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

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

23 **INTRODUCTION**

24 Respondent Susan G. Shelley argues that probable cause should not be found for the violations  
25 of the Political Reform Act<sup>1</sup> (Act) stated in the Amended Report in Support of a Finding of Probable  
26 Cause (Amended Report) because 1) filing campaign statements simultaneously for two campaign  
27 committees was an extraordinary burden, 2) the timelines for the special elections were very short,  
28 increasing the burden, 3) she was her own treasurer for both committees, she did not know the rules, the  
violations were inadvertent and she tried to correct them, 4) she asked Commission staff for help with

<sup>1</sup> 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 §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

1 her filing requirements, 5) the Secretary of State's office waived and/or lowered the late fees she owed  
2 for the late-filed campaign statements and she paid those reassessed late fees, and 6) because she filed  
3 all of her campaign statements before the 2014 elections, the seriousness of the violations for late-filing  
4 campaign statements for the 2013 special elections is mitigated. This rebuttal will address evidentiary  
5 issues and Shelley's arguments.

#### 6 EVIDENTIARY ISSUES

7 In her response, Shelley references statements and communications made by Enforcement  
8 Division counsel.<sup>2</sup> These statements and communications were made during settlement negotiations and  
9 are inadmissible regarding liability for the violations stated in the Amended Report.<sup>3</sup> The hearing officer  
10 should disregard these portions of Shelley's response to the Amended Report.

#### 11 DISCUSSION REGARDING SHELLEY'S RESPONSE TO THE AMENDED REPORT

##### 12 A. Two Campaign Committees and the Special Elections Schedule

13 Shelley argues that probable cause should not be found because filing campaign statements  
14 simultaneously for two campaign committees was an extraordinary burden, and was even more difficult  
15 due to the schedule for the special elections. But these circumstances do not excuse Shelley's and her  
16 committees' violations stated in the Amended Report. Candidates for elective state office hold money  
17 from their contributors in trust to use for expenditures related to their campaigns.<sup>4</sup> The Act's campaign  
18 disclosure requirements help ensure that candidates are respecting and abiding by that trust – for regular  
19 and special elections. Shelley, as a candidate for statewide public office, was obligated to abide by the  
20 Act's disclosure rules for every election in which she chose to engage.

21 Shelley raised and spent a significant amount of money for her campaigns for state office. During  
22 calendar year 2013, Shelley raised and spent approximately \$115,000. During calendar year 2014,  
23 Shelley raised and spent approximately \$125,000. The Act required Shelley to timely inform the voting  
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26 <sup>2</sup> Shelley's Response to the Amended Report, p.2, ¶2, p.2, ¶8, p.3 ¶2.

27 <sup>3</sup> Evid. Code § 1152; see also *Moving Picture Etc. Union v. Glasgow Theaters, Inc.* (1970) 6 Cal App 3d 395, 402.

28 <sup>4</sup> § 89510.

1 public of the campaign activity for both of her committees. Instead, Shelley continually filed her  
2 campaign statements late, even after she learned the rules..

3 Special elections are not unique. Special elections occur every year all over the state of  
4 California. The Commission issues filing schedules for each special election on its website, and these  
5 schedules apply to all candidates running in those special elections. Shelley was not treated differently  
6 than the other candidates running for the same office – everyone had the same filing obligations under  
7 the Act. The purpose of timely disclosure by all candidates running in the same election is to provide  
8 complete information on all sides so voters can make informed decisions. Shelley and her committees  
9 were responsible for timely filing campaign statements and reports for the special elections and regular  
10 elections alike, and sufficient evidence exists in this matter to find probable cause that Shelley and her  
11 committees did not timely file campaign statements and reports.

12 **B. Inexperienced Treasurer, Inadvertent Violations, and Seeking Assistance from**  
13 **Commission Staff**

14 Shelley argues that probable cause should not be found against her and her committees for filing  
15 campaign statements late because she was her own treasurer for both committees, she did not know the  
16 rules, the violations were inadvertent and she tried to correct them, and Shelley consulted with  
17 Commission staff for guidance regarding filing deadlines for her campaign statements. None of these  
18 claims effect whether probable cause exists for the 11 violations stated in the Amended Report.

19 Shelley's consultations with Commission staff do not request assistance with filing deadlines,  
20 do not excuse Shelley's and the 2013 and 2014 Committees' late filing of campaign statements and  
21 reports and do not effect a finding of probable cause.<sup>5</sup> Regulation 18361.4(e) states:

22 The hearing officer shall not make a finding of probable cause if he or she is presented  
23 with clear and convincing evidence that, at a time prior to the alleged violation, the  
24 violator consulted with the staff of the Commission in good faith, disclosed truthfully all  
25 of the material facts, and committed the acts complained of either in reliance on the advice  
26 of the staff or because of the staff's failure to provide advice.<sup>6</sup>

26 <sup>5</sup> See emails attached to Shelley's Response to the Amended Report; See Enforcement Division's Response to  
27 Discovery Request, pp. 519-522.

27 <sup>6</sup> Reg. 18361.4(e).

