  
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<sup>10</sup> See Section 83116, subd. (c).

1 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the  
2 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the  
3 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

4 With respect to the first factor, failure to timely and fully report required financial activity on  
5 campaign statements deprives the public of timely disclosure of a committee's activity, which is  
6 heightened when related to preelection activity, as occurred here.

7 With respect to the second factor, Cox was inexperienced as a candidate. Cox running for  
8 Governor was Cox's first candidacy in California, though Cox had run unsuccessfully for federal office  
9 previously. According to the Committee's representative during the FTB audit, Ryan was inexperienced  
10 as a treasurer.

11 With respect to the third factor, the following cases were considered as comparable cases:

12 Count 1

- 13 • *In the Matter of Anthony Phan and Neighbors for Anthony Phan 2016 – City Council; FPPC No.*  
14 *17/54.* Anthony Phan was a successful candidate for the Milpitas City Council in the November 8,  
15 2016 General Election. Anthony Phan and Neighbors for Anthony Phan 2016 – City Council was  
16 his candidate-controlled committee. Johnathon Le was the Committee treasurer. The Committee,  
17 Phan, and Le failed to disclose loans, impermissible cash receipt and expenditures, and disclosure  
18 of required contributor information. In May 2022, the Commission approved a stipulated decision  
19 for one count of failing to timely disclose all required contributor information in the amount of  
20 \$5,000.
- 21 • *In the Matter of Tom Wheeler for Supervisor District 5-2018, Tom Wheeler, and Nancy D. Beavers;*  
22 *FPPC No. 18/381.* Respondents, an incumbent candidate for Madera County supervisor, his  
23 controlled committee, and its treasurer, failed to report employer and occupation information for  
24 24 contributors totaling \$10,927. In the first half of 2018, the Committee reported receiving a total  
25 of \$42,811 in contributions and spending a total of \$75,405 on expenditures for the Primary  
26 Election. The contributions with missing contributor information amounted to approximately 25%  
27 of the total contributions received in the first half of 2018. On September 20, 2018, the Commission  
28 approved a penalty of \$1,500 for this count.

1 Here, in mitigation, the Committee failed to timely disclose approximately 5.2% of contributors'  
2 occupation and/or employer information. Whereas, in Phan and Wheeler that number was higher at 73%  
3 and 25%, respectively. The present case has 1,123 contributors at issue, but the two other cases are  
4 significantly lower with 25 contributors and 24 contributors, respectively. Furthermore, in aggravation,  
5 for \$129,131 of the contributions, a record of this information was not maintained, and the contributions  
6 were not returned.

7 In mitigation, in Phan, Phan admitted that he made up the contributor information for 12 of the  
8 contributors in the amended campaign statement. Here, the evidence supports that the missing contributor  
9 information most likely the result of inadvertence or negligence due to the high volume of contributions  
10 received.

11 With respect to the fourth factor, the Enforcement Division did not find evidence to support a  
12 finding that there was intent to conceal, deceive, or mislead.

13 With respect to the fifth factor, the Enforcement Division did not find evidence to support a  
14 finding that the violations were deliberate. The evidence supports that the violations were most likely  
15 inadvertent or negligent. The FTB audit found that all the Committee's contributors' information was  
16 requested and that follow up letters, phone calls, and emails were sent to collect the information.  
17 Furthermore, the Committee's representative during the audit stated the Committee attempted to collect  
18 information on the donors, but there was a tremendous amount of volume. Specifically, the Committee  
19 received \$16,512,316 in contributions and only \$233,761 in contributions, or 1.4%, were missing  
20 employment or occupation records. However, the Committee's audit representative contended that that  
21 all efforts were made to collect and maintain the contributors' information.

22 With respect to the sixth factor, there is no relevant information available for this factor.

23 With respect to the seventh factor, the violations appear to be isolated and limited to the  
24 violations in the present case. There is no prior enforcement history for any of the Respondents.

25 With respect to the eighth factor, the Committee attempted to collect the missing information for  
26 purposes of filing corrective amendments, but was unable to collect the necessary information.

27 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a  
28 penalty of \$4,500 is recommended.

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
3 Committee, Cox, and Ryan hereby agree as follows:

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

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

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

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

18 5. Respondents agree to the issuance of the decision and order set forth below. Also,  
19 Respondents agree to the Commission imposing against them an administrative penalty in the amount of  
20 \$4,500. One or more payments totaling said amount—to be paid to the General Fund of the State of  
21 California—is/are submitted with this stipulation as full payment of the administrative penalty described  
22 above, and same shall be held by the State of California until the Commission issues its decision and  
23 order regarding this matter.

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

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

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8 Dated: \_\_\_\_\_

\_\_\_\_\_  
Angela J. Brereton, Chief of Enforcement  
Fair Political Practices Commission

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11 Dated: \_\_\_\_\_

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John Cox, individually and on behalf of John Cox for  
Governor 2018

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14 Dated: \_\_\_\_\_

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Mclayn Ryan, individually and on behalf of  
John Cox for Governor 2018

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18 The foregoing stipulation of the parties John Cox for Governor 2018, Cox, and Ryan, FPPC Case  
19 No. 2021-01092 is hereby accepted as the final decision and order of the Fair Political Practices  
20 Commission, effective upon execution below by the Chair.

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22 IT IS SO ORDERED.

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24 Dated: \_\_\_\_\_

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Richard C. Miadich, Chair  
Fair Political Practices Commission