

Susan Shelley

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May 18, 2017

Ms. Angela J. Brereton  
Senior Commission Counsel  
Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814  
By email: abrereton@fppc.ca.gov

Dear Ms. Brereton:

Thank you for the opportunity to respond to your amended report of April 18 in support of a finding of probable cause.

It is my sincere belief that a person of ordinary caution and prudence, looking at all the facts of this case, would not believe or entertain a strong suspicion that violations of the law occurred here.

I believe a person of ordinary caution and prudence would believe that the FPPC's unique requirement for candidates in this election to have two committees created extraordinary circumstances, particularly for the two candidates in the runoff 60 days following the primary, only one of whom was a first-time state candidate with no professional staff.

I believe a person of ordinary caution and prudence would see that I made a good-faith effort to learn and comply with the complex requirements in a compressed special-election schedule, and that I sought the assistance of Commission staff before during and after the election, but inadvertent filing errors occurred under the pressure of an active campaign. The two-committee requirement meant that every error was doubled, and the short time schedule meant that I was not notified of the errors until 2014, despite my effort to find out earlier if everything had been filed correctly. Given the unique circumstances of this campaign, the Secretary of State's office found good cause to waive liability for some of the filing errors that are included as counts in this report, and even so I paid \$2,210 in fines to the Secretary of State for the errors. Further, the FPPC would not permit me to close the 2014 committee without forgiving \$30,000 in loans that I had made to the campaign, which was a unique burden.

Evidence in the custody and control of the Fair Political Practices Commission demonstrates that all 11 counts in the report were inadvertent errors, and that I sought the assistance of Commission staff repeatedly in an effort to learn, understand and comply with the filing requirements. For your convenience, a copy of my email correspondence with Commission staff is attached.

In my email of August 16, 2013, to [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov), I asked for help to understand the pre-election reporting deadlines for the two committees, which, as I state apologetically in the email, I learned that I had inadvertently missed. (It's my recollection that I learned this from a news report about other candidates' fundraising.) I stated in that email, "Thank you for your assistance. I'm making every effort to comply with everything, and it's a daunting task."

Ms. Brereton, when you dropped the earlier charge related to attribution of funds, you told me that you recognized that I had asked for help, and you said the FPPC does not typically charge people for things on which they have asked for help.

I asked for help on the pre-election reporting deadlines as soon as I realized that I had missed one.

A response from the Commission's advice staff came three days later, on August 19, answering my question with the information that both committees had to file reports every time either of them had to report. But although I had asked for assistance to understand pre-election reporting deadlines, the answer did not provide either the schedule or a link to the schedule on the FPPC website, if that's where it was posted. I had not found the schedule on the Secretary of State's website where the information about semi-annual reports and other required forms was posted, or in the materials I received from Los Angeles County.

Until the special election was called, the deadlines for pre-election reports were unknown, and until the primary was over and no candidate received over 50 percent of the vote, the general election was not officially called. As a result, when I attempted to learn all the reporting requirements at the start of the campaign, I did not find the pre-election reporting schedule and I did not know the dates.

The requirement to have both a 2014 committee and then later a 2013 committee, due to the delayed resignation of the incumbent, created a unique situation and the burden of undue complexity in reporting.

In my email of August 19, 2013, to the Commission staff, I explained the difficulty I was having on the Cal-Access website in reporting the transfer of \$17,500 from the 2014 committee to the 2013 committee. I wrote, "I reported it as a transfer but that doesn't appear to be correct—it looks like I loaned my campaign an additional \$17,500 if you look at both reports together." And I state, "I couldn't locate the correct information on how to report this transfer accurately." I respectfully call to your attention that this email is time-stamped 11:27 p.m. on August 19, which is the day the Commission staff answered my email of August 16. I was working to comply with the law as soon as I was informed of how to do it.

The Commission has evidence of the unreasonable complexity of the two-committee requirement. In the complaint dated April 29, 2016, you personally experienced the problem of double-counting the transferred funds, stating that "total receipts for both committees during the audit period was approximately \$146,504, and total expenditures was approximately \$145,146." Your April 18, 2017, document says the correct numbers were \$115,604 and \$114,246. I believe that's still incorrect—for the

special election campaign in 2013, I raised almost exactly \$100,000, in both committees combined, for the primary and general election.

