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

11 In the Matter of) FPPC Case No. 15/003
12)
13)
14) **AMENDED REPORT IN SUPPORT OF A**
15) **FINDING OF PROBABLE CAUSE**
16)
17) Conference Date: TBA
18) Conference Time: TBA
19) Conference Location: Commission Offices
20) 428 J Street, Suite 620
21) Sacramento, CA 95814
22)
23 Respondents.)

24 **INTRODUCTION**

25 Respondent Susan G. Shelley was a successful candidate for California State Assembly, 45th
26 District, in the September 17, 2013 special primary election and an unsuccessful candidate in the
27 November 19, 2013 special general election. Shelley was also a successful candidate for the 45th
28 Assembly District in the June 3, 2014 primary election and an unsuccessful candidate in the November
4, 2014 general election. Respondent Susan Shelley for Assembly 2013 (2013 Committee) was Shelley's
candidate controlled committee for the 2013 special elections. Respondent Susan Shelley for Assembly
2014 (2014 Committee) was Shelley's candidate controlled committee for the 2014 elections. At all
relevant times, Shelley was treasurer for both the 2013 and 2014 Committees.

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1 This case arose from a Franchise Tax Board ("FTB") audit of the 2013 and 2014 Committees
2 for the period of January 1, 2013 through December 31, 2013. During the period covered by the audit,
3 the 2013 Committee reported receiving contributions of approximately \$99,091 and making
4 expenditures of approximately \$104,940, and the 2014 Committee reported receiving contributions of
5 approximately \$47,413 and making expenditures of approximately \$40,207. Taking into consideration
6 transfers between the 2013 and 2014 committees, total receipts for both committees during the audit
7 period was approximately \$115,604, and total expenditures was approximately \$114,246.

8 The Enforcement Division also reviewed the 2014 Committee campaign statements for reporting
9 periods between January 1, 2014 and June 30, 2015. During this time, the 2014 Committee reported
10 receiving contributions of approximately \$124,465 and making expenditures of approximately
11 \$126,641.

12 As a candidate and her controlled committees under the Political Reform Act¹ (Act), Shelley and
13 the 2013 and 2014 Committees had a duty to timely file campaign statements and disclose particular
14 information. But Shelley and the 2013 and 2014 Committees each failed to timely file four preelection
15 campaign statements. And Shelley and the 2014 Committee failed to file two \$5,000 reports disclosing
16 \$30,000 in loans from Shelley, and failed to timely file a \$5,000 report disclosing two contributions
17 totaling \$8,200 from a small contributor committee.

18 SUMMARY OF THE LAW

19 All legal references and discussions of law pertain to the Act's provisions as they existed at the
20 time of the applicable violations.

21 Jurisdiction

22 The Fair Political Practices Commission (the "Commission") has administrative jurisdiction to
23 enforce the provisions of the Act.²

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

² § 83116.

1 Probable Cause Proceedings

2 Prior to the Enforcement Division commencing an administrative action, the General Counsel of
3 the Commission or her designee (the "hearing officer"), must make a finding that there is probable cause
4 to believe the respondent has violated the Act.³ After a finding of probable cause, the Commission may
5 hold a noticed hearing in accordance with the Administrative Procedure Act⁴ to determine whether
6 violations occurred, and levy an administrative penalty of up to \$5,000 for each violation.⁵

7 Standard for Finding Probable Cause

8 To make a finding of probable cause, the hearing officer must be presented with sufficient
9 evidence to lead a person of ordinary caution and prudence to believe, or entertain a strong suspicion,
10 that a respondent committed or caused a violation.⁶

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

12 When enacting the Political Reform Act, the people of the state of California found and declared
13 that previous laws regulating political practices suffered from inadequate enforcement by state and local
14 authorities.⁷ To that end, the Act must be liberally construed to achieve its purposes.⁸

15 There are many purposes of the Act. One purpose is to ensure that receipts and expenditures in
16 election campaigns are fully and truthfully disclosed, so that voters may be fully informed, and improper
17 practices may be inhibited.⁹ Another is to provide adequate enforcement mechanisms so that the Act
18 will be "vigorously enforced."¹⁰

19 Definition of Controlled Committee

20 A "committee" includes any person or combination of persons who receives contributions
21 totaling \$1,000 or more in a calendar year,¹¹ commonly known as a "recipient committee." A recipient
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23 ³ § 83115.5, and Reg. 18361 and 18361.4.

