

1 SUSAN G. SHELLEY

2 [REDACTED]
3 Electronic Mail: Susan@SusanShelley.com

4 Respondents, In Pro Per
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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

9 STATE OF CALIFORNIA

10	In the Matter of) FPPC No.: 15/003
11) OAH No.: 2019030096
12	SUSAN G. SHELLEY, SUSAN SHELLEY) Assigned Judge: Hon. Deena Ghaly
13	FOR ASSEMBLY 2013 and SUSAN)
14	SHELLEY FOR ASSEMBLY 2014) RESPONDENTS' CLOSING ARGUMENT
15)
16	Respondents.)
17)
18) <i>Hearing Date: June 19, 2019</i>
19) <i>Place: 320 W. Fourth Street, # 630,</i>
20) <i>Los Angeles, Calif. 90013</i>
21)

22 TO THE HONORABLE DEENA GHALY, TO ALL PARTIES HEREIN AND TO THEIR
23 ATTORNEYS OF RECORD:

24 By its words and actions, the Complainant, the Fair Political Practices Commission (FPPC),
25 itself acknowledges that this case against Respondents should never have been brought at all.

26 In the Amended Probable Cause Report (Exhibit A, and Exhibit 2.2 [p. 12]) dated April 18,
27 2017, which was the basis for this Accusation, the FPPC states:

28 "The evidence shows that Shelley was a first-time candidate for state office acting as her own
campaign treasurer, and she made a good-faith effort to familiarize herself with and comply with
the complex and compressed reporting requirements for the special elections. Additionally, the
evidence demonstrates Shelley consulted Commission staff throughout her campaign regarding

1 disclosure issues. Shelley and the 2013 and 2014 Committees have no history of enforcement
2 action. A review of the audit report and supporting papers indicates no evidence of deliberate
3 concealment or intent to deceive the public. The Enforcement Division confirmed the FTB's
4 audit findings showing that Shelley and the 2013 and 2014 Committees substantially complied
5 with the Act's campaign reporting requirements during the audit period, as well as in campaign
6 statements for reporting periods between January 1, 2014 and June 30, 2015."

7 And yet, in its Amended Complainant's Administrative Hearing Brief (Hereafter,
8 "Complainant's Brief") dated 6/17/19 and served on Respondents and the Office of
9 Administrative Hearings on 6/18/19, the FPPC seeks "moderate to high" monetary penalties
10 against Shelley and the two committees totaling between \$12,000 and \$17,000.

11 To make this leap of unreason, the FPPC Enforcement Division first withholds from this court
12 material evidence demonstrating the flat-out falsehood of the following assertion, which is stated
13 under "Aggravating Factors" in the Accusation: "And for the preelection [sic] period
14 immediately before the 2013 Special General election, Shelley and the 2013 and 2014
15 Committees did not file any campaign statements in any format, so no disclosure was available
16 to the public immediately before the Special General election." (Exhibit 2, p. 10)

17 In fact, the evidence shows that Shelley and the 2013 committee timely filed Form 497
18 reports for contributions totaling \$28,500 during the reporting period immediately before the
19 2013 Special General election, a total of 78% of the monetary contributions to the committee
20 during the period in question, from 10/6/13 through 11/2/13.

21 The evidence shows that during this same period the 2014 committee had total monetary
22 contributions of only \$266, merely a transfer from the 2013 committee to reimburse the 2014
23 committee for the earlier purchase of campaign buttons. The evidence shows that this transfer
24 was a good-faith effort to comply with the law and the instructions of state officials in the
25 "unique" (Exhibit 2, p. 10, lines 7-8) circumstances of this special election (Exhibit CC).

26 The FPPC next attempts to deceive the court, in argument and witness testimony at the June
27 19 hearing, by concealing that the "unique" circumstances of the special election included this
28 key fact, as accurately stated in the Accusation (Exhibit 2, p. 4, lines 22-23; p. 5, lines 1-2):

1 “Candidates wishing to raise funds before July 2013 to campaign for [soon-to-be or newly-
2 elected Los Angeles City Councilman Robert] Blumenfield’s vacated Assembly seat were
3 instructed to first establish 2014 campaign committees, then transfer the funds to 2013 campaign
4 committees once Blumenfield officially vacated the seat.”

