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

10 In the Matter of:

11 **NEWSOM FOR GOVERNOR 2018**
12 **AND GAVIN NEWSOM**

13 Respondents.
14

FPPC Case No. 2021-00299 and 2021-00644

STIPULATION, DECISION, AND ORDER

Date Submitted to Commission: November 2024

15 **INTRODUCTION**

16 Respondent Gavin Newsom (“Newsom”) is the Governor of the State of California. Newsom
17 was elected as Governor in the November 6, 2018 General Election. Case number 2021-00299
18 originated from seventeen filing officer referrals alleging Newsom failed to timely file eighteen behested
19 payment reports for payments of more than \$5,000. Case number 2021-00644 originated from a
20 Franchise Tax Board (“FTB”) audit regarding Newsom’s candidate-controlled committee Newsom for
21 California Governor 2018 (“the Committee). Newsom served as the Committee treasurer.

22 Newsom violated the Political Reform Act (the “Act”)¹ by failing to timely file certain behested
23 payment reports for payments of more than \$5,000 between 2019 and 2024. The Committee and
24 Newsom violated the Act by failing to timely disclose sub-vendor payments. Respondents cooperated
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28 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18104 through 18998 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 with the Enforcement Division by entering into a tolling agreement with respect to the statute of
2 limitations.

3 **SUMMARY OF THE LAW**

4 The violations in this case occurred in 2018, 2019, 2020, 2021, and 2024 and all legal references
5 and discussions of law pertain to the Act’s provisions as they existed at that time.

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

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

10 Payments made at the behest of elected officials, including charitable donations, are a means by
11 which donors may seek to gain favor with elected officials. When behested payments are made, the
12 requirements of the Act ensure timely, transparent reporting of such activity, which increases public
13 awareness regarding potential attempts to influence in this manner.⁴

14 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
15 be “vigorously enforced.”⁵

16 **Behested Payment Reports**

17 When an elected officer solicits a charitable donation or donations from one individual or
18 organization to another, the officer is required to disclose the payment(s) on a behested payment report,
19 Form 803, which must be filed with the officer’s agency within 30 days following the date on which the
20 payment(s) equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. The
21 report is a public record, which must include the name and address of the payor, the amount of the
22 payment, the date of payment, the name and address of the payee, a brief description of the goods or
23 services provided or purchased (if any), and a description of the specific purpose or event for which the
24 payment or payments were made. Once the \$5,000 aggregate threshold from a single source has been
25 reached for a calendar year, all payments for the calendar year made by that source must be disclosed
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27 ² Section 81001, subd. (h).

28 ³ Section 81003.

⁴ Sections 82004.5, 82041.3, 84224 and 82015, subd. (b)(3)(B).

⁵ Section 81002, subd. (f).

1 within 30 days after the date the threshold was reached or the payment was made, whichever occurs
2 later.⁶

3 These rules apply when the payment is “made at the behest” of the officer. This means that the
4 payment is made under one (or more) of the following circumstances:

- 5 1. at the request, suggestion, or direction of the officer (or his agent);
- 6 2. in concert with the officer (or his agent);
- 7 3. with the express, prior consent of the officer (or his agent);
- 8 4. in cooperation, consultation, or coordination with the officer (or his agent); or
- 9 5. under the control of the officer (or his agent).⁷

10 An officer “has a duty to be informed of payments made at his or her behest and must make an effort to
11 file required forms as soon as possible.”⁸

12 **Duty to Disclose Subvendor Payments**

13 A “subvendor” is a person or company that is hired by a committee’s agent or independent
14 contractor to provide a good or service for the committee. The Act requires committees to report
15 payments of \$500 or more made on its behalf or for its benefit by an agent or independent contractor the
16 same way it would if it were making the payment on its own.⁹ Disclosure of the expenditures made by
17 an agent or independent contractor are required to be made at the same time and in the same manner and
18 detail as required for the committee’s direct expenditures.¹⁰ Specifically, the following information must
19 be provided: (1) the subvendor’s full name; (2) their street address; (3) the amount of each expenditure;
20 and (4) a brief description of the consideration for which each expenditure was made.¹¹ This information
21 is commonly referred to as “subvendor information.”

22 An agent or independent contractor who makes an expenditure on behalf of a candidate or
23 committee that is \$500 or more must notify the candidate or committee of the subvendor information no
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26 ⁶ Sections 84204.5, 842041.3 and 84224.

