1 GALENA WEST Chief of Enforcement 2 THERESA GILBERTSON Commission Counsel 3 Fair Political Practices Commission 1102 Q Street, Suite 3000 Sacramento, CA 95811 4 Telephone: (916) 322-5660 5 Email: tgilbertson@fppc.ca.gov 6 Attorneys for Complainant Enforcement Division of the Fair Political Practices Commission 7 8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION 9 STATE OF CALIFORNIA 10 In the Matter of: FPPC Case No. 2018-00916 11 BRIAN PAYTON FOR EUREKA CITY STIPULATION, DECISION AND ORDER 12 SCHOOL BOARD 2018 and BRIAN **PAYTON** 13 Respondents. 14 15 INTRODUCTION 16 Brian Payton for Eureka City School Board 2018 ("Committee") was the candidate-controlled 17 committee for Brian Payton ("Payton"), an unsuccessful candidate for Eureka City School Board during 18 the November 6, 2018 General Election. Payton served as the treasurer for the Committee. The Committee 19 and Payton violated the Political Reform Act (the "Act") by failing to use a designated campaign bank 20 account. 21 SUMMARY OF THE LAW 22 The Act and its regulations are amended from time to time. The violations in this case occurred in 23 2018. For this reason, all legal references and discussions of law pertain to the Act's provisions as they 24 existed at that time—unless otherwise noted. 25 26 27 ¹ The Political Reform Act—sometimes simply referred to as the Act—is contained in Government Code sections 81000 through 91014. All statutory references are to this code. The regulations of the Fair Political Practices Commission 28 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

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

When enacting the Political Reform Act, the people of California found and declared that previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² Thus, it was decreed that the Act "should be liberally construed to accomplish its purposes."³

One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed and improper practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵ Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be "vigorously enforced."

Committees

A "committee" includes any person who directly or indirectly receives contributions totaling \$2,000 or more in a calendar year.⁷ A committee must file a statement of organization with the Secretary of State within 10 days of qualifying as a committee.⁸

One Designated Campaign Bank Account

A candidate-controlled committee must deposit all contributions and make all expenditures from the committee's designated bank account. Any loans to the candidate or committee must be deposited in the campaign bank account before being utilized. Any personal funds a candidate intends to spend on campaign-related expenses must first be deposited in the campaign bank account before the expenditure is made.

² Section 81001, subdivision (h).

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³ Section 81003.
4 Section 81002, subdivision (a).

⁵ Sections 84200, et seq.

⁶ Section 81002, subdivision (f).

⁷ Section 82013, subdivision (a).

⁸ Section 84101, subdivision (a).

⁹ Section 85201, subdivision (e).

¹⁰ Section 85201, subdivision (c).

¹¹ Section 85201, subdivision (d), and Regulation 18524, subdivision (a).

Joint and Several Liability

Every committee must have a treasurer.¹² It is the duty of the treasurer and the candidate to ensure that the committee complies with all the requirements of the Act.¹³ The treasurer and the candidate may be held jointly and severally liable, along with the committee, for violations committed by the committee.¹⁴

SUMMARY OF THE FACTS

This matter was opened as part of the Enforcement Division's pre-election efforts during the November 6, 2018 General Election. Humboldt County Elections referred the matter to the Enforcement Division because the Committee and Payton failed to timely file a pre-election campaign statement.

On July 27, 2018, Payton filed the Committee's initial statement of organization, indicating that the Committee had not yet qualified, however, subsequent campaign statements indicate that the Committee qualified on or around July 3, 2018. The Committee and Payton failed to timely file a first preelection campaign statement for the reporting period ending September 22, 2018 by the deadline of September 27, 2018. This statement was filed eight days late on October 5, 2018, after the Enforcement Division contacted the candidate. This statement only covered the reporting period of July 1, 2018 through September 22, 2018; however, since the Committee had not previously filed any campaign statements, the Committee and Payton were required to file for the reporting period starting January 1, 2018. As a result, the Committee's activity from prior to July 1, 2018, totaling approximately \$1,300, was not disclosed until amendments were filed in 2020.

The Committee and Payton timely filed the second pre-election campaign statement for the reporting period ending October 20, 2018 but failed to file any post-election campaign statements until contacted again by the Enforcement Division. The Committee and Payton filed the outstanding statements and filed a statement of organization to terminate the Committee with local county election officials on January 22, 2020.

The campaign statements demonstrate, and Payton admitted, that the Committee and Payton did not utilize the designated campaign bank account for depositing the contributions of the candidate. Instead, the candidate made expenditures on behalf of the Committee utilizing his own accounts. The Committee

¹² Section 84100.

¹³ Sections 81004, 84100, 84104, and 84213, and Regulation 18427.