5 Following these instructions, Shelley filed a statement of intention to run for the 45th
6 Assembly District seat in the 2014 election in January 2013, filed a statement of organization for
7 the 2014 Committee on 2/20/13, with a qualifying date of 2/8/13, filed a Form 460 campaign
8 statement on 4/22/13 for the quarter ended 3/31/13, and filed a Form 460 campaign statement on
9 7/30/13 for the quarter ended 6/30/13 (Exhibit X). Following Blumenfield vacating the seat, she
10 filed a statement of intention on 7/10/13 for the 2013 special election, and filed a statement of
11 organization for the 2013 committee on 7/11/13, with a qualifying date of 7/8/13.

12 On “Request for Waiver of Liability” forms signed under penalty of perjury on 4/14/14,
13 Shelley stated to the office of Secretary of State, “In order to raise money in compliance with
14 campaign finance law, it was necessary to open a 2014 committee for all fundraising that was
15 conducted prior to the special election being called in July. After the special election was called,
16 it was necessary to open a 2013 committee in order to spend money in compliance with
17 campaign finance law. From that time forward, there were two committees for the same
18 candidate in the same election.” (Exhibits J, N, P, R)

19 And yet, Complainant attempted to mislead the court by concealing this key fact, thereby
20 obfuscating the timely disclosures made in Form 460 campaign statements, by portraying the
21 formation of the 2014 committee as solely for the purpose of a 2014 candidacy, as follows:

- 22 1. In the Complainant’s Brief, the “Summary of the Facts and Evidence” begins, “Shelley
23 was a candidate for the 45th District of the California State Assembly during the 2014
24 election cycle. She filed a candidate statement of intention on January 14, 2013, declaring
25 her candidacy and voluntarily placing herself on the 2014 ballot for this Assembly seat. In
26 order to solicit and receive contributions to support her campaign for the Assembly,
27 Shelley formed a candidate-controlled committee.” (Complainant’s Brief, p. 12, lines 7-
28 11)

1 2. In an opening statement at the June 19 hearing, counsel for the FPPC stated: “Susan
2 Shelley was a candidate for the 45th Assembly District in the 2014 primary and general
3 election. A special election was called in 2013 due to a vacancy in the office and Shelley,
4 thereafter, placed herself on the ballot. As a result, she had two political committees....”
5 (Certified Transcript, p. 16, lines 20-25)

6 3. In direct examination of Complainant’s witness Luzmaria Bonetti, counsel asked, “Can
7 you tell us why did she have two committees, the 2013 and the 2014 committee?” The
8 witness answered, “One committee was formed for the 2013 special election and then the
9 special runoff, and the other one was for the – I recall the regular election in the even year
10 for Assembly 2014.” Counsel then asked, “And why did she need to have two committees
11 instead of just one?” The witness answered, “The law requires that candidates establish a
12 separate committee for each if they qualify as a committee for each term that they run for
13 office.” (Certified Transcript, p.46, lines 17-25; p. 47, lines 1-2)

14 4. On redirect examination, counsel for the FPPC asked Ms. Bonetti, “Just to reiterate I
15 think something we had said earlier, why was Ms. Shelley required to open two
16 committees?” The witness answered, “...the 501 will tell me what they’re running for and
17 that’s signed under penalty of perjury. If I have an indication – and it happens with locals.
18 Where there is an anticipated special election to run for, there might be more information
19 there, but all I can do is go based on the filings that someone is running for the election.”
20 (Certified Transcript, p. 90, lines 17-25; p. 91, lines 1-2)

21 There certainly was more information and Ms. Bonetti testified that it was her job to look for
22 it. But she apparently disregarded mitigating information such as the months-long delay in
23 calling a special election to replace an incumbent who had been elected to another office early in
24 2013, as well as the instruction to candidates to open 2014 committees to raise money in the
25 interim. She testified that it was her job to look for “facts, whether they’re mitigating or
26 aggravating, or any additional things that I might need to review,” including “if something was
27 disclosed on something else.” Why were the certified records of the Form 497 reports filed by
28

1 the 2013 committee not found, not considered in the investigation, and not placed into evidence
2 in this case?