27 ⁷ Regulation 18215.3, subd. (a).

28 ⁸ See: John St. Croix Advice Letter (I-13-107), page 4.

⁹ Section 84303, subd. (a).

¹⁰ Regulation 18431, subd. (c); Section 84211, subd. (k).

¹¹ Section 84211, subd. (k).

1 later than three working days prior to the time the campaign statement reporting the information is
2 required to be filed.¹²

3 **SUMMARY OF THE FACTS**

4 **Behested Payment Reports**

5 Newsom was elected Governor of California in 2018 and is currently in office. Between 2019
6 and 2024, various payors made eighteen payments of \$5,000 or more to entities at Newsom’s behest.
7 For each of these payments, Newsom failed to timely file a corresponding behested payment report with
8 the Governor’s Office within 30 days and thereafter with the Fair Political Practices Commission.
9 However, all eighteen behested payment reports were filed prior to Enforcement Division contact.

10 Below is a chart summarizing the late behested payment reports:

11 Report	Due Date	Date Filed	Payor	Reportable Activity
12 Form 803	7/11/2019	10/1/2019	Andrew P. Barowsky Foundation	\$50,000
13 Form 803	8/10/2019	10/1/2019	Southern Glazer' Wine & Sprints	\$25,000
14 Form 803	10/27/2019	3/12/2020	Lumina Foundation	\$100,000
15 Form 803	11/23/2019	3/12/2020	Ford Foundation	\$200,000
16 Form 803	5/3/2020	7/29/2020	T-Mobile	\$12,264,000
17 Form 803	4/13/2020	8/2/2021	1111 Foundation	\$50,000
18 Form 803	5/20/2020	7/29/2020	Amazon	\$499,900
19 Form 803	5/28/2020	7/29/2020	Microsoft	\$229,750
20 Form 803	8/15/2020	3/18/2021	College Future Foundation	\$32,260
21 Form 803	10/1/2020	8/2/2021	1111 Foundation	\$200,000
22 Form 803	11/30/2020	8/2/2021	1111 Foundation	\$100,000
23 Form 803	12/2/2020	9/8/2021	Alien Getty Foundation	\$25,000
24 Form 803	1/3/2021	3/11/2021	Heising-Simons Foundation	\$300,000
25 Form 803	2/15/2021	7/8/2021	Youth Mentoring Action Network	\$5,000
26 Form 803	3/1/2021	7/8/2021	Youth Mentoring Action Network	\$9,000
27 Form 803	6/27/2021	9/17/2021	1111 Foundation	\$250,000
28 Form 803	7/2/2021	9/17/2020	Richard and Rhoda	\$5,000
	5/6/2024	7/23/2024	CA Community Foundation	\$25,000

¹² Regulation 18341, subd. (d).

1 **Subvendor Payments**

2 The Committee was the subject of a FTB Audit for the period of January 1, 2015 through
3 December 31, 2018. The audit report found the committee substantially complied with the disclosure
4 and recordkeeping provisions of the Act. However, the report also found the Committee failed to report
5 \$1,123,180 in subvendor payments on the preelection campaign statement covering the period of July 1,
6 2018 through September 22, 2018. The Committee amended the statement on November 6, 2018, the
7 date of the election, to disclose \$1,108,771 in subvendor payments. The Committee also amended the
8 statement on July 31, 2019 to disclose \$14,409 in subvendor payments, the remaining subvendor
9 payments that had not been previously disclosed.

10 **VIOLATIONS**

11 **Count 1: Failure to Timely File Behested Payment Report**

12 Newsom failed to timely file a behested payment report for a payment of \$50,000, in violation of
13 Government Code 84224.

14 **Count 2: Failure to Timely File Behested Payment Report**

15 Newsom failed to timely file a behested payment report for a payment of \$100,000, in violation
16 of Government Code 84224.

17 **Count 3: Failure to Timely File Behested Payment Report**

18 Newsom failed to timely file a behested payment report for a payment of \$200,000, in violation
19 of Government Code 84224.

20 **Count 4: Failure to Timely File Behested Payment Report**

21 Newsom failed to timely file a behested payment report for a payment of \$50,000, in violation of
22 Government Code 84224.

