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7

8 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

9 **STATE OF CALIFORNIA**

10
11 In the Matter of) OAH No. 2019030096
12) FPPC No. 15/003
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SUSAN G. SHELLEY, SUSAN)
SHELLEY FOR ASSEMBLY 2013, and)
SUSAN SHELLEY FOR ASSEMBLY)
2014,)
Respondents.)

Hearing Judge: Deena R. Ghaly
Hearing Date: **June 19, 2019**
Hearing Time: 9:00 a.m.
Hearing Place: 320 W. Fourth Street, Suite 630
Los Angeles, CA 90013

18 This matter came before Administrative Law Judge Deena R. Ghaly of the Office of
19 Administrative Hearings (OAH) on June 19, 2019, in Los Angeles, California. Complainant, the
20 Enforcement Division of the Fair Political Practices Commission (Commission), submits the following
21 closing argument:
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1 **I. INTRODUCTION**

2 Respondents, Susan G. Shelley (“Shelley”), Susan Shelley for Assembly 2013 (“2013
3 Committee”), and Susan Shelley for Assembly 2014 (“2014 Committee”), violated the Political Reform
4 Act (“Act”)¹ by failing to timely file pre-election statements for a primary and general special election in
5 2013. Shelley did not take the filing deadlines seriously during the election cycle and does not want to
6 take responsibility for the failure to timely file. Shelley was a candidate for State Assembly, 45th District,
7 in a primary and general special election in 2013 and again in a regularly-scheduled primary and general
8 election in 2014. She formed two candidate-controlled committees, one for each election as required by
9 law. As Shelley was on the ballot, both committees had filing obligations in connection with the special
10 election held on September 17, 2013 and the special general election held on November 19, 2013. Both
11 committees were required to file paper campaign disclosure statements and—when each committee met
12 the threshold for filing electronic campaign disclosure statements—the committees were required to file
13 electronic campaign disclosure statements. Both committees repeatedly filed required campaign
14 disclosure statements late. Complainant has met its burden of proof by a preponderance of the evidence
15 for five violations of the Act.

16 Shelley does not deny that she filed campaign disclosure statements late; she produced no evidence
17 to refute her late filing and made no arguments that she filed timely. Shelley argues that she should not
18 have to pay a penalty for the violations based on mitigating circumstances, including, but not limited to,
19 that she was a first-time state office candidate, that there was some disclosure of her campaign activity,
20 that the requirements are too difficult to comply with for a candidate acting as her own treasurer, and that
21 she has already paid fines associated with the disclosure statements in question. However, any mitigating
22 circumstances do not obviate the liability for violating the Act. A moderate to high penalty is appropriate
23 in these circumstances.

24 Throughout this brief, references are made to Complainant’s Exhibits, Complainant’s Items of
25 Official Notice, and Respondent’s Exhibits admitted during the hearing. References are also made to the

26 _____
27 ¹ The Political Reform Act is contained in Government Code §§ 81000 through 91014, and all statutory references
28 are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title
2 of the California Code of Regulations, and all regulatory references are to this source. See §§ 83111 and 83116.

1 official transcript of the hearing, which is submitted electronically with this brief. Citations to the
2 transcript are by page and line number.

3 **II. JURISDICTION**

4 The Commission is a state agency charged with the duty to administer, implement, and enforce
5 the provisions of the Act. On August 7, 2017, the Commission issued an Order Finding Probable Cause
6 and to Prepare and Serve an Accusation in this matter.² Complainant prepared and served an Accusation
7 pursuant to the terms of the Order.³ Shelley filed a Notice of Defense,⁴ and Complainant served Shelley
8 with Notices of Hearing.⁵

9 **III. APPLICABLE LAW**

10 All legal references and discussions of law pertain to the Act's provisions as they existed at the
11 time of the violations in question.

12 **A. Importance of Liberal Construction and Vigorous Enforcement of the Act**

13 When enacting the Political Reform Act, the people of the state of California found and declared
14 that previous laws regulating political practices suffered from inadequate enforcement by state and local
15 authorities.⁶ To that end, the Act must be liberally construed to achieve its purposes,⁷ and provide adequate
16 enforcement mechanisms so that the Act will be "vigorously enforced."⁸

17 **B. Intent of the Act**

18 There are many purposes of the Act, including ensuring that voters are fully informed and improper
19 practices are inhibited by requiring committees to disclose all contributions and expenditures made
20 throughout a campaign.⁹

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23
24 ² Ex. 2.1
25 ³ Ex. 2.
26 ⁴ Ex. 3.
27 ⁵ Ex. 4.
28 ⁶ § 81001, subd. (h).
⁷ § 81003.
⁸ § 81002, subd. (f).
⁹ § 81002, subd. (a).

