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8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA

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11 In the Matter of:

12 YES ON P FOR QUALITY SCHOOLS
and JAMES ROD BORBA,

13 Respondents.

FPPC Case No. 15/1559

14 STIPULATION, DECISION AND ORDER

15 **INTRODUCTION**

16 In 2012, Yes on P for Quality Schools was a ballot measure committee, which was primarily
17 formed to support a school bond proposition that was on the November 6, 2012 ballot for voters in the
18 Folsom Cordova Unified School District in Sacramento County. James Rod Borba was the committee
19 treasurer and principal officer.

20 The committee raised and spent close to \$86,000, but it failed to file virtually all required
21 campaign statements and reports before the election—in violation of the Political Reform Act.¹

22 **SUMMARY OF THE LAW**

23 The Act and its regulations are amended from time to time. The violations in this case occurred in
24 2012. For this reason, all legal references and discussions of law pertain to the Act's provisions as they
25 existed at that time.

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.

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

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

6 One purpose of the Act is to promote transparency by ensuring that receipts and expenditures in
7 election campaigns are fully and truthfully disclosed so that voters are fully informed and improper
8 practices are inhibited.⁴ Along these lines, the Act includes a comprehensive campaign reporting system.⁵
9 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will be
10 “vigorously enforced.”⁶

11 **Mandatory Filing of Campaign Statements and Reports**

12 At the core of the Act’s campaign reporting system is the requirement that committees, including
13 ballot measure committees, must file campaign statements and reports for certain reporting periods and
14 by certain deadlines.⁷

15 For example, in connection with the general election that was held on November 6, 2012, ballot
16 measure committees were required to file pre-election campaign statements for the periods ending
17 September 30 and October 20, 2012 by the deadlines of October 5 and 25, 2012, respectively. Also,
18 committees were required to file semi-annual campaign statements for the period ending December 31,
19 2012 by the deadline of January 31, 2013.⁸

20 Additionally, each committee that made or received a late contribution was required to file a late
21 contribution report within 24 hours. At the time, a “late contribution” was any contribution aggregating
22 \$1,000 or more that was made or received before an election, but after the closing date of the last
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25 ² Section 81001, subdivision (h).

26 ³ Section 81003.

27 ⁴ Section 81002, subdivision (a).

28 ⁵ Sections 84200, et seq.

⁶ Section 81002, subdivision (f).

⁷ Sections 84200, et seq.

⁸ See Sections 84200, subdivision (a); 84200.5, subdivision (b); and 84200.7, subdivision (b).

1 campaign statement that was required to be filed before the election. This period of time before the
2 election was referred to as the late contribution reporting period. In connection with the general election
3 that was held on November 6, 2012, the late contribution reporting period was October 21 through
4 November 5, 2012.⁹

5 As for the place of filing, committees existing primarily to support or oppose a local measure to
6 be voted upon in any number of jurisdictions within one county are required to file their campaign
7 statements and reports with the elections official for that county and for the committee's county of
8 domicile.¹⁰

9 **Joint and Several Liability of Committee and Treasurer**

10 It is the duty of a committee treasurer to ensure that the committee complies with the Act.¹¹ A
11 treasurer may be held jointly and severally liable, along with the committee, for violations committed by
12 the committee.¹²

13 **SUMMARY OF THE FACTS**

14 On September 18, 2012, the Yes on P committee filed a statement of organization, which
15 identified Borba as the committee treasurer and principal officer. This filing indicated that the committee
16 was primarily formed to support Measure P—but a box was checked on the filing to indicate that the
17 committee had not yet qualified.

18 Measure P was a Folsom Cordova Unified School District bond proposition, which was on the
19 November 6, 2012 ballot for voters in the school district in Sacramento County.

20 On September 26, 2012, Yes on P first received contributions totaling \$1,000 or more, which
21 qualified it as a committee under the Act.

22 On October 31, 2012, Yes on P filed an amended statement of organization, reflecting that it had
23 qualified as a committee. (This was filed 25 days late. It should have been filed no later than October 6,
24 2012—within 10 days of qualifying.¹³)

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26 ⁹ See Sections 84203, subdivisions (a) and (b); and 82036.

27 ¹⁰ Section 84215, subdivision (c).

28 ¹¹ Sections 81004, 84100, and Regulation 18427.

¹² Sections 83116.5 and 91006.

¹³ Section 84101, subdivision (a).

1 That year, the committee raised and spent close to \$86,000, but no campaign statements or reports
2 were filed by the committee—other than the two statements of organization noted above.