3 The effect of the deliberate and repeated attempt to mislead the court about the “unique”
4 circumstances surrounding the formation of the 2014 committee is to obfuscate that nearly
5 \$40,000 in monetary contributions and loans raised for the 2013 election was disclosed on two
6 Form 460 campaign statements filed by Shelley and the 2014 committee on 4/22/13 and 7/30/13,
7 at least six weeks before the special primary election on 9/17/13, in compliance with instructions
8 given to the candidates in this special election by state officials.

9 Together with the intentional decision to exclude from the Complainant’s evidence the
10 timely-filed Form 497 reports showing \$28,500 in monetary contributions disclosed between
11 10/6/13 and 11/2/13, it is disturbingly clear that the Complainant engaged in intentional
12 misrepresentation in order to support a false assertion that there was “no disclosure” by the
13 Shelley campaign during the period immediately prior to the Special General election on
14 11/19/13.

15 The evidence further shows that Complainant withheld additional mitigating information by
16 including in its evidence a letter from Chris Reynolds of the Secretary of State’s Political Reform
17 Division to Shelley, dated 10/1/15 (Exhibit 20.8), which charges that Shelley had not paid the
18 2015 annual fee for the 2014 committee. However, Complainant failed to include in its evidence
19 the letter dated 10/29/15 written by Shelley in response, which included enclosed copies of the
20 front and back of the cancelled check showing that the fee had been paid timely. (Exhibit FF)

21 The California Bar Association’s Rules of Professional Conduct, effective November 1, 2018,
22 state, “It is professional misconduct for a lawyer to...(c) engage in conduct involving dishonesty,
23 fraud, deceit, or reckless or intentional misrepresentation; (d) engage in conduct that is
24 prejudicial to the administration of justice....” (Rule 8.4, Misconduct)

25 The Complainant’s bad faith in the pursuit of this action extends further to its failure to
26 comply with the policies set forth in the FPPC Enforcement Manual.

27 The FPPC’s Enforcement Division Manual states, “the Enforcement Division prepares and
28 serves an Accusation by personal service on all respondents” (Exhibit DD, p. 23, No. 7), yet the

1 FPPC served the Accusation in this case on Respondents “via email” (Amended Complainant’s
2 Administrative Hearing Brief, p. 5, lines 18-19). The Enforcement Division Manual further states
3 that in cases in which it is determined that a violation has occurred, the commission counsel must
4 find “public harm” sufficient to justify a fine. (Exhibit DD, p. 21, No. 3)

5 Respondents’ witness Amber Maltbie, certified by Los Angeles County Superior Court Judge
6 Malcolm Mackey as an expert in campaign finance, testified that in this campaign there really
7 was no public harm. Ms. Maltbie further testified that the statement in the Accusation that
8 claimed “no disclosure was available to the public immediately before the Special Election”
9 (Exhibit 2, p. 10 lines 19-20) was not true.

10 Ms. Maltbie testified that she reviewed Respondents’ records of Form 497 reports filed, and
11 that she independently verified them by viewing public records on the website of the Secretary of
12 State. (Respondents’ copies are marked collectively as Exhibit W, with a separate listing of the
13 individual donations in the reports marked as Exhibit V). These reports were logged on the Filing
14 History for the 2013 committee (Exhibit T, Exhibit 10), but Complainant chose not to bring the
15 certified records to be entered into evidence in this hearing, attempting to conceal the content of
16 the reports from this court.

17 Ms. Maltbie testified, and the evidence shows, that Ms. Shelley and the 2013 committee filed
18 Form 497 reports disclosing monetary contributions totaling \$28,500 during the period from
19 10/6/13 to 11/2/13. This accounted for approximately 78% of the \$36,580 in total monetary
20 contributions to the 2013 committee during the period. The activity of the committee for this
21 period was reported on a Form 460 report for the period from 10/6/13 to 12/31/13, filed
22 electronically on 1/31/14.

23 As a candidate acting as her own treasurer in an all-volunteer campaign with no paid staff,
24 Ms. Shelley had many responsibilities and demands on her time during the condensed special
25 election campaign. She was effectively the campaign’s manager, communications director,
26 webmaster, data analyst, media buyer, art director and events coordinator as well as the
27 candidate. Ms. Maltbie testified that she noticed many of the Shelley committees’ campaign
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1 finance reports that were listed on the Secretary of State’s website had been filed “between the
2 hours of 12:30 in the morning and 4:30 or 5:00 in the morning.”