I think a person of ordinary caution and prudence would believe that if even the FPPC's Senior Commission Counsel has difficulty accurately calculating the campaign's fundraising and spending in the required two committees, then a first-time state candidate with no professional staff would certainly struggle with it, having to invest far more time to report the numbers accurately than would be required of a typical campaign with one committee, and that this unique situation should weigh very heavily in mitigation.

To be clear about what was raised and spent, to the best of my ability to recall and reconstruct it, all the money that was raised in the 2014 committee was transferred to the 2013 committee with the exception of approximately \$1,500 that I left in the bank account to keep it open. After the election, on December 20, 2013, I sought advice again from the Commission staff, trying to determine if it was possible to transfer the loans from the 2014 committee to the 2013 committee and then close the 2014 committee, keeping the 2013 committee open so supporters could help me retire the debt in the future. My email was answered on December 23 with this single sentence: "We are researching your question, and will be contacting you as soon as possible."

Instead of a written answer, I received a phone call. "We have a question," the staffer told me. "Are you going to run again?" I said that I did not know. The Commission staffer told me that the answer to my question was no, the loans could not be transferred.

That left me a choice between running again so the committee could remain open or forgiving \$30,000 in personal loans to the 2013 campaign. That is, by any definition, an unreasonable burden.

I transferred the small amount that was left in the 2013 account (there were two refunds from L.A. County for overcharges) to the 2014 committee before the end of the year, and the 2013 committee was terminated.

When I ran in 2014, I did not use the contributions to repay the debt from the 2013 campaign. I ran the best campaign that I could, worked long hours and made a good-faith effort to win, consistent with the expectations of donors that they were giving to the 2014 campaign, and not to reduce the 2013 campaign's debt. At the conclusion of the campaign, I was able to repay \$3,000 of the debt with the refund of an overcharge from an advertising buy. The 2014 committee still has \$27,000 in debt. The FPPC has advised me in a formal letter that I may now raise funds into that committee to pay enforcement penalties. I hope that won't be necessary.

I think a person of ordinary caution and prudence would review the 11 counts in this report and all the evidence and conclude that a person who is trying this hard to comply with the law cannot reasonably be charged with violating that same law.

Eight of the counts pertain to late-filed pre-election reports. Because of the two-committee requirement and the compressed special-election calendar, and because I finished second in the primary and was in the runoff, it turned out that there were eight separate pre-election reports due within a 90-day period, in both electronic and paper formats, for a total of 16 filing deadlines for pre-election reports in twelve weeks. The only other campaign in the history of California that ever faced this requirement was that of my general election opponent, who outraised and outspent my campaign by a factor of at least 7-1, and who had a team of high-priced political professionals working for him.

My overall workload in my all-volunteer campaign filled 18-20 hours a day. During that hectic three months, I spent many late nights on campaign finance reporting and I thought I had completed and filed every required campaign finance report. To make sure I had done it all correctly, in my December 20 email to the Commission staff, in which I asked about the loan transfer, I also wrote, "I acted as my own treasurer and would like to make sure the campaign's reporting is in full compliance. I made every effort during the campaign to file all required reports as completely and accurately as possible. Please let me know if anything is missing or incorrect."

I asked for help.

That request was not answered, but in February, 2014, I received letters from the Political Reform Division of the Secretary of State's office that assessed fines for late filings in the 2013 primary. I wrote checks on February 25, 2014, for \$110 (Committee 1355796, Form 460, 8-4-13 to 8-31-13, paper \$100, electronic \$10), \$270 (Committee 1358945, Form 460, 8-4-13 to 8-31-13), \$660 (Committee 1355796, Form 460, 7-1-13 to 8-3-13, paper \$550, electronic \$110), and \$550 (Committee 1358945, Form 460, 7-1-13 to 8-3-13).

Because of the compressed special-election calendar, by the time I was informed of the errors I'd made in the primary, the general election was already over. I tried to correct all the errors that I'd made, and I wrote to the Political Reform Division to explain the circumstances.