24 ⁴ § 11500, et seq.

25 ⁵ § 83116, and Reg. 18361.4, subd. (e).

26 ⁶ Reg. 18361.4, subd. (e).

27 ⁷ § 81001, subd. (h).

28 ⁸ § 81003.

⁹ § 81002, subd. (a).

¹⁰ § 81002, subd. (f).

¹¹ § 82013, subd. (a).

1 committee which is controlled directly or indirectly by a candidate, or which acts jointly with a candidate
2 in connection with the making of expenditures, is a “controlled committee.”¹²

3 Duty to File Preelection Campaign Statements

4 All candidates for offices being voted upon in elections not held in June or November of an even-
5 numbered year and their controlled committees must file preelection statements as follows: 1) For the
6 period ending 45 days before the election, the statement must be filed no later than 40 days before the
7 election; 2) For the period ending 17 days before the election, the statement must be filed no later than
8 12 days before the election.¹³

9 For the September 17, 2013 special primary election, the first preelection statement was due on
10 August 8, 2013 for the reporting period of January 1 through August 3, 2013, and the second preelection
11 statement was due on September 5, 2013 for the reporting period of August 4 through August 31, 2013.

12 For the November 19, 2013 special general election, the first preelection statement was due on
13 October 10, 2013 for the reporting period of September 1 through October 5, 2013, and the second
14 preelection statement was due on November 7, 2013 for the reporting period of October 6 through
15 November 2, 2013.

16 Duty to File Reports Online

17 A candidate for state elective office and his or her controlled committee must file campaign
18 statements, reports, or other documents online or electronically when the total cumulative reportable
19 amount of contributions received, expenditures made, loans made, or loans received is \$25,000 or
20 more.¹⁴ In determining the cumulative reportable amount, all controlled committees, as defined by
21 Section 82016, must be included.¹⁵ Once a person meets the \$25,000 threshold and qualifies as an
22 electronic filer, the person must file all following reports online or electronically.¹⁶ Electronic filers must
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25 ¹² § 82016, subd. (a).

26 ¹³ §§ 84200.5, subd. (c), and 84200.8, subd. (a) and (b).

27 ¹⁴ § 84605, subd. (a)(1).

28 ¹⁵ *Ibid.*

¹⁶ § 84605, subd. (d).

1 continue to file statements and reports in paper format, which is the official filing for audit and other
2 legal purposes.¹⁷

3 Election Cycle

4 “Election cycle” means the period of time beginning 90 days prior to an election and ending on
5 the date of the election.¹⁸ On July 2, 2013, the Governor called for a special primary election pursuant
6 to the California Elections Code. A special general election would not be required if a candidate won
7 more than 50% of the vote in the special primary election.

8 Because the governor called for the special election within the 90-day election cycle, the election
9 cycle for the September 17, 2013 special primary election began on July 2, 2013 and ended on
10 September 17, 2013. Because the special general election would only be held if necessary, the election
11 cycle for the November 19, 2013 special general election began on September 18, 2013 and ended on
12 November 19, 2013.