3 The evidence shows that following the Special General election and before the end of the
4 year, Ms. Shelley contacted the FPPC advice staff in an email on 12/20/13 and wrote, “I acted as
5 my own treasurer and would like to make sure the campaign’s reporting is in full compliance. I
6 made every effort during the campaign to file all required reports as completely and accurately as
7 possible. Please let me know if anything is missing or incorrect.” (Exhibit D, p. 2)

8 The evidence shows that there was no answer to that good-faith inquiry. Fines of \$10 per day
9 per deadline continued to rack up at the Secretary of State’s Political Reform Division for
10 anything that had been overlooked. Ms. Shelley was not informed that pre-election reports due
11 on 11/7/13 had not been filed. Ms. Shelley was not informed that some paper hardcopies had not
12 been received.

13 As a first-time state candidate, Ms. Shelley made a good-faith effort to find all the
14 requirements and rules that applied to a candidacy for the Assembly. The pre-election reporting
15 periods and filing deadlines for the special election were not available during the period before
16 the seat was officially vacated. The evidence shows that after the special election was called,
17 there was no notification to the candidates of the newly created filing schedule:

- 18 1. Dominika Wojenska, an Associate Governmental Program Analyst at the FPPC,
19 testified that one of her responsibilities is to maintain case files and add correspondence
20 and other documents to those files. She testified that the filing schedule for the District 45
21 2013 special election (Exhibit 9) was in the file, but she did not know of any
22 correspondence that informed the candidates of the filing schedule.
- 23 2. Samantha Brown, Staff Services Analyst at the Secretary of State’s Political Reform
24 Division, testified that she and her colleagues assist candidates “by directing them to the
25 Fair Political Practices Commission manuals and regulations on the website.” She testified
26 that she does not receive or answer inquiries made by candidates to the
27 advice@fppc.ca.gov email address.

1 3. Luzmaria Bonetti testified that she did not know where the filing schedule was
2 available, although she thought the Secretary of State’s office might “have them on the
3 counter,” a distance of approximately 375 miles from the 45th Assembly District.

4 4. The calendar for the special election primary lists important dates and deadlines for
5 candidates and voters, however, the pre-election campaign finance reporting periods and
6 filing deadlines are not listed on this calendar (Exhibit 31).

7 The evidence shows that Ms. Shelley was unaware during the 2013 campaign that the filing
8 schedule was on the FPPC’s website. In a statement made on a Request for Waiver of Liability
9 form dated 4/14/14 and signed under penalty of perjury, she wrote, “I acknowledge that I did not
10 have a timely understanding of all the reporting requirements for a state legislative race. It was
11 necessary to dig through the Secretary of State’s website to find the deadlines unique to the
12 special election, and I made every good faith effort to do so.” (Exhibits J, N, P, R)

13 The evidence shows that in good faith Ms. Shelley looked for information on her own
14 initiative and discovered on August 16 that the filing deadline for a pre-election report had been
15 August 8. In an email to advice@fppc.ca.gov, she wrote, “I’m a candidate in the AD45 special
16 election on September 17 and serving as my own Treasurer. I just checked online to find the pre-
17 primary filing deadline and discovered that it was August 8. Sorry about that. I’m on it now.”
18 (Exhibit B, lower half of page)

19 Ms. Shelley used the singular form and the term used by the Federal Election Commission,
20 “the pre-primary filing deadline,” reflective of her experience as a one-time federal candidate in
21 a race in which one “pre-primary” report was due. The evidence shows that she was a first-time
22 state candidate who had no notification of the filing schedule for the special election, and that
23 she displayed no awareness that there were two pre-election reports due before the primary.

24 However, Complainant cites this email as evidence that Ms. Shelley had knowledge of the
25 special election filing deadlines. If this were true she would likely have been able to file the pre-
26 election reports on time and would have had no need to write to the FPPC staff in December
27 2013 to ask if “anything was missing.” (Exhibit D, p. 2) “I just checked online” may refer to any
28 information found online from any source, including blog posts, press releases or news reports

1 about the fundraising of other candidates, or any public source that reports fundraising totals
2 after campaign finance statements have been filed.