1 **C. Controlled Committee Definition**

2 In 2013, a “committee” included any person or combination of persons who received contributions
3 totaling \$1,000 or more in a calendar year.¹⁰ This is commonly known as a “recipient committee.” A
4 recipient committee which is controlled by a candidate, or which acts jointly with a candidate in
5 connection with the making of expenditures, is a “controlled committee.”¹¹

6 **D. Candidates for Elective State Office**

7 Candidates for elective state office must open a committee for each specific office and are
8 prohibited from re-designating committees.¹² Prior to soliciting or receiving contributions or loans, an
9 individual who intends to be a candidate for elective state office shall file a statement of intent to be a
10 candidate for that specific office.¹³

11 **E. Duty to File Pre-Election Campaign Statements**

12 In 2013, all candidates for offices being voted upon in elections not held in June or November of
13 an even-numbered year, and their controlled committees, must file pre-election statements as follows: 1)
14 For the period ending 45 days before the election, the statement must be filed no later than 40 days before
15 the election; 2) For the period ending 17 days before the election, the statement must be filed no later than
16 12 days before the election.¹⁴

17 For the September 17, 2013 Special Primary Election, the first pre-election statement was due on
18 August 8, 2013 for the reporting period of January 1 through August 3, 2013, and the second pre-election
19 statement was due on September 5, 2013 for the reporting period of August 4 through August 31, 2013.

20 For the November 19, 2013 Special General Election, the first pre-election statement was due on
21 October 10, 2013 for the reporting period of September 1 through October 5, 2013, and the second pre-
22 election statement was due on November 7, 2013 for the reporting period of October 6 through November
23 2, 2013.¹⁵

24
25 ¹⁰ § 82013, subd. (a) (amended in 2016).

26 ¹¹ § 82016, subd. (a).

27 ¹² Reg. § 18521.

28 ¹³ § 85200.

¹⁴ §§84200.5, subd. (c) (amended in 2016) and 84200.8, subd. (a) and (b).

¹⁵ See Ex. 9.

1 **F. Multiple Committees**

2 When a candidate controls multiple committees, each of those committees must file pre-election
3 statements when the candidate is on the ballot in an upcoming election.¹⁶

4 **G. Filing Officer**

5 A filing officer is the office or officer with whom any statement or report is required to be filed
6 under this title.¹⁷ A candidate for state elective office shall file a campaign statement by online or
7 electronic means, as specified in Section 84605, and shall file the original and one copy of the campaign
8 statement in paper format with the Secretary of State (“SOS”).¹⁸ The SOS shall maintain at all times a
9 secured, official version of all original online and electronically filed statements and reports required.¹⁹

10 **H. Duty to File Statements Online**

11 A candidate for state elective office and his or her controlled committee must file campaign
12 statements, reports, or other documents online or electronically when the total cumulative reportable
13 amount of contributions received, expenditures made, loans made, or loans received is \$25,000 or more.²⁰
14 In determining the cumulative reportable amount, all controlled committees, as defined by Section 82016,
15 must be included.²¹ Once a person meets the \$25,000 threshold and qualifies as an electronic filer, the
16 person must file all following reports online or electronically.²² Electronic filers must continue to file
17 statements and reports in paper format, which is the official filing for audit and other legal purposes.²³

18 **I. Candidate and Treasurer Liability**

19 Every committee must have a treasurer.²⁴ It is the duty of a committee’s candidate and treasurer to
20 ensure that the committee complies with all of the requirements of the Act concerning the receipt and
21
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23
24 ¹⁶ Reg. 18405.

¹⁷ § 82027.

25 ¹⁸ § 84215, subd. (a).

¹⁹ § 84605, subd. (g).

26 ²⁰ § 84605, subd. (a)(1).

²¹ § 84605, subd. (a)(1).

27 ²² § 84605, subd. (d).

²³ § 84605, subd. (f).

28 ²⁴ § 84100.