13 For the June 3, 2014 primary election, the election cycle began on March 5, 2014.

14 Duty to Report Contributions of \$5,000 or More Received Outside the Election Cycle

15 A candidate for elective state office who qualifies as an electronic filer must file a campaign
16 report online or electronically disclosing receipt of every contribution of \$5,000 or more that is received
17 outside of the election cycle.¹⁹ \$5,000 reports must disclose the same contributor information required
18 by Section 84203 subdivision (a), and must be filed within 10 business days of receipt of the
19 contribution.²⁰

20 Candidate and Treasurer Liability

21 Every committee must have a treasurer.²¹ It is the duty of a committee’s candidate and treasurer
22 to ensure that the committee complies with all of the requirements of the Act concerning the receipt and
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25 ¹⁷ § 84605, subd. (f).

26 ¹⁸ § 85204.

27 ¹⁹ § 85309, subd. (c).

28 ²⁰ § 85309, subd. (c); See also § 84203, subd. (a).

²¹ § 84100.

1 expenditure of funds and the reporting of such funds.²² A committee's candidate and treasurer may be
2 held jointly and severally liable with the committee for any reporting violations.²³

3 **SUMMARY OF THE EVIDENCE**

4 Robert Blumenfield, a member of the California State Assembly, representing the 45th District,
5 was scheduled to term out of office in 2014. In March 2013, Blumenfield won election to the Los
6 Angeles City Council, 3rd District. Blumenfield's term on the LA City Council began in July 2013, so
7 he did not vacate his Assembly office until June 30, 2013. Candidates wishing to raise funds before July
8 2013 to campaign for Blumenfield's vacated Assembly seat were instructed to first establish 2014
9 campaign committees, then transfer the funds to 2013 campaign committees once Blumenfield officially
10 vacated the seat.

11 In January 2013, Shelley filed her statement of intention to run for the 45th Assembly District
12 seat in the 2014 election. She filed a statement of organization for the 2014 Committee on February 20,
13 2013, with a qualifying date of February 8, 2013. And following Blumenfield vacating the seat, she filed
14 a new statement of intention on July 10, 2013 for the 2013 Special elections, and a statement of
15 organization for the 2013 Committee on July 11, 2013, with a qualifying date of July 8, 2013.

16 FTB's audit found, and the Enforcement Division of the Fair Political Practices Commission
17 confirmed, that Shelley and the 2013 and 2014 Committees substantially complied with the Act's
18 campaign reporting requirements. However, Shelley and the 2013 and 2014 Committees failed to timely
19 file several preelection campaign statements. The charts below details all of the preelection and semi-
20 annual campaign statements filed by Shelley and the 2013 and 2014 Committees during the audit period:
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27 ²² § 84100; Reg. 18427.

²³ §§ 83116.5 and 91006; Reg. 18316.6.

Election Date	Reporting Period	Date Due	Date Filed Hardcopy	No. Days Late H/C	Date e-Filed	No. Days Late e-Filed	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
Approximate Total Reported During Audit Period							\$99,091	\$104,939
2014 Committee								
06/03/2014 Primary ²⁴	01/01 – 03/31/2013	n/a ²⁵	04/29/2013	n/a	04/22/2013	n/a	\$30,524	\$2,213
06/03/2014 Primary	04/01 – 06/30/2013	07/31/2013	07/31/2013	0	07/30/2013	0	\$6,820	\$4,867
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
09/17/2013 Special Primary	08/04 – 08/31/2013	09/05/2013	10/02/2013	27	09/06/2013	1	\$50	\$83
11/19/2013 Special General	09/01 – 10/05/2013	10/10/2013	02/06/2014	119	10/21/2013	11	\$330	\$13,597
11/19/2013 Special General	10/06 – 11/02/2013	11/07/2013	02/06/2014	91	01/31/2014	85	\$266	\$0
Post-election Semi-annual	11/03 – 12/31/2013	01/31/2014	02/06/2014	6	01/31/2014	0	\$6,198	\$440
Approximate Total Reported During Audit Period							\$47,413	\$40,207

²⁴ The date for the Special Primary election was not yet set.

²⁵ Shelley and the 2014 Committee were not required to file this campaign statement because they did not make contributions of \$10,000 or more to elected state officers, their controlled committees, or committees primarily formed to support or oppose any elected state officer during the reporting period pursuant to Section 84202.7.