The Commission has the two letters from the Political Reform Division of the Secretary of State's office which granted waivers of liability for "good cause" in the category of "other unique, unintentional factors beyond the filer's control not stemming from a negligent act or nonaction." The waivers pertain to the liability for late-filed pre-election reports covering the period from October 6, 2013, through December 31, 2013.

I think a person of ordinary caution and prudence, seeing that an agency of the state government found that there was good cause to reduce liability for late filings, including granting a full waiver for the late paper filings, would believe that a violation of the law has not occurred in these and related instances, and would further believe that the late-fee penalties already paid are significant.

In addition to the fines listed above, I wrote checks on July 2, 2014, for \$300 (Committee 1358945, Form 460, 10-6-13 to 12-31-13), \$110 (Committee 1358945, Form 460, 9-1-13 to 10-5-13), \$110 (Committee

1355796, Form 460, 9-1-13 to 10-21-13) and \$100 (Committee 1355796, Form 460, 10-6-13 to 12-31-13).

The three remaining counts in the report pertain to \$5,000 reports. As a first-time state candidate, I was unaware of this requirement until the campaign was audited in June, 2014, when the FTB's auditor informed me that I was supposed to file these separate reports for two loans that I made to the campaign and for a contribution from the Howard Jarvis Taxpayers Association Small Contributor Committee. It would have been in my interest to file the reports and I would happily have done so if I had known about them. I made the loans to demonstrate publicly that the campaign would have resources, and I certainly wanted to advertise the support of the Howard Jarvis Taxpayers Association. This is clearly and obviously an inadvertent error, occurring near the start of the campaign. The funds were fully disclosed to the public long before the primary election.

I made one more request for help to find out if everything had been filed that was due. In October, 2015, the Political Reform Division sent me an erroneous letter stating that the 2014 committee's annual \$50 fee had not been paid on time. In my letter of response, I enclosed copies of the canceled check to show that the fee had been paid on time, and I asked for verification "that the committee does not currently owe any fees or fines to the Secretary of State." I received no answer.

In the documents you sent in January, 2016, charging three counts of violating the Political Reform Act, you wrote:

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in the context of the factors set forth in Regulation 18361.5, subdivision (d): 1) the seriousness of the violations; 2) the presence or lack of intent to deceive the voting public; 3) whether the violation was deliberate, negligent or inadvertent; 4) whether the Respondent demonstrated good faith in consulting with Commission staff; 5) whether there was a pattern of violations; and 6) whether, upon learning of the violation, the violator voluntarily provided amendments to provide full disclosure.

I believe a person of ordinary caution and prudence would look at the facts of this case and see:

1. This situation was unique due to the requirement for two committees.
2. The seriousness of the violations is fully mitigated because all the funds raised for the 2014 committee were disclosed to the public well before the primary or general election. The transfer of those funds to the 2013 committee so they could legally be spent did not add information that the voters did not already have. In three out of four cases, the pre-election reports were filed electronically within a few days of their deadline. In only one case did I completely miss a pre-election report that was due, not realizing that I had missed it until I was notified the following year, and the Secretary of State's office granted a partial waiver of liability for the

electronic reports, and a full waiver for the paper reports, for “good cause” because of the unique circumstances.

3. There was no intent to deceive the voting public.
4. The violations were inadvertent.
5. I consulted with Commission staff repeatedly and made a good-faith effort, and every possible effort, to comply with the law.
6. Because all the pre-election reports were due within a 90-day period that ended in November, 2013, and I did not know until I was notified the following February that I had missed anything, this cluster of errors is not a “pattern of violations.” As soon as I learned or was notified that anything was amiss, I always tried to correct it immediately.
7. I paid \$2,210 in late fees to the Secretary of State’s office for the late filing of pre-election reports, which is a substantial penalty for inadvertent paperwork errors by a first-time state candidate with an all-volunteer campaign.

In conclusion, I believe it would be appropriate for the Commission to close this case without further action, and I respectfully ask for a finding that there is not probable cause to believe that I or my committees violated the Political Reform Act.

Thank you.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Susan Shelley', with a long horizontal flourish extending to the right.

Susan Shelley

att.