1 expenditure of funds and the reporting of such funds.²⁵ A committee's candidate and treasurer may be
2 held jointly and severally liable with the committee for any reporting violations.²⁶

3 **J. Mandatory Audit**

4 The Franchise Tax Board ("FTB") audits legislative candidates in a special primary or special
5 runoff election who raised or spent \$15,000 or more.²⁷

6 **K. Penalty for Violations of the Act**

7 Each violation of the Act is punishable by imposition of a monetary penalty of up to \$5,000 per
8 violation, which must be paid to the General Fund of the State of California.²⁸

9 **L. The Burden of Proof in Administrative Hearings**

10 In a case such as this, the burden of proof rests upon the party making the charges.²⁹ The standard
11 of proof is a preponderance of the evidence.³⁰ The phrase "preponderance of the evidence" is usually
12 defined in terms of "probability of truth" or "more likely to be true than not true."³¹

13 **M. Factors to be Considered by the Commission and Administrative Law Judge**

14 In framing a proposed order following a finding of a violation pursuant to Section 83116, the Fair
15 Political Practices Commission and the administrative law judge shall consider all the surrounding
16 circumstances including but not limited to: (1) The seriousness of the violation; (2) The presence or
17 absence of any intention to conceal, deceive or mislead; (3) Whether the violation was deliberate,
18 negligent or inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission
19 staff or any other government agency in a manner not constituting a complete defense under Section
20 83114, subdivision (b); (5) Whether the violation was isolated or part of a pattern and whether the violator
21 has a prior record of violations of the Political Reform Act or similar laws; and (6) Whether the violator,
22 upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.³²

23
24 ²⁵ § 84100; Reg. 18427.

25 ²⁶ §§ 83116.5 and 91006; Reg. 18316.6.

26 ²⁷ § 90001.

27 ²⁸ § 83116, subd. (c).

28 ²⁹ *Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.

³⁰ Evid. Code, § 115.

³¹ 3 Witkin Cal. Evid. Burden § 36.

³² Reg. § 18361.5, subd. (d).

1 IV. FACTS AND EVIDENCE

2 By a preponderance of the evidence, Respondents violated the Act’s campaign disclosure reporting
3 requirements. Shelley and the 2013 Committee failed to timely file three pre-election campaign
4 statements. Shelley and the 2014 Committee failed to timely file two pre-election campaign disclosure
5 statements.

6 **A. Background**

7 Shelley was a candidate for the 45th District of the California State Assembly during the 2014
8 election cycle. She filed a candidate statement of intention on January 14, 2013, declaring her candidacy
9 and voluntarily placing herself on the 2014 ballot for this Assembly seat.³³ In order to solicit and receive
10 contributions to support her campaign for the Assembly, Shelley was required to form a candidate-
11 controlled committee. She filed a Statement of Organization for a recipient committee with the SOS on
12 February 20, 2013, indicating that the committee qualified on February 8, 2013.³⁴ This committee, the
13 2014 Committee, was assigned a committee identification number by the SOS, number 1355796.³⁵

14 In 2013, Robert Blumenfield, the occupant of the 45th District Assembly seat, won election to the
15 Los Angeles City Council, 3rd District.³⁶ Thereafter, on July 2, 2013, the Governor proclaimed and
16 ordered a special election to be held on November 19, 2013 to fill the vacancy resulting from the
17 resignation of Blumenfield.³⁷ A special primary was set for September 17, 2013 and, if no candidate
18 received more than 51% of the vote, the special general election would take place.³⁸

19 Following Blumenfield vacating the seat, Shelley filed an additional candidate statement of
20 intention on July 10, 2013 in order to declare her candidacy in the 2013 special elections.³⁹ In order to
21 solicit and receive contributions to support her campaign for the special election and because state
22 committees are prohibited from being used for more than one election and office, Shelley formed a second
23 candidate-controlled committee for the special election. She filed a statement of organization for a

24 _____
25 ³³ Ex. 5.

³⁴ Ex. 6.

³⁵ *Ibid.*

³⁶ Official Notice Ex. 29.

³⁷ Official Notice Ex. 30.

³⁸ Official Notice Ex. 31.

³⁹ Ex. 7.

1 recipient committee on July 11, 2013, indicating that the committee qualified on July 8, 2013.⁴⁰ This
 2 committee, the 2013 Committee, was assigned a committee identification number by the SOS, number
 3 1358945.

4 **B. 2013 Committee**

5 As Shelley was a candidate on the ballot for the 2013 special primary and special general election,
 6 she and the 2013 Committee were required to file campaign disclosure statements for the prescribed
 7 reporting periods and deadlines, as per statute, with the filing officer for elective state office, the SOS.⁴¹

8 According to information provided by certified records from the SOS, the following table details
 9 statements filed by the 2013 Committee for 2013 reporting periods⁴²:

Election Date	Reporting Period	Date Due	Date Paper Statement Filed	No. Days Late (paper)	Date Electronic Statement Filed	No. Days Late (electronic)	Approx. Total Contrib. Reported	Approx. Total Expend. Reported
2013 Committee								
09/17/2013 Special Primary	01/01 – 08/03/2013	08/08/2013	10/02/2013	55	08/19/2013	11	\$18,155	\$10,147
09/17/2013 Special Primary	08/04 – 08/31/2013	09/05/2013	10/02/2013	27	09/06/2013	1	\$5,479	\$9,696
11/19/2013 Special General	09/01 – 10/05/2013	10/10/2013	02/06/2014	119	10/21/2013	11	\$23,212	\$20,294
11/19/2013 Special General	10/06 – 11/02/2013	11/07/2013	02/06/2014	91	01/31/2014	85	\$36,580	\$28,663
Post-election Semi-annual	11/03 – 12/31/2013	01/31/2014	02/06/2014	6	01/31/2014	0	\$15,665	\$36,139
Total :							\$99,091	\$104,939

22 **C. 2014 Committee**

23 Because Shelley was the controlling candidate for the 2014 Committee and because she was on
 24 the ballot in the 2013 special primary and general elections, the 2014 Committee was required to file pre-

27 ⁴⁰ Ex. 8.

⁴¹ See, Ex. 9.

⁴² Ex. 10-12, See also Hr'g Tr. 32:9-39:5.

1 election statements for the 2013 elections. In 2013, the 2014 Committee was accepting contributions and
 2 transferring funds to the 2013 Committee.⁴³ This activity was required to be disclosed timely.

3 According to information provided by certified records from the SOS, the following table details
 4 statements filed by the 2014 Committee for 2013 reporting periods⁴⁴:

5 Election Date	6 Reporting Period	Date Due	Date Paper Statement Filed	No. Days Late (paper)	Date Electronic Statement Filed	No. Days Late (electronic)	Approx. Total Contrib. Reported	Approx. Total Expend. Reported
7 09/17/2013 Special Primary	07/01 – 08/03/2013	08/08/2013	10/02/2013	55	08/19/2013	11	\$3,225	\$19,007
9 09/17/2013 Special Primary	08/04 – 08/31/2013	09/05/2013	10/02/2013	27	09/06/2013	1	\$50	\$83
11 11/19/2013 Special General	09/01 – 10/05/2013	10/10/2013	02/06/2014	119	10/21/2013	11	\$330	\$13,597
12 11/19/2013 Special General	10/06 – 11/02/2013	11/07/2013	02/06/2014	91	01/31/2014	85	\$266	\$0
14 Post-election Semi-annual	11/03 – 12/31/2013	01/31/2014	02/06/2014	6	01/31/2014	0	\$6,198	\$440
Total :							\$10,069	\$33,127

16 In the 2013 Special Primary Election, Shelley received the second most votes out of ten candidates,
 17 which qualified her for the 2013 Special General Election.⁴⁵ She lost the 2013 Special General Election
 18 by 319 votes, a margin of approximately 1% of voters.⁴⁶

19 **D. Audit**

20 The 2013 Committee and the 2014 Committee were subject to and were audited by FTB, having
 21 raised over \$15,000 in the calendar year, along with the other candidates in the special primary and special
 22 runoff election, for the period of January 1, 2013 through December 31, 2013. The reports for the audits
 23 of the 2013 Committee and the 2014 Committee were submitted by FTB to the Commission, the SOS,
 24 and the Attorney General on December 31, 2014.⁴⁷

25 ⁴³ Ex. 11-12, 14-15

26 ⁴⁴ Ex. 13-15, See also Hr’g Tr. 32:9-39:5.

27 ⁴⁵ Official Notice Ex. 32.

28 ⁴⁶ Official Notice Ex. 33.

⁴⁷ Ex. 16-17.

1 During the period covered by the audit, the report found that the 2013 Committee reported
2 receiving contributions of approximately \$99,091 and making expenditures of approximately \$104,940,
3 and the 2014 Committee reported receiving contributions of approximately \$47,363 and making
4 expenditures of approximately \$39,937.⁴⁸ Taking into consideration transfers between the 2013 and 2014
5 committees, total receipts for both committees during the audit period was approximately \$115,604 and
6 total expenditures was approximately \$114,246.⁴⁹

7 The report on the 2013 Committee found that the filers were not substantially compliant with the
8 disclosure and recordkeeping provisions of the Act.⁵⁰ The report on the 2014 Committee found that the
9 filers substantially complied with the disclosure and recordkeeping provisions of the Act.⁵¹ The reports
10 found that both committees failed to timely file pre-election campaign statements.⁵² The findings were
11 confirmed by the Enforcement Division pursuant to an investigation by Enforcement Division staff.⁵³

12 **V. OVERVIEW OF THE VIOLATIONS**

13 **1. Shelley and the 2013 Committee committed the following violations of the Act:**

14 **Count 1**

15 **Failure to Timely File Pre-election Campaign Statement**

16 As a result of Shelley appearing on the ballot in the September 17, 2013 Special Primary Election
17 for the 45th Assembly District, Shelley and the 2013 Committee had a duty to file paper and electronic
18 versions of a pre-election campaign statement for the reporting period of January 1, 2013 through August
19 3, 2013 on or before August 8, 2013. Shelley and the 2013 Committee filed the pre-election statement for
20 the January 1, 2013 through August 3, 2013 period in paper format on October 2, 2013, and in electronic
21 format on August 19, 2013. By failing to timely file this pre-election statement, Shelley and the 2013
22 Committee violated sections 84200.5, subdivision (c) and 84200.8, subdivision (a).