23 **Count 5: Failure to Timely File Behested Payment Report**

24 Newsom failed to timely file a behested payment report for a payment of \$200,000 in violation
25 of Government Code 84224.

26 **Count 6: Failure to Timely File Behested Payment Report**

27 Newsom failed to timely file a behested payment report for a payment of \$100,000 in violation
28 of Government Code 84224.

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2 **Count 7: Failure to Timely File Behested Payment Report**

3 Newsom failed to timely file a behested payment report for a payment of \$250,000 in violation
4 of Government Code 84224.

5 **Count 8: Failure to Timely Report Subvendor Payments**

6 The Committee and Newsom failed to timely report subvendor payments on the preelection
7 campaign statement covering the period of July 1, 2018 through September 22, 2018, in violation of
8 Government Code Sections 84303 and 84211, subdivision (k).

9 **PROPOSED PENALTY**

10 This matter consists of eight proposed counts. The maximum penalty that may be imposed is
11 \$5,000 per count. Thus, the maximum penalty that may be imposed for the violations charged is
12 \$40,000.¹³

13 This matter does not qualify for the Streamline Program.¹⁴ While the failure to timely file
14 behested payment reports is included in the Streamline Program, payments of more than \$150,000
15 excludes the violations from the Streamline Program.¹⁵ Additionally, the unreported subvendor
16 payments for the reporting period at issue totaled more \$100,000; therefore, the failure to report
17 subvendor payments is also excluded from the Streamline Program.¹⁶

18 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
19 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
20 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
21 considers the facts and circumstances of the violation in the context of the following factors set forth in
22 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and the gravity of the public harm
23 caused by the specific violations; (2) The level of experience of the violator with the requirements of the
24 Political reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The
25 presence or absence of any intention to conceal, deceive, or mislead; (5) Whether the violation was
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27 ¹³ Section 83116, subd. (c).

28 ¹⁴ Regulations 18360.1, subd. (a) and 18360.2, subd. (a).

¹⁵ Regulation 18360.2, subd. (e)(7)(D)(i).

¹⁶ Regulation 18360.1, subd. (e)(2)(C)(i).

1 deliberate, negligent, or inadvertent; (6) Whether the violator demonstrated good faith by consulting the
2 Commission, staff or any other governmental agency in a manner not constituting complete defense
3 under Government Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern
4 and whether the violator has a prior record of violations of the Political Reform Act or similar law; (8)
5 Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide
6 full disclosure.¹⁷

7 With respect to the first factor, payments made at the behest of elected officials, including
8 charitable donations, are a means by which donors may seek to gain favor with elected officials. Timely
9 reporting of such activity serves to increase public awareness regarding potential attempts to influence in
10 this manner. There is inherent public harm in non-disclosure of the payments because the public is
11 deprived of important information and deprived of the timely opportunity to scrutinize the payments.
12 Without such scrutiny, improper practices are not inhibited. The Commission has found timely
13 disclosure to be essential. Here, Newsom failed to timely report eighteen behested payments. However,
14 all the reports were filed prior to Enforcement Division contact and were filed within months of the due
15 date.

16 The public harm inherent in campaign reporting violations is that the public is deprived of
17 important, time-sensitive information regarding campaign activity. The gravity of the public harm is
18 heightened when the campaign reporting violations are related to pre-election activity. In this matter, the
19 Committee's failure to timely disclose subvendor payments prior to the relevant elections limited the
20 information available to the public regarding the Committee's expenditures. These violations were
21 somewhat corrected as the Committee filed amendments and disclosed certain subvendor payments on
22 the date of the relevant election.

23 With respect to the second factor, Newsom has served in public office since 1997. Through
24 Newsom's years of service, Newsom served on the Parking and Traffic Commission, as a member of the
25 San Francisco Board of Supervisors, as the Mayor of San Francisco, as the Lieutenant Governor of
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¹⁷ Regulation 18361.5, subd. (e).

1 California, and was elected Governor of California in 2018.¹⁸ Therefore, Newsom has significant
2 experience with the Act.