¹⁴ Sections 83116.5 and 91006.

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¹⁵ See Section 83116, subd. (c). ¹⁶ Regulation 18361.5, subd. (d).

statement indicates that the campaign bank account was not opened until August 14, 2018. Payton made at least \$2,228 in expenditures for the Committee using his own funds prior to opening the campaign bank account. After the account was opened, Payton continued to use his own funds instead of using the campaign bank account, for a total of approximately \$530. In total, this activity was approximately 63% of the committee activity. In 2018, the Committee reported raising and spending approximately \$4,338.

and Payton reported several non-monetary contributions from Payton. A notation on the campaign

VIOLATIONS

Count 1: Failure to Use One Designated Campaign Bank Account

The Committee and Payton failed to deposit all contributions, including personal funds of the candidate, into the designated campaign bank account and failed to make all expenditures from the designated campaign bank account from approximately May 25, 2018 through September 27, 2019, in violation of Section 85201.

PROPOSED PENALTY

This matter consists of one count. Therefore, the maximum penalty that may be imposed is \$5,000.15

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the facts of the case, the public harm involved, and the purposes of the Act. Also, the Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior record of violations. ¹⁶

Due to the size of the committee and the inexperience of the candidate, the potential violations in this matter are considered as generally aggravating while the most serious violation, the failure to exclusively utilize a designated campaign bank account, is presented as the one charged violation. Failing to utilize a designated campaign bank account impedes the ability of the Enforcement Division to substantiate the campaign activity that a candidate reports. The violations appear to be negligent, as

opposed to deliberate or inadvertent, as Payton disclosed his spending as nonmonetary contributions and responded to requests to file from the Enforcement Division. In aggravation, Payton failed to maintain adequate source documentation and records to substantiate reporting. Payton admitted that records were accidently destroyed by rain. However, corrective amendments were filed voluntarily to provide disclosure. The violations appear to be isolated and not part of a larger pattern. The Committee and Payton were cooperative with the Enforcement Division. The Committee and Payton have no prior enforcement history.

Additionally, the Commission considers penalties in prior cases with comparable violations. A recent similar case with respect to Count 1 is *In the Matter of David Albanese for Oxnard City Council and David Albanese*; FPPC Case No. 16/19663. The respondents failed to make all campaign expenditures and deposit all contributions into a designated campaign bank account, totaling about \$5,162 in contributions and \$4,200 in expenditures. On September 19, 2019, the Commission imposed a penalty of \$1,500. As the two committees are similar in size, a similar penalty is warranted for this case. However, in light of the other potential violations present here, including the failure to timely file pre-election campaign statements, a post-election semiannual campaign statement, and failure to report required information related to campaign activity, a penalty of \$2,000 is recommended.

After considering the factors listed in Regulation 18361.5, prior similar cases, and other relevant facts, a total penalty of \$2,000 is recommended.

CONCLUSION

Complainant, the Enforcement Division of the Fair Political Practices Commission, and Respondents Brian Payton for Eureka City School Board 2018 and Brian Payton hereby agree as follows:

- 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate summary of the facts in this matter.
- 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose of reaching a final disposition without the necessity of holding an administrative hearing to determine the liability of Respondents pursuant to Section 83116.

- 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9. This includes, but is not limited to the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially reviewed.
- 5. Respondents agree to the issuance of the decision and order set forth below. Also, Respondents agree to the Commission imposing against them an administrative penalty in the amount of \$2,000. One or more payments totaling said amount—to be paid to the General Fund of the State of California—is/are submitted with this stipulation as full payment of the administrative penalty described above, and same shall be held by the State of California until the Commission issues its decision and order regarding this matter.
- If the Commission refuses to approve this stipulation—then this stipulation shall become null and 6. void, and within fifteen business days after the Commission meeting at which the stipulation is rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.
- 7. The parties to this agreement may execute their respective signature pages separately. A copy of any party's executed signature page, including a hardcopy of a signature page transmitted via fax or as a PDF email attachment, is as effective and binding as the original.

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2	Dated:	Galena West, Chief of Enforcement Fair Political Practices Commission
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6	Dated.	Brian Payton, Candidate and Treasurer Individually and on behalf of Brian Payton for Eureka City School Board 2018
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1	The foregoing stipulation of the parties "Brian Payton for Eureka City School Board 2018 and	
2	Brian Payton," FPPC Case No. 2018-00916, is hereby accepted as the final decision and order of the Fair	
3	Political Practices Commission, effective upon execution below by the Chair.	
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5	IT IS SO ORDERED.	
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7	Dated:	
8	Richard C. Miadich, Chair Fair Political Practices Commission	
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