25 ⁴⁸ *Ibid.*

26 ⁴⁹ Ex. 11, 14.

27 ⁵⁰ Ex. 16.

28 ⁵¹ Ex. 17.

⁵² *Ibid.*

⁵³ Hr'g Tr. 47:14-50:22; Hr'g Tr. 57:23-59:12.

1 **Count 2**

2 Failure to Timely File Pre-election Campaign Statement

3 As a result of Shelley appearing on the ballot in the November 19, 2013 Special General Election
4 for the 45th Assembly District, Shelley and the 2013 Committee had a duty to file paper and electronic
5 versions of a pre-election campaign statement for the reporting period of September 1, 2013 through
6 October 5, 2013 on or before October 10, 2013. Shelley and the 2013 Committee filed the pre-election
7 statement for the September 1, 2013 through October 5, 2013 period in paper format on February 6, 2014
8 and electronically on October 21, 2013. By failing to timely file this pre-election statement, Shelley and
9 the 2013 Committee violated sections 84200.5, subdivision (c) and 84200.8, subdivision (a).

10 **Count 3**

11 Failure to Timely File Pre-election Campaign Statement

12 As a result of Shelley appearing on the ballot in the November 19, 2013 Special General Election
13 for the 45th Assembly District, Shelley and the 2013 Committee had a duty to file paper and electronic
14 versions of a pre-election campaign statement for the reporting period of October 6, 2013 through
15 November 2, 2013 on or before November 7, 2013. Shelley and the 2013 Committee filed the pre-election
16 statement for the October 6, 2013 through November 2, 2013 period in paper format on February 6, 2014
17 and electronically on January 31, 2014, 2013. By failing to timely file this pre-election statement, Shelley
18 and the 2013 Committee violated sections 84200.5, subdivision (c) and 84200.8, subdivision (a).

19 **2. Shelley and the 2014 Committee committed the following violations of the Act:**

20 **Count 4**

21 Failure to Timely File a Pre-election Campaign Statement

22 As a result of Shelley appearing on the ballot in the November 19, 2013 Special General Election
23 for the 45th Assembly District, Shelley and the 2014 Committee had a duty to file paper and electronic
24 versions of a pre-election campaign statement for the reporting period of September 1, 2013 through
25 October 5, 2013 on or before October 10, 2013. Shelley and the 2014 Committee filed the pre-election
26 statement for the September 1, 2013 through October 5, 2013 period in paper format on February 6, 2014
27
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1 and electronically on October 21, 2013. By failing to timely file this pre-election statement, Shelley and
2 the 2014 Committee violated sections 84200.5, subdivision (c) and 84200.8, subdivision (a).

3 **Count 5**

4 Failure to Timely File a Pre-election Campaign Statement

5 As a result of Shelley appearing on the ballot in the November 19, 2013 Special General Election for the
6 45th Assembly District, Shelley and the 2014 Committee had a duty to file paper and electronic versions
7 of a pre-election campaign statement for the reporting period of October 6, 2013 through November 2,
8 2013 on or before November 7, 2013. Shelley and the 2014 Committee filed the pre-election statement
9 for the October 6, 2013 through November 2, 2013 period in paper format on February 6, 2014 and
10 electronically on January 31, 2014. By failing to timely file this pre-election statement, Shelley and the
11 2014 Committee violated sections 84200.5, subdivision (c) and 84200.8, subdivision (a).

12 **VI. DISCUSSION AND ANALYSIS**

13 **A. The Preponderance of the Evidence Proves the Violation**

14 The preponderance of the evidence proves that Shelley and the 2013 Committee were required to
15 but failed to timely file paper and electronic campaign statements for three pre-election campaign
16 disclosure statements and that Shelley and the 2014 Committee were required to but failed to timely file
17 paper and electronic campaign statements for two pre-election campaign disclosure statements.