3 The evidence shows that Ms. Shelley concluded this August 16 email by writing, “Thank you
4 for your assistance. I’m making every effort to comply with everything, and it’s a daunting task.”

5 On August 19, the FPPC advice staff responded to Ms. Shelley’s question about whether the
6 2014 committee was required to file a statement along with the 2013 committee, but the advice
7 staff did not send the filing schedule or even a link to where it could be found, despite the
8 obvious lack of knowledge of the candidate who was seeking help “to comply with everything.”
9 Although another pre-election report was due in a short time, on September 5, no mention was
10 made of it. (Exhibit B, upper half of page)

11 On August 19 at 11:27 p.m., Ms. Shelley wrote to the advice staff again to relate the problems
12 she was having using the Cal Access system to correctly report two transfers totaling \$17,500 of
13 the funds she loaned to the 2014 committee, previously disclosed on Form 460 reports filed by
14 the 2014 committee before the 2013 committee could be formed. (Exhibit X) She concluded the
15 email by writing, “Your help would be most appreciated. I’ll file an amended report, or two
16 amended reports if you can tell me how this should be reported.” (Exhibit C)

17 In recognition of the evidence that Ms. Shelley did seek help, the Enforcement Division did
18 not charge her with not reporting the transfers correctly. Yet the Complainant cites in its Brief
19 the information about these dropped charges as evidence in support of a false assertion that there
20 was a “pattern” of bad conduct. (Complainant’s Brief, page. 30, lines 1-3).

21 Similarly, Complainant includes irrelevant and sometimes incorrect letters (Exhibit FF) from
22 the Secretary of State levying minor fees, such as \$10 for paper filings postmarked one day late
23 (Exhibits 19.5, 19.2, 19.4, 19.6, 19.10, 20.12, 20.13), and describes this by writing, “she
24 persisted in filing campaign statements past the deadline during the 2014 election cycle.”
25 (Complainant’s Brief, page 29, lines 10-11).

26 In point of fact, the evidence shows that Ms. Shelley consulted the staff of the Secretary of
27 State’s office and the Commission staff before, during and after her campaign in a good faith
28 effort to comply with the law in every respect. She asked for help on specific issues and “to

1 comply with everything.” She offered to file amended reports if needed and to file any reports
2 that were missing. The FPPC failed to provide this well-intentioned first-time state candidate
3 with the most basic advice in response to her requests: a simple link to the filing schedule for her
4 campaign.

5 FPPC regulation 18361.4(e) states: “The hearing officer shall not make a finding of probable
6 cause if he or she is presented with clear and convincing evidence that, at a time prior to the
7 alleged violation, the violator consulted with the staff of the Commission in good faith, disclosed
8 truthfully all the material facts and committed the acts complained of either in reliance on the
9 advice of the staff or because of the staff’s failure to provide advice.”

10 In near-mockery of this regulation, the FPPC sought and obtained an order finding probable
11 cause for 11 counts of violating the Political Reform Act in this case, threatening a potential
12 penalty of \$55,000. When Ms. Shelley exercised her right to a hearing, five counts were charged
13 in this Accusation, with this explanation: “The Enforcement Division has reduced the number of
14 violations charged in this case in light of any potential confusion that may have occurred due to
15 the multiple committees.” (Exhibit 2, p. 10, lines 7-9)

16 This is arbitrary. The circumstances of the two committees and the “potential confusion”
17 apply equally to all five counts in this Accusation. All of the charged violations occurred
18 between 8/8/13 and 11/7/13, a three-month period of active campaigning during which a first-
19 time state candidate/treasurer was required to file two pre-election reports for each of two
20 committees in each of two formats for each of two elections that were 60 days apart, without any
21 notification of the filing schedule.

22 Ms. Maltbie testified that she would have advised a candidate facing this two-committee
23 reporting requirement to hire both a professional campaign treasurer and a campaign attorney.
24 That expense would have made this grassroots campaign, which raised only \$99,091 for the
25 Special Primary election and Special General election combined, infeasible, and that would have
26 been to the detriment of many thousands of voters who chose to vote for this candidate.

