



July 14, 2021

Subject: Requesting additional action for the proposed stipulation in the matter of BluPAC and Douglas Chan

Dear FPPC Chair and Commissioners:

I'm writing to you because Dark Money is an important issue for the FPPC and the City of Santa Clara. This Commission made a name for itself back in 2013 when it blazed a trail by uncovering dark money used against statewide propositions 30 and 32 in 2012 and uncovered that the source of funds was a nonprofit in the Koch Brothers' dark money network.

The matter of BluPAC and Douglas Chan is clearly another example of dark money being used to conceal the identity of donors in a California election in Santa Clara. It is possibly of even more importance given this targeted a local, municipal, small city election with big monies by attempting to skirt the law using loopholes. By not applying the same scrutiny towards this case and turning a blind eye to dark money violations after justly enforcing the case in 2013, there is a chance this body will be perceived as selectively enforcing the rules in a partisan manner.

The facts of this case are simple. BluPAC, led by Douglas Chan, reported collecting and expending \$49,265 to oppose a group of candidates for local office and support others. They reported to have expended 100% of their monies to the Citizens Economic Council (CEC), a slate-mailer organization. We do not contest BluPAC's expenditure of \$49,265 to the CEC. However, there is a preponderance of evidence that they did not fully report their expenditures. By your own staff's admission, this deliberate attempt to avoid triggering the \$50,000 threshold requiring BluPAC to register as a recipient committee was a calculated move showing a high level of intent and sophistication.

"...there was insufficient evidence to conclude BluPAC had become a recipient committee, **as it kept political expenditures under the \$50,000 threshold** for a multipurpose committee to become a recipient committee. **This displayed a level of sophistication**, so it is aggravating that no disclosure was made locally prior to the election and only 1 day prior to the election with the Secretary of State's Office."
[emphasis added]

With their sophistication and deliberate under-reporting, BluPAC was only shy of the \$50,000 threshold by \$735. While your staff had gathered some of the evidence related to BluPAC's campaign activity, it had originally not uncovered all the facts. Over the course of the last year I

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have provided your staff physical evidence that demonstrates how BluPAC exceeded the \$50,000 threshold in 2016. This evidence included **unreported** expenditures of:

- Two full-page, color, gloss mailers that clearly state "paid for by BluPAC" that do not qualify for the Safe Harbor provisions afforded to slate mailer organizations.
- A professionally produced and hosted BluPAC website, still live at BluPACUS.org.
- Three separate professionally-produced video ads opposing three Santa Clara candidates for local office, still live on BluPAC's website and YouTube channel.
- Three separate mass-delivered robo-text messages targeting Santa Clara voters opposing 3 candidates for local office, linking directly to BluPAC's website.
- Sponsored / paid-for Facebook ads from BluPAC's direct Facebook page promoting a Santa Clara candidate for local office, linking directly to BluPAC's website.
- Consulting fees (or in-kind contributions in-lieu of fees) with Rich Robinson Consulting, confirmed by their publicly listed "past clients" and by Rich Robinson himself in a Mercury News article.

For full transparency I have attached the complete correspondence between myself and Enforcement staff, as well as digital copies of all mailers, robo-text messages, news articles, and Facebook ads. Links in my reports to staff include links to videos and a download of their complete archived website.

As Santa Clara's chief elections officer, it is my professional opinion that these unreported expenditures total in the tens of thousands of dollars. As one of the only entities entitled to do so, the Commission should exercise its subpoena authority to assert the true costs of these unreported expenditures. These omissions were not omissions of ignorance or accident. These were willful, deliberate omissions in an attempt to skirt the laws on disclosure requirements. By your own staff's admission "this displayed a level of sophistication" on the part of Mr. Chan and BluPAC.

Further, your own staff report confirms Mr. Chan's experience as an attorney and a former public official familiar with FPPC regulations.

"Chan is an experienced attorney in a business law firm and is the responsible officer for the 501 (c)(4), BluPAC. In addition, Chan has held various public service offices for which he has been required to file Statement of Economic Interests, but not campaign finance reports."

As an experienced attorney, Mr. Chan should know that *ignorantia juris non excusat* or "ignorance of the law excuses not." Ensuring accurate and timely reporting of campaign related activity is at the core of the FPPC's charter.

As you know, the item before you today is no stranger to this Commission. This item was first agendized for July 2020, was continued to September 2020, and pushed once again to July 2021. However, in that one year span, the staff report and proposed stipulation has remained

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virtually unchanged despite the extensive evidence presented. While I acknowledge staff's willingness to accept additional evidence over the course of this period, I am disappointed that they have not engaged my office on the details of the case. No matter the hollow excuses Mr. Chan could offer, it is shocking that the Enforcement staff would rely on testimony from a non-credible individual already found in violation by your own staff and already convicted by my office for his reporting violations. I understand the pressure Enforcement staff may be under due to the impending expiry of the statute of limitations. However, I am confident that by working together with my office as the local elections official and our City Attorney's office, we can make a very strong case that finds this matter as another landmark dark money violation case.

Finally, to find BluPAC in violation of failure to register as a recipient committee the Commission does not need to confirm an omission of tens of thousands of dollars of unreported expenditures – which there likely is. You only need to verify an omission of \$735.

If the commission cannot determine this today, I humbly ask you to refer this back to staff with the direction to 1) issue a notice of probable cause to stay the expiry of the statute of limitations, 2) actively engage me and my office on the evidence as presented, and 3) come back in 60 days with an update to the Commission and perhaps a revised stipulation.

By considering this stipulation as presented and ignoring the new evidence herewith, the Commission would leave unaddressed a clear and egregious violation of the FPPC's dark money laws and choose to reduce this matter to a 24-hour Campaign Late Filer slap-on-the-wrist. This would be a serious disservice to the Commission's previous groundbreaking work and send a terrible signal to our political establishment.

Sincerely,

Hosam Haggag
Santa Clara City Clerk

cc: Galena West, Executive Director, FPPC
Angela Brereton, Chief of Enforcement, FPPC
Bridgette Castillo, Senior Commission Counsel, FPPC
Brian Doyle, City Attorney, City of Santa Clara