18 **1. Stipulated Facts**

19 The parties did not stipulate to any facts.

20 **2. Supporting Documentary Evidence**

21 The Secretary of State produced certified copy of Shelley's Candidate Statement of Intention for
22 the 2013 special election for the 45th District of the California State Assembly.⁵⁴ As a candidate, Shelley
23 was on the ballot for the September 17, 2013 special primary election and later was on the ballot for the
24 special general election in November 19, 2013.⁵⁵ In 2013, Shelley had two open committees, as evidenced
25 by the Statement of Organizations filed with the Secretary of State.⁵⁶ By law, committees controlled by a

26 ⁵⁴ Ex. 7.

27 ⁵⁵ Official Notice Ex. 32 and 33.

28 ⁵⁶ Ex. 6 and 8.

1 candidate who is on the ballot are required to file pre-election campaign statements and the deadlines for
2 the statements are set by statute.⁵⁷ The Secretary of State produced certified copies of both committee's
3 filings of campaign disclosure statements and a copy of the filing history for both committees.⁵⁸ These
4 records show, and Shelley does not deny, that both committees filed paper and electronic copies of the
5 pre-election campaign disclosure statements after the deadline set by statute.⁵⁹ The Secretary of State
6 produced certified copies of the FTB's audit reports for both committees that found violations of the Act's
7 campaign reporting requirements.⁶⁰

8 **3. Supporting Witness Testimony**

9 Staff Services Analyst Samantha Brown testified that the report from CARES titled Filing
10 History⁶¹ is the complete history of filings received by and filed by the filing officer for candidates for
11 state elective office. Program Specialist II Luz Bonetti testified that she, as the auditor assigned to review
12 the FTB's audits on behalf of the Fair Political Practices Commission, confirmed the findings of the audits.

13 **4. Analysis**

14 The evidence shows, and Shelley does not deny, that Shelley and the 2013 Committee were
15 required to timely file three pre-election campaign statements and that Shelley and the 2013 Committee
16 failed to timely file the paper and electronic statements by the deadline. The evidence shows, and Shelley
17 does not deny, that Shelley and the 2014 Committee were required to timely file two pre-election
18 campaign statements and that Shelley and the 2014 Committee failed to timely file the paper and electronic
19 statements by the deadline.

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26 ⁵⁷ 84200.5 and 84200.8.

27 ⁵⁸ Ex. 10-15.

28 ⁵⁹ Ex. 9-15.

⁶⁰ Ex. 16-17.

⁶¹ Ex. 10 and 13.

1 **B. Shelley, the 2013 Committee, and the 2014 Committee Should Pay an Administrative**
2 **Penalty for Each Violation**

3 The Commission considers the failure to timely file pre-election campaign statements to be a
4 serious violation. Each violation of the Act carries a maximum administrative penalty of \$5,000.⁶² The
5 maximum penalty for the violations charged in the Accusation is \$25,000.

6 In framing a proposed order following a finding of a violation pursuant to Section 83116, the
7 Commission and the administrative law judge shall consider all the surrounding circumstances including
8 but not limited to: (1) The seriousness of the violation; (2) The presence or absence of any intention to
9 conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or inadvertent;
10 (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other
11 government agency in a manner not constituting a complete defense under Section 83114(b); (5) Whether
12 the violation was isolated or part of a pattern and whether the violator has a prior record of violations of
13 the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of a reporting
14 violation, voluntarily filed amendments to provide full disclosure.⁶³

15 **1. The Seriousness of the Violations**

16 The statutory requirement for candidates and candidate-controlled committees to file pre-election
17 campaign disclosure statements are an integral part of the overall statutory scheme of transparency and
18 disclosure in the political process so that the voters may be fully informed and improper practices may be
19 inhibited.⁶⁴ Without disclosure at the appropriate times, the voters are deprived of information during the
20 lead up to a vote. Additionally, the rules apply to all candidates on the ballot and in fairness to all
21 candidates, the disclosure rules should be enforced against all who choose to be on the ballot. A candidate,
22 who chooses to place herself on the ballot to run for public office and who chooses to act as her own
23 treasurer, has the duty to comply with the campaign reporting rules of the Act and must take responsibility
24 if those rules are not followed, including Shelley.

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26 _____
27 ⁶² § 83116.

28 ⁶³ Reg. § 18361.5, subd. (d).

⁶⁴ § 81002, subd. (a).

1 At hearing, Shelley made several arguments that the violations were not serious because there was
2 disclosure prior to the special primary and special general election. Shelley argued that she disclosed a
3 large number of her contributors in the first half of 2013 when she filed campaign statements to report the
4 activity of the 2014 Committee. She argued that this fundraising was obviously intended for the 2013
5 special election and therefore, there was disclosure.