27 The FPPC has itself acknowledged and attempted to remedy the problem that new candidates
28 like Ms. Shelley had in finding all the information necessary to comply with the law. On

1 February 26, 2015, the FPPC announced in a news release that it was launching an “Online
2 Toolkit for New Candidates” that “provides step-by-step instructions” and a “one site, one stop
3 toolkit” to help prospective candidates understand how to comply with “various rules and laws
4 involved in running for office.” Then-FPPC Chair Jodi Remke was quoted as saying, “We want
5 to encourage people to participate in the political process.” The news release quoted League of
6 California Cities executive director Chris McKenzie as saying, “Having election information and
7 requirements in one place will make the process of running for office more easily accessible for
8 people who want to serve their communities in an elected capacity.” (Exhibit Y)

9 This admission by the FPPC of failures to adequately communicate important information to
10 candidates prior to 2015 is one more reason that charges should not have been brought in this
11 case, in which the FPPC now seeks fines of up to \$17,000 from a 2013 candidate who
12 experienced precisely the problem that the candidate toolkit was launched in 2015 to address.

13 The subject of excessive fines has been part of an ongoing discussion of Enforcement
14 Division practices. According to a transcript of the FPPC’s meeting on September 21, 2017,
15 Commissioner Maria Audero stated, “I think that we have to try to ensure that our fines aren’t
16 such that they chill the running for office.” (Exhibit EE, p. 12)

17 In May 2018, the Commission decided to establish a Task Force on Enforcement Priorities
18 and Procedures. In an outline and comments letter dated June 8, 2018, the California Political
19 Attorneys’ Association recommended review of the Enforcement Division’s practices with
20 regard to “Resolution” of cases. “A number of cases that arise from minor FTB audit findings
21 should be resolved with warning letters,” the attorneys wrote, “Fine ranges should relate to the
22 seriousness of the violation,” and “Proportionality should be considered in evaluating whether or
23 not to pursue enforcement and what type of resolution is warranted.” (Exhibit LL, p. 3)

24 Ms. Maltbie testified that legislation passed last year directs the Secretary of State to update
25 Cal Access and that as part of that update, paper hardcopy filings will be eliminated. Ms. Maltbie
26 said this is an acknowledgment that the public gets its information from the online resource tool,
27 derived from the electronic filings.

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1 Despite all of these changes to address known problems, which bear on this case, the
2 Enforcement Division continues its useless and wasteful pursuit of Ms. Shelley, seeking up to
3 \$17,000 in penalties from a defeated first-time state candidate who has already been deemed to
4 have “substantially complied” with the law by another state agency, the Franchise Tax Board, a
5 conclusion which was confirmed by the FPPC Enforcement Division.

6 The evidence shows no enforcement history, no pattern of violations, no intent to conceal or
7 deceive. The evidence shows a good faith effort by a candidate to comply with the law, who
8 communicated with the Commission staff throughout her campaign and who offered to amend or
9 file reports if needed.

10 Complainant ignores mitigating information and falsely claims aggravating information,
11 withholding certified records of timely filed Form 497 campaign statements and misrepresenting
12 key facts in order to conceal from this court that all loans and nearly all monetary contributions
13 were fully disclosed to the public by Respondents before the 2013 Special Primary and General
14 elections.

15 If the FPPC had provided advice in the form of notification of the filing schedule,
16 Respondents would likely have been able to meet the technical requirements as well as the
17 substantive ones, and would have avoided the chaotic and unnecessary game of catch-up that led
18 to fines from the Secretary of State’s office for late filings.

19 The evidence shows that more than two months after the November 19 Special General
20 election, Ms. Shelley was informed in letters dated 1/27/14 from the Secretary of State’s office
21 that fines had been incurred for late filing of four pre-election reports for the Special Primary
22 election (Exhibit E). She immediately took responsibility and paid \$110, \$270, \$660, and \$550,
23 totals that reflected \$10-per-day fines for 8 separately enforced pre-election report filing
24 deadlines for the 9/17/13 primary (Exhibits F, G, S). The evidence shows that she also sought to
25 correct other errors by immediately mailing overlooked paper hardcopies of two pre-election
26 reports that had been filed electronically in October. These are recorded as filed on 2/6/14,
27 incurring \$10-per-day fines that began on 10/11/13.