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

4 **Counts 1-7:**

- 5 • [*In re the Matter of Christopher Holden; FPPC 19/429*](#): Holden is a member of the California
6 State Assembly, District 41. In 2017 and 2018, ninety-four charitable payments were made in
7 amounts of \$5,000 or more to the California Legislative Black Caucus Policy Institute (“the
8 Institute”) by over six-dozen donors. The payments were made at Holden’s behest, while he
9 served as the Chair of the Institute. Holden failed to timely report the ninety-seven payments,
10 totaling \$1,567,500, in violation of Government Code Section 82015, subdivision (b)(2)(B)(iii),
11 as in effect prior to 2018, and Section 84224, as in effect after 2017 (16 counts). In March 2024,
12 the Commission approved a penalty of \$1,500 per count.

13 Here, a similar penalty is justified. Like in *Holden*, respondents are experienced and sophisticated
14 with the Act. Both respondents filed the missing behested payment reports before the Enforcement
15 Division received the referrals, making a good-faith effort to comply with the Act. Additional
16 information discussing the similarities in how the counts are charged in this case and in *Holden* is
17 discussed in more detail below.

- 18 • [*In re the Matter of William Dodd; FPPC 19/439*](#): Dodd is a member of the California State
19 Senate, District 3. In 2017 and 2018, numerous donors made charitable payments in amounts of
20 \$5,000 or more to the Salvation Army and the Napa Valley Education Foundation at Dodd’s
21 behest. Dodd failed to timely report 27 of these payments, totaling \$481,900, in violation of
22 Government Code Section 82015, subdivision (b)(2)(B)(iii), as in effect prior to 2018, and
23 Section 84224, as in effect after 2017 (5 counts). In January 2023, the Commission approved a
24 penalty of \$1,500.

25 Here, a similar penalty as *Dodd* is justified. Here, like in *Dodd*, both respondents are experienced
26 and sophisticated with the Act. Both respondents filed the missing behested payment reports before the
27 Enforcement Division received the referrals, making a good-faith effort to comply with the Act.

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¹⁸<https://governors.library.ca.gov/40-Newsom.html>

1 Additionally, in both cases, the reports were generally filed within months of the due date. In both cases,
2 the respondents noted for some of the reports, there was a delay due to the need to rely on third parties to
3 track the information necessary for reporting.

4 **Count 8:**

- 5 • *In the Matter of Dave Jones for Attorney General 2018, Dave Jones, and James Santos; FPPC*
6 *Case No. 2021-00641*: Jones failed to timely report subvendor payments totaling approximately
7 \$958,652. The subvendor payments were required to be disclosed on the pre-election campaign
8 statements for the reporting periods ending April 21, 2018 and May 19, 2018. Instead, the
9 subvendor payments were disclosed, as soon as the information was received from the vendor,
10 on amendments filed July 31, 2018, after the June 5, 2018 Primary Election but prior to the
11 November 6, 2018 General Election. The late disclosed subvendor payments amounted to
12 approximately 41% of the committee’s total expenditures during the relevant reporting periods.
13 In mitigation, Jones was unsuccessful in the November 6, 2018 General Election and the records
14 show that the vendor did not timely notify the committee of the relevant subvendor payments
15 made during the pre-election reporting periods. In April 2023, the Commission approved a
16 penalty of \$4,000.

17 Here, a lesser penalty than in *Jones* is recommended. Similar to Jones, the subvendor payments here
18 were required to be reported on a preelection campaign statement. However, unlike in Jones, a bulk of
19 the subvendor payments were disclosed on the date of the relevant election. Additionally, here the late
20 disclosed subvendor payments amounted to approximately 2% of the Committee’s total expenditures,
21 significantly less than the 41% in *Jones*. Therefore, a penalty of \$2,500 is recommended.

22 With respect to the fourth and fifth factors, the Enforcement Division did not obtain any
23 evidence that the violations were due to an intent to conceal, deceive, mislead the public, or to avoid
24 compliance with the Act. The evidence supports that the failure to timely file the behested payment
25 reports was negligent. Newsom contends the Governor’s Office was first notified of the payments for
26 two of the counts after the deadline to file the reports had passed. Additionally, all behested payment
27 reports were filed prior to Enforcement Division contact, showing a good faith effort to comply with the
28 Act.

1 With respect to the sixth factor, Newsom did not consult the Commission staff or any other
2 governmental agency in an effort to understand the Act’s requirements.