6 While it is true that the 2014 Committee filed two campaign disclosure statements in early 2013,
7 it was not obvious that it was her intent to transfer these funds. Shelley filed a candidate statement of
8 intention to run for the 2014 election and opened a committee for that elective office. Though she asserted
9 that she was instructed to open the committee in order to raise funds for an anticipated special election in
10 2013, as was required by law, it was not required by law that Shelley open a committee prior to the calling
11 of a special election and further, it was not required by law to transfer contributions to fund the 2013
12 campaign from the 2014 Committee. It was only necessary to open a Committee prior to the call of the
13 special election if Shelley wanted to fundraise prior to the calling of the special election. Therefore, it was
14 not obvious that the funds raised and deposited into the 2014 Committee would later be transferred to the
15 2013 Committee that was subsequently opened after the calling of the election. Until the pre-election
16 campaign statements were filed, the public was in the dark as to the disposition of the funds Shelley had
17 already raised in the first half of 2013 and as to what funds Shelley had raised and spent since the last
18 reporting period.

19 Shelley argued that the public harm was minimized because she filed her campaign statements
20 electronically only a few days after the deadline and usually before the relevant election and that the public
21 generally utilizes the electronic statements over paper statements. However, the law requires that the
22 statements be filed in paper format. While there was some early disclosure in the form of electronic filings
23 compared to the paper filings, the electronic statements were still filed between 11 and 85 days after the
24 deadline.

25 Shelley argued that for the second pre-election statement for the reporting period of October 6,
26 2013 through November 2, 2013, in which Shelley did not file any statement until after the special general
27 election, that the public harm was minimized because she timely filed 24-hour late contribution reports
28

1 and therefore, she disclosed a large percentage of the contributors to the 2013 Committee. 24-hour late
2 contribution reports disclose contributors who donate \$1,000 or more in the 90-day period prior to the
3 election.⁶⁵ A campaign disclosure statement covers significantly more information, including, but not
4 limited to, the total cash balance, the total contributors who donated less than \$1,000, the total expenditures
5 and accrued expenses made and the payees of expenditures and accrued of \$100 or more, the total and
6 date of any loans paid or forgiven, and any contributions or expenditures made by committees that were
7 less than \$1,000, and, a summary page condensing the information into an easily digestible format.⁶⁶ By
8 failing to file any statement at all prior to an election, Shelley deprived the voters of critical information
9 just before a close election.

10 Shelley further argued that the public harm was minimized because during the reporting period of
11 October 6, 2013 through November 2, 2013, in which Shelley did not file any statement until after the
12 special general election, the 2014 committee had very little activity. However, even disclosure statements
13 reporting little to no activity can be informative to the public and must be filed timely.

14 **2. Intention to Conceal, Deceive, or Mislead**

15 The evidence shows that Shelley filed campaign statements to disclose her activity, albeit late, and
16 made a good faith effort to comply with the reporting requirements of the Act.

17 **3. Whether the Violations were Deliberate, Negligent or Inadvertent**

18 The evidence shows that Shelley's violations were negligent. Shelley was careless with meeting
19 the deadlines for filing statements throughout 2013. Though in her email to the FPPC's Technical
20 Assistance Division, she acknowledges that she had missed the deadline for the first pre-election campaign
21 statement, Shelley continued to miss the deadlines and went so far as not filing the second pre-election
22 statement for both the 2013 and the 2014 Committee until after the general election was over.

23 **4. Whether Shelley Demonstrated Good Faith by Consulting the Commission Staff**

24 The evidence shows that Shelley made a good faith effort to comply with the reporting
25 requirements of the Act. Though the audit report found, and the Enforcement Division confirmed,
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27 ⁶⁵ See Ex. T – W, See also §§ 84203, 84204.

28 ⁶⁶ See Ex. 11-12, 14-15, See also § 84211.

1 additional violations regarding attribution of transfers, the Enforcement Division found that Shelley had
2 sought advice regarding transfers and declined to include these charges in the Accusation, finding that
3 Shelley's emails were sufficiently mitigating.

4 At hearing and in her trial brief, Shelley argued that she should not have to pay a fine because she
5 asked for help. However, there was no evidence presented that Shelley sought advice regarding filing
6 deadlines or that she asked and did not receive this advice. In fact, in her August 16, 2013 email to the
7 FPPC's Technical Assistance Division, she intimated that she did in fact have knowledge of the filing
8 deadlines: "I just checked online to find the pre-primary filing deadline and discovered it was August 8.
9 Sorry about that, I'm on it now."⁶⁷ Shelley asked whether the 2014 Committee had to follow a different
10 filing schedule. The response was to refer Shelley to the FPPC's website and cited a section from a
11 campaign manual, "When a candidate or officeholder controls more than one election committee... all
12 committees must file statements each time any committee statement is due." Despite implying that she
13 was aware of the filing deadlines and despite being given an answer that both committees were required
14 to follow the same schedule of filing deadlines, Shelley continued to file campaign statements for both
15 committees late.