1 The above reported figures include transfers between the 2013 and 2014 committees totaling \$30,900.
2 So total receipts for both committees during the audit period was approximately \$115,604, and total
3 expenditures was approximately \$114,246.

4 The evidence obtained during this investigation showed that although Shelley was a first-time
5 state candidate, she had previously run for Congress, and Shelley recalled that federal campaign
6 disclosure rules required candidates to file all statements electronically. Shelley told Enforcement
7 Division staff that when she began her campaign for Assembly in 2013, she did not know that the Act
8 required campaign statements to be filed in both paper and electronic formats. But Shelley and the 2014
9 Committee first filed a hardcopy statement on April 29, 2013, so from at least that date forward, Shelley
10 knew or should have known of the requirement to file hardcopies of campaign statements. Significantly,
11 Shelley and the 2014 Committee filed the hardcopy timely for the semi-annual campaign statement
12 which was due July 31, 2013.

13 Even so, during the remainder of the audit period, Shelley and the 2013 and 2014 Committees
14 continually filed hardcopies for preelection statements late. Shelley and the 2013 and 2014 Committees
15 filed hardcopies for the preelection statements related to the Special Primary election ranging from 27
16 to 55 days late. And Shelley and the 2013 and 2014 Committees did not file hardcopies for the
17 preelection statements related to the Special General election until February 6, 2014, ranging from 91 to
18 119 days late. And making things worse, for the preelection period ending November 2, 2013, Shelley
19 and the 2013 and 2014 Committees did not file electronically or in hardcopy until over two months after
20 the Special General election, so no disclosure was available to the public in any format before the date
21 of the Special General election.

22 The late-reported figures represent approximately 48.78% of the total receipts and 61.79% of the
23 total expenses reported during the audit period for the 2013 and 2014 Committees.

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1 Additionally, the 2014 Committee failed to file two \$5,000 reports for \$30,000 in loans from
2 Shelley as follows:

Date of Contribution	Report Due Date	Contribution Amount
03/22/2013	04/05/2013	\$25,000
06/30/2013	07/12/2013	\$5,000

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6 Shelley and the 2014 Committee qualified as electronic filers on March 22, 2013 with the receipt of the
7 \$25,000 loan. The loans were ultimately reported in the applicable preelection campaign statements,
8 which were filed late. These non-reported figures represent 20.48% of total receipts during the audit
9 period for the 2013 and 2014 Committees.

10 Shelley and the 2014 Committee failed to timely file a \$5,000 report by the
11 March 3, 2014 due date for two contributions totaling \$8,200 from the Howard Jarvis Taxpayers
12 Association Small Contributor Committee as follows:

Date of Contribution	Report Due Date	Contribution Amount
02/14/2014	03/03/2014	\$5,200 (Primary Election)
02/14/2014	03/03/2014	\$3,000 (General Election)

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16 Shelley and the 2014 Committee filed the report 21 days late on March 24, 2014, and disclosed the
17 contributions in the 2014 Committee's preelection statement also filed on March 24, 2014. The late-
18 reported contributions represent 6.5% of the 2014 Committee's reported contributions for reporting
19 periods between January 1, 2014 and June 30, 2015.

20 VIOLATIONS

21 Shelley and the 2013 Committee

22 Preelection Campaign Statements

23 Count 1: Late filing of Preelection Campaign Statement

24 Shelley and the 2013 Committee failed to timely file a preelection campaign statement related
25 to the September 17, 2013 Special Primary election by the due date of August 8, 2013, violating
26 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

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1 Count 2: Late filing of Preelection Campaign Statement

2 Shelley and the 2013 Committee failed to timely file a preelection campaign statement related
3 to the September 17, 2013 Special Primary election by the due date of September 5, 2013, violating
4 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

5 Count 3: Late filing of Preelection Campaign Statement

6 Shelley and the 2013 Committee failed to timely file a preelection campaign statement related
7 to the November 19, 2013 Special General election by the due date of October 10, 2013, violating
8 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