1 The evidence shows that on 1/31/14, Ms. Shelley electronically filed year-end reports for the
2 two committees showing a reporting period covered of 10/6/13 to 12/31/13, consistent with a
3 belief that this was the next report due. The evidence shows that she received no response to her
4 inquiry of 12/20/13 asking the FPPC advice staff if anything was “missing or incorrect.” (Exhibit
5 D, p.2)

6 The evidence shows that in letters from the Secretary of State’s office dated 3/21/14, Ms.
7 Shelley was informed that fines had been incurred for the late filing of four pre-election reports
8 for the Special General election. The letters stated, “The Secretary of State may reduce or waive
9 payment of the liability in certain extremely limited cases,” and enclosed a sheet specifying
10 “acceptable ‘good cause’ reasons.” (Exhibits H, L, O)

11 The evidence shows that Ms. Shelley timely filed four Requests for Waiver of Liability, Form
12 PRD-1, seeking waiver of the fines of \$1,300, \$1,300, \$592 and \$1,820. Her statements on the
13 forms, signed under penalty of perjury on 4/14/14, explained the unique circumstances of the
14 special election, the reason for two committees, the effort made to comply with the law, the
15 timely filing of 497 reports, the compressed calendar and the lack of knowledge of the filing
16 schedule. She wrote, “In the interests of proportionality and fairness to small, low-budget
17 campaigns that cannot afford the services of professional treasurers, I respectfully request a
18 waiver of liability for filing after the filing deadline.” (Exhibits J, N, P, R)

19 The evidence shows that the Secretary of State found “good cause” to fully waive liability for
20 the late filing of the four paper hardcopies and to reduce liability for two of the late-filed
21 electronic reports. Ms. Shelley was informed of this resolution in letters dated 6/26/14 and paid
22 the remaining fine amounts with checks dated 7/2/14 in the amounts of \$100, \$110, \$110 and
23 \$300. (Exhibit JJ) In total, Ms. Shelley paid \$2,210 as a penalty for late-filed pre-election reports
24 that were due between 8/8/13 and 11/7/13.

25 That is a very substantial penalty for the errors of a first-time state candidate who has been
26 deemed by state agencies to have substantially complied with the law, and the penalty has been
27 borne by Ms. Shelley personally, because the evidence shows that as of January 2019, the 2014
28 committee still owed \$27,000 to Ms. Shelley, debt remaining from the personal loans she made

1 to the 2014 committee for the 2013 campaign in the first half of 2013. Ms. Shelley did not use
2 the funds later raised for the actual 2014 campaign to pay herself back for the 2013 campaign,
3 and this good faith should weigh heavily in mitigation. (Exhibit HH)

4 But Complainant chooses to pull information selectively and misleadingly from the record to
5 paint a false picture of bad conduct, and seeks up to \$17,000 in additional penalties from Ms.
6 Shelley.

7 Adding insult to injury, Complainant cites three allegedly similar cases to justify these
8 penalties, but the evidence shows that those campaign committees were contacted by the
9 Secretary of State's office and the FPPC Enforcement Division and informed that reports had not
10 been filed. This disparate treatment, ignoring Ms. Shelley's inquiry of 12/20/13 (Exhibit D, p. 2)
11 but affirmatively reaching out to inform other candidates and committees of filing omissions, is
12 fundamentally unfair and calls into question whether the equal protection of the law has been
13 accorded to Respondents in this case. (Exhibit 36, stipulation agreement, p. 3, lines 23-25, p. 7,
14 lines 3-5; Exhibit 37, stipulation agreement p. 3, lines 13-15; Exhibit 39, default decision, p. 8-9)

15 Complainant's bad faith in pursuing this action against a candidate who acted in good faith is
16 deeply troubling. The Enforcement Division has virtually unlimited and unchecked discretion to
17 file charges or not file charges, giving it control over the reputations of people who engage in
18 political activity in California. How it is exercising this power should be a matter of grave
19 concern to everyone who cares about transparency and accountability in government.