16 Shelley argues that because at the time of the election she made requests of the Technical
17 Assistance Division for advice, including, "Please let me know if anything is missing or incorrect,"⁶⁸ that
18 this constitutes a complete defense. However, Shelley conflates asking for informal advice by email, as
19 described in Regulation 18329, subdivision (c) and the formal advice as described in Section 83114.
20 Informal advice does not provide the requestor with immunity. Moreover, Shelley did not ask for advice
21 regarding the deadlines to file pre-election campaign statements.

22 **5. Whether Shelley's Violations were Isolated or Part of a Pattern and Whether Shelley has**
23 **a Prior Record of Violations of the Political Reform Act or Similar Laws**

24 The evidence shows a pattern of violations because Shelley knew or should have known the
25 deadlines to file pre-election campaign statements and yet she persisted in filing multiple campaign
26

27 ⁶⁷ Ex. 18 at 0630.

28 ⁶⁸ Ex. 18 at 0633.

1 statements, in both paper and electronic format, past the deadline. As referenced in the charts on pages 10
2 and 11 of this document, Shelley filed multiple statements late in 2013 for both committees, though not
3 all were charged in the Accusation. Shelley continued to file late in 2014. For example, the 2014
4 Committee filed in electronic and paper formats. For the electronic filings, some were on time or a day
5 late and others were up to four days late. For the paper filings, all were filed between one and five days
6 late.

7 The evidence shows that Shelley does not have a prior record of violations of the Political Reform
8 Act.⁶⁹

9 **6. Whether Shelley Voluntarily Filed Amendments to Provide Full Disclosure**

10 The violations charged were for failure to timely file. Shelley filed campaign statements to report
11 the two committee's activities, albeit late. However, the audit report for the 2013 Committee included a
12 finding that the transfers received from the 2014 Committee were not attributed, meaning that the original
13 contributors were not listed on the 2013 Committee's campaign statements. Shelley has not amended the
14 statements to include the required information regarding original contributors.

15 **7. Imposition of an Administrative Penalty is Warranted**

16 In this matter, the evidence sufficiently proves that Shelley, the 2013 Committee, and the 2014
17 Committee violated the Act by failing to timely file pre-election campaign statements. While the
18 Enforcement Division acknowledges that Shelley sought advice regarding some aspects of campaign
19 reporting and has paid fines to the Secretary of State for the same reporting periods, this mitigation has
20 already been taken into account. The Report in Support of a Finding of Probable Cause and the Amended
21 Report in Support of a Finding of Probable Cause alleged 11 violations, however, 6 of these counts were
22 dropped in consideration of the mitigating factors present in this case.

23 Given the public harm from not timely disclosing her campaign's activity, the pattern of behavior,
24 and in consideration of the mitigating factors present in this case, a moderate to high fine is justified for
25 each violation proved in this matter.

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28 ⁶⁹ Hr'g Tr. 65:23-66:12.

1 **VII. CONCLUSION**

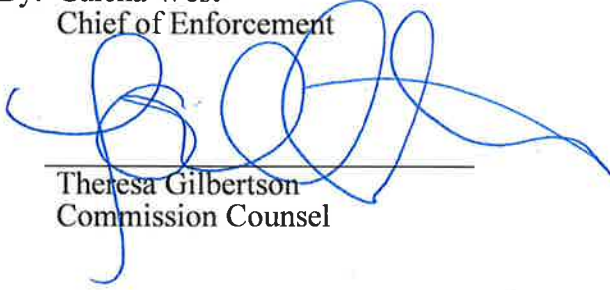
2 The preponderance of the evidence proves that Shelley, the 2013 Committee, and the 2014
3 Committee violated the Act's requirement to timely file pre-election campaign statements.

4 For all the foregoing reasons, the Enforcement Division of the Fair Political Practices Commission
5 respectfully requests that a proposed decision be issued with a finding that Shelley and the 2013
6 Committee violated the Political Reform Act as set forth in Counts 1-5 of the Accusation, imposing a
7 moderate to high penalty.

8
9 Dated: July 3, 2019

10 **FAIR POLITICAL PRACTICES COMMISSION**

11 By: Galena West
12 Chief of Enforcement

13 
14 _____
15 Theresa Gilbertson
16 Commission Counsel