1 This clause of the Regulation 18361.4(e) does not apply to Shelley's and the 2013 and 2014 Committees'  
2 violations. All of the consultations occurred when Shelley and her committees were already delinquent  
3 in filing the campaign statements and reports identified in the Amended Report. And none of the  
4 consultations discussed filing schedules or deadlines. The only mention of a filing deadline occurs in  
5 the email from Shelley dated August 16, 2013, in which she acknowledges that she missed the  
6 preelection deadline.<sup>7</sup> Her question to Commission staff was whether, not when, both committees  
7 needed to file preelection statements, and staff responded in the affirmative.<sup>8</sup>

8 Shelley claims in her response that she consulted with Commission staff to make sure she had  
9 filed "every required campaign finance report."<sup>9</sup> In support of this claim, Shelley cites her  
10 December 20, 2013 email to Commission staff, in which, after asking questions regarding whether she  
11 may transfer campaign debt between her committees, Shelley states:

12 I acted as my own treasurer and would like to make sure the campaign's reporting is in  
13 full compliance. I made every effort during the campaign to file all required reports as  
14 completely and accurately as possible. Please let me know if anything is missing or  
incorrect.

15 But the Commission was not the filing officer for Shelley's and her committees' campaign statements,  
16 so the Commission staff had no way of knowing what statements and reports Shelley and her committees  
17 had filed, and whether she had missed any filing deadlines. The focus of Shelley's email was transferring  
18 debt between her committees, not filing deadlines. Shelley did not provide Commission staff with any  
19 information regarding what statements and reports she filed and when. And Shelley did not ask any  
20 questions regarding filing deadlines in her December 20, 2013 email, so no response regarding filing  
21 deadlines was appropriate, or offered, from the Commission staff in this regard. So her claim that her  
22 December 20, 2013 email was a request for help regarding filing deadlines is inaccurate.

23 There is no evidence of any other consultations by Shelley with Commission staff before the  
24 filing deadlines for any of the violations identified in the Amended Report. And Shelley did not ask for  
25 guidance regarding her filing deadlines in the consultations available. Thus, Shelley's consultations with

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26 <sup>7</sup> See emails attached to Shelley's Response to the Amended Report.

27 <sup>8</sup> *Ibid.*

28 <sup>9</sup> Shelley's Response to the Amended Report, p.4, ¶2.

1 Commission staff do not excuse Shelley's and the 2013 and 2014 Committees' late filing of campaign  
2 statements and reports.

3 Shelley's inexperience as a treasurer and inadvertent violations likewise do not excuse Shelley's  
4 and the 2013 and 2014 Committees' late filing of campaign statements and reports. The factors cited by  
5 Shelley in her response go toward the amount of the imposed penalty for violations of the Act, not  
6 toward whether any violations occurred or whether there is enough evidence for a finding of probable  
7 cause.<sup>10</sup> In this case, plenty of evidence exists showing that Shelley and her committees continually filed  
8 campaign statements and reports late, and the Enforcement Division has met its burden for a finding of  
9 probable cause.

### 10 **C. Secretary of State Late-Fees**

11 Shelley claims that probable cause cannot be found for the violations identified in the Amended  
12 Report because the Secretary of State's (SOS) office waived and/or lowered the late fees she owed for  
13 the late-filed campaign statements and she paid those reassessed late fees.<sup>11</sup> But Shelley's claim is  
14 incorrect. SOS made factual findings that she filed her statements late. SOS determined that Shelley and  
15 her committees had a duty to file specific campaign statements, affirmed that she filed the applicable  
16 campaign statements late, calculated how late the statements were filed, and assessed late-fees  
17 accordingly. SOS then allowed Shelley to pay a lower or waived late-fee in each instance, but SOS did  
18 not excuse the violations or state that Shelley and her committees did not late-file the campaign  
19 statements. So the evidence that SOS reduced or waived the late-fees owed by Shelley supports a finding  
20 of probable cause, not dismissal of the violations.

### 21 **D. Seriousness of the Violations Not Mitigated**

22 Shelley argues that because she filed all of her campaign statements before the 2014 elections,  
23 the seriousness of the violations for late-filing campaign statements for the 2013 special elections is  
24 mitigated.<sup>12</sup> This claim is incorrect. Whether she filed all of her campaign statements for the 2014  
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26 <sup>10</sup> Shelley's Response to the Amended Report, p.5, ¶¶4-5.

27 <sup>11</sup> Shelley's Response to the Amended Report, p.4, ¶¶6-8.

28 <sup>12</sup> Shelley's Response to the Amended Report, p.5, ¶5.

1 elections before the applicable 2014 elections has no bearing on the seriousness of late-filing multiple  
2 campaign statements for the 2013 elections. The public harm for late-disclosure in 2013 cannot be  
3 undone by better disclosure in 2014. At most, such information would go toward the amount of any  
4 penalty imposed by the Commission, not whether there is enough evidence to find probable cause. Here,  
5 there is plenty of evidence to find probable cause.

6 **CONCLUSION**

7 Shelley and her committees late-filed numerous campaign statements and reports in 2013 and  
8 2014. None of the arguments, claims, and evidence provided by Shelley in her Response excuses the  
9 violations identified in the Amended Report, or invalidates the available evidence. Probable cause exists  
10 to believe that Respondent Susan G. Shelley, Susan Shelley for Assembly 2013 and Susan Shelley for  
11 Assembly 2014 committed 11 violations of the Act, as set forth above. The Enforcement Division  
12 respectfully requests an order finding probable cause pursuant to Section 83115.5 and Regulation  
13 18361.4.

14 Dated: May 26, 2017

Respectfully Submitted,

15 **FAIR POLITICAL PRACTICES COMMISSION**

16 By: Galena West  
Chief of Enforcement

17 

18 Angela J. Brereton  
19 Senior Commission Counsel  
20 Enforcement Division