20 Ms. Maltbie testified that there was no public harm in this campaign. Is there public harm in
21 seeking nearly \$20,000 in total fines from a defeated first-time state candidate who acted in good
22 faith and substantially complied with the law?

23 Ms. Maltbie testified that the law and regulations enforced by the FPPC are so complicated
24 that even a CPA cannot competently serve as a campaign treasurer. She testified that she always
25 advises candidates to hire a professional treasurer and further, that many treasurers fear liability
26 for errors and insist that the campaign also hire an election attorney.

27 The evidence in this case shows that this is excellent advice, but at the same time, it is a
28 message that people wishing to engage in political activity risk severe legal jeopardy unless they

1 can raise enough money to hire highly-compensated professionals who specialize in campaign
2 finance.

3 The practical effect of that is to suppress California residents from engaging in any means of
4 political speech or campaign activity that incurs costs of more than \$2,000, the level at which the
5 requirement for a committee is triggered, along with the need for a professional treasurer and
6 perhaps an attorney.

7 But if grassroots political activity is suppressed through the costly and arbitrary enforcement
8 of campaign finance law and regulations, state politics is a tilted playing field that favors well-
9 funded candidates backed by deep-pocketed special interests.

10 That was one of the problems the voters sought to address when they passed the Political
11 Reform Act in 1974. [Exhibit 34, p. 0812, Cal Gov Code Section 81001 (c), (d), (e), (f)]

12 The pursuit of this Accusation against Ms. Shelley and her committees after the Secretary of
13 State has completed an enforcement action for the identical late-filed statements is a violation of
14 the Double Jeopardy clause of the Fifth Amendment to the United States Constitution and is
15 barred as a matter of law. It is a deeply entrenched concept of criminal law that a State should
16 not be allowed to make repeated attempts to convict an individual for an alleged offense (See
17 Cal. Penal Code section 687). Further, this action threatens to violate Ms. Shelley's First
18 Amendment rights by seeking to impose unwarranted reputational damage that would mortally
19 wound any potential future candidacy. Complainant has violated the Fourteenth Amendment's
20 Equal Protection and Due Process clauses by its arbitrary and disparate treatment of Ms. Shelley
21 and her committees; and, in seeking to impose fines of \$12,000 to \$17,000 against a candidate
22 who acted in good faith and substantially complied with the law, this action teeters on the edge
23 of violating the Eighth Amendment prohibition on excessive fines.

24 The mitigating information in this case, and the lack of public harm, are factors that
25 overwhelm any reasonable assessment of the seriousness of the alleged violations. Additionally,
26 Complainant's bad-faith conduct in this case provides sufficient reason to find that Complainant
27 has not met its burden to prove, by a preponderance of the evidence, that a violation of the law
28 has occurred.

1 Respondents respectfully ask that Your Honor find:

- 2 1. The FPPC's attorney failed to fully disclose facts to the trier of fact during the hearing on
3 the FPPC's complaint;
- 4 2. The FPPC's own conduct caused, created and contributed to the alleged violations;
- 5 3. Respondents acted in good faith at all times and no violation of the law has occurred;
- 6 4. In the context of the factors set forth in Regulation 18361.5, subdivision (d), no monetary
7 penalties are justified.

8 Respondents respectfully ask that Your Honor take the following actions:

- 9 1. Issue a proposed decision to close this case against Respondents with no further action;
- 10 2. Recommend that Susan Shelley be awarded her costs of suit;
- 11 3. Request that the FPPC investigate the misconduct of its attorney(s) in this hearing,
12 including whether the misconduct was directed or approved by any person or persons.
- 13 4. Recommend that the Legislature create an independent Office of Inspector General
14 within the FPPC to provide much-needed oversight of the agency, and in particular the
15 Enforcement Division, which the Commissioners cannot oversee because of an ethical
16 "curtain" that prevents them from knowing the details of cases on which they may later
17 have to rule.

18
19 Dated: July 2, 2019

20
21 SUSAN G. SHELLEY

22
23 BY: 

24 SUSAN G. SHELLEY, SUSAN
25 SHELLEY FOR ASSEMBLY 2013,
26 AND SUSAN SHELLEY FOR
27 ASSEMBLY 2014
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