9 Count 4: Late filing of Preelection Campaign Statement

10 Shelley and the 2013 Committee failed to timely file a preelection campaign statement related
11 to the November 19, 2013 Special General election by the due date of November 7, 2013, violating
12 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

13 Shelley and the 2014 Committee

14 Preelection Campaign Statements

15 Count 5: Late filing of Preelection Campaign Statement

16 Shelley and the 2014 Committee failed to timely file a preelection campaign statement related
17 to the September 17, 2013 Special Primary election by the due date of August 8, 2013, violating
18 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

19 Count 6: Late filing of Preelection Campaign Statement

20 Shelley and the 2014 Committee failed to timely file a preelection campaign statement related
21 to the September 17, 2013 Special Primary election by the due date of September 5, 2013, violating
22 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

23 Count 7: Late filing of Preelection Campaign Statement

24 Shelley and the 2014 Committee failed to timely file a preelection campaign statement related
25 to the November 19, 2013 Special General election by the due date of October 10, 2013, violating
26 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (a).

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1 Count 8: Late filing of Preelection Campaign Statement

2 Shelley and the 2014 Committee failed to timely file a preelection campaign statement related
3 to the November 19, 2013 Special General election by the due date of November 7, 2013, violating
4 Government Code Sections 84200.5, subdivision (c), and 84200.8, subdivision (b).

5 \$5,000 Reports

6 Count 9: Failure to File \$5,000 Report

7 Shelley and the 2014 Committee failed to timely file a \$5,000 report due April 5, 2013 disclosing
8 receipt of \$25,000 in loans from Shelley outside the 90-day election cycle, violating Section 85309,
9 subdivision (c).

10 Count 10: Failure to File \$5,000 Report

11 Shelley and the 2014 Committee failed to timely file a \$5,000 report due July 12, 2013 disclosing
12 receipt of \$5,000 in loans from Shelley outside the 90-day election cycle, violating Section 85309,
13 subdivision (c).

14 Count 11: Failure to File \$5,000 Report

15 Shelley and the 2014 Committee failed to timely file a \$5,000 report due March 3, 2014
16 disclosing receipt of an \$8,200 contribution outside the 90-day election cycle, violating Section 85309,
17 subdivision (c).

18 **OTHER RELEVANT MATERIAL AND ARGUMENTS**

19 In this case, Shelley and the 2013 and 2014 Committees each failed to timely file four preelection
20 campaign statements. Even though they knew to file hardcopies in addition to the electronically filed
21 statements, Shelley and the 2013 and 2014 Committees continued to file hardcopies several months late.
22 And for the preelection period immediately before the Special General election, Shelley and the 2013
23 and 2014 Committees did not file any campaign statements in any format, so no disclosure was available
24 to the public immediately before the Special General election.

25 The late-reported statements included nearly 49% of total receipts and nearly 62% of total
26 expenses reported during the audit period for the 2013 and 2014 Committees.

1 **CONCLUSION**

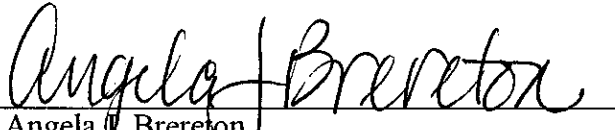
2 Probable cause exists to believe that Respondent Susan G. Shelley, Susan Shelley for Assembly
3 2013 and Susan Shelley for Assembly 2014 committed 11 violations of the Act, as set forth above. The
4 Enforcement Division respectfully requests an order finding probable cause pursuant to Section 83115.5
5 and Regulation 18361.4.

6 Dated: April 18, 2017

Respectfully Submitted,

7 **FAIR POLITICAL PRACTICES COMMISSION**

8 By: Galena West
Chief of Enforcement

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11 Angela J. Brereton
12 Senior Commission Counsel
13 Enforcement Division
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