3 With respect to the seventh factor, there is no evidence to suggest these violations were part of a
4 pattern of repeated violations. In addition, the late behested payment reports at issue here comprise a
5 small fraction of the number of behested payment reports Newsom has filed as an officeholder: since
6 2011, he has filed more than 1,100 behested payment reports, totaling over \$300,000,000.

7 With respect to the eighth factor, Newsom filed the missing behested payment reports prior to
8 Enforcement Division contact and filed most of the subvendor payments at issue on the date of the
9 election.

10 In mitigation, of all counts, Newsom filed all reports prior to Enforcement Division contact and
11 cooperated with the Enforcement Division.

12 **Recommended Number of Counts and Penalty**

13 Historically, in cases with large numbers of violations involving the failure to timely file
14 behested payment reports, the Enforcement Division has used thresholds of reportable activity on a case-
15 by-case basis to determine the more egregious violations with the most public harm. The most recent
16 example is the *Holden* case. In *Holden*, there were ninety-four late behested payment reports, ranging
17 from \$5,000 to \$100,000, totaling \$1,576,500. Sixteen of the most egregious payments were charged, at
18 \$1,500 per count, for a total penalty of \$24,000. The penalty in *Holden* was approximately 1.5% of the
19 combined total of all the charged behested payments which represented a similar percentage achieved in
20 *Dodd*. The number of counts also generally represented the number of payments exceeding \$25,000 on
21 different reporting due dates.

22 In this case, the payment amounts ranged from \$5,000 to \$12,264,000. Therefore, for purposes of
23 settlement, the Enforcement Division is not charging payments made at or under \$25,000 because the
24 public harm is lower in those instances, given the low payment amount. This drops the counts from
25 eighteen to twelve. Further, the Enforcement Division is not charging payments where the official made
26 its best efforts to comply with the behested payment rules but was unable to do so due to the COVID-19
27 pandemic, including both during the initial shelter in place order issued in March 2020 and the regional
28 stay-at-home order in effect from December 2020 through the end of January 2021, where the payments

were made to help the effects of the pandemic, and where the approach to filing the behested payments reports was consistent with the press release guidelines provided by the Commission on March 25, 2020 regarding behested payment reporting.¹⁹ This further drops the counts down from twelve to seven

The Enforcement Division is recommending seven counts at \$1,500 per count for the failure to timely file behested payment reports. The total penalty for those counts is \$10,500 which is a similar resolution to both *Dodd* and *Holden*.

Based on the factors outlined above, the Enforcement Division is seeking a penalty of \$13,000 for all violations.

Based on the foregoing, the following penalties are recommended:

Count #	Violation	Penalty Amount
1	Failure to Timely File Behested Payment Report	\$1,500
2	Failure to Timely File Behested Payment Report	\$1,500
3	Failure to Timely File Behested Payment Report	\$1,500
4	Failure to Timely File Behested Payment Report	\$1,500
5	Failure to Timely File Behested Payment Report	\$1,500
6	Failure to Timely File Behested Payment Report	\$1,500
7	Failure to Timely File Behested Payment Report	\$1,500
8	Failure to Report Subvendor Payments	\$2,500
	Total:	\$13,000

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents, Newsom for Governor 2018 and Gavin Newsom, 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.

¹⁹ <https://www.fppc.ca.gov/media/press-releases/2020-news-releases/press-release-behested-payments.html>

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

9 5. Respondents agree to the issuance of the decision and order set forth below. Also, the
10 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
11 \$13,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
12 Fund of the State of California—is/are submitted with this stipulation as full payment of the
13 administrative penalty described above, and same shall be held by the State of California until the
14 Commission issues its decision and order regarding the matter.

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

21 7. The parties to this agreement may execute their respective signature pages separately. A copy of
22 any party's executed signature page including a hard copy of a signature page transmitted via fax or as a
23 PDF email attachment is as effective and binding as the original.
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Dated: _____
James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission

Dated: _____
Gavin Newsom, Respondent

1 The foregoing stipulation of the parties, “In the Matter of Gavin Newsom,” FPPC Case No.
2 2021-00299 and “In the Matter of Newsom for Governor 2018 and Gavin Newsom”
3 FPPC Case No. 2021-00644, is hereby accepted as the final decision and order of the Fair Political
4 Practices Commission, effective upon execution below by the Chair.

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6 IT IS SO ORDERED.

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8 Dated: _____

_____ Adam Silver, Chair
Fair Political Practices Commission