3 Specifically, the committee failed to file a pre-election campaign statement for the reporting
4 period of January 1 through September 30, 2012. Also, the committee failed to file a pre-election
5 campaign statement for the reporting period of October 1 through 20, 2012. Additionally, the committee
6 failed to file a semi-annual campaign statement for the reporting period of October 21 through December
7 31, 2012. A rough approximation of reportable activity per reporting period is provided in the chart
8 below:¹⁴

Reporting Period Ending	Receipts	Expenditures
9/30/12	\$26,700	\$18,229
10/20/12	\$39,450	\$33,991
12/31/12	\$19,800	\$33,742
Total:	\$85,950	\$85,962

12
13 Measure P passed—with approximately 71.48% of the vote.

14 VIOLATIONS

15 Count 1

16 *Failure to File Pre-Election Campaign Statements*

17 In failing to file pre-election campaign statements for the reporting periods ending September 30
18 and October 20, 2012, the Yes on P committee and Borba violated Sections 84200.5, subdivision (b); and
19 84200.7, subdivision (b).

20 Count 2

21 *Failure to File Semi-Annual Campaign Statement*

22 In failing to file a semi-annual campaign statement for the reporting period ending December 31,
23 2012, the Yes on P committee and Borba violated Section 84200, subdivision (a).

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28 ¹⁴ Exact dates of accrued expenses were difficult to determine due to limited records.

1 **Count 3**

2 *Failure to File 24-Hour Reports*

3 During the last 16 days before the election, the Yes on P committee received seven contributions
4 of \$1,000 or more—totaling \$16,500. These contributions were received on four different days (October
5 22, 29, 30, and November 5, 2012). Receipt of these contributions was required to be reported on four
6 different late contribution reports (one for each day)—within 24 hours.

7 However, the Yes on P committee and Borba failed to file these reports—in violation of Section
8 84203, subdivision (b).

9 **PROPOSED PENALTY**

10 This matter consists of three counts. The maximum penalty that may be imposed is \$5,000 per
11 count. Thus, the maximum penalty that may be imposed is \$15,000.¹⁵

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

20 The Commission has found disclosure to be essential, especially before an election. In this case,
21 the Enforcement Division did not find evidence of intentional concealment or deception. Rather, it
22 appears the violations were the result of negligence and a lack of diligence in learning the requirements
23 of the Act.

24 Regarding Counts 1 through 3, the public harm inherent in failure to file campaign statements and
25 reports is that the public is deprived of important, time-sensitive information regarding political
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¹⁵ See Section 83116, subdivision (c).

28 ¹⁶ Regulation 18361.5, subdivision (d).

1 contributions and expenditures. Generally, this type of violation is considered to be more serious when it
2 involves failure to file statements or reports that were required to be filed before an election.

3 *In the Matter of Contra Costa Supervisor John Gioia 2010 Officeholder Account, Contra Costa*
4 *Supervisor John Gioia 2014 Officeholder Account, John Gioia, and Jennifer Peck*; FPPC Case Nos.
5 17/84 and 17/86 (approved Aug. 17, 2017), the Commission imposed a penalty in the amount of \$14,000
6 for failure to timely file 14 semi-annual campaign statements, two pre-election campaign statements—
7 and for failure to file five 24-hour reports. Other filing violations were noted, but for settlement purposes,
8 they were not charged as separate counts. Instead, they were identified as aggravating factors. The
9 current case also involves uncharged potential counts as aggravating factors. For example, Yes on P did
10 file an amended statement of organization shortly before the election (reflecting that it had qualified as a
11 committee)—but the filing was 25 days late. Also, Yes on P accepted four contributions from major
12 donors of \$10,000 or more, but the committee failed to send the required notice to these contributors
13 about their major donor filing requirements—and two of the contributors failed to file as major donors.

14 Generally, *Gioia* involved more egregious aggravating factors. In that case, it was noted that the
15 violations were indicative of a pattern over several years, and one or more of the respondents had a prior
16 enforcement history. In contrast, the current case does not involve parties with a history of prior, similar
17 violations. Nor does the current case involve a multi-year pattern of disregard for the Act’s filing
18 requirements.

19 Another distinction is the level of sophistication of the parties. It was noted that *Gioia* had been a
20 member of the Contra Costa County Board of Supervisors since 1998. Thus, he was an experienced
21 candidate—with ample reason to be familiar with the Act’s filing requirements. Similar facts are not
22 present in the current case.

23 To some extent, these considerations are overshadowed by differences in the amount of
24 reportable activity per campaign statement/report.

25 Regarding the pre-election campaign statements in *Gioia*, average receipts and expenditures per
26 reporting period were approximately \$14,197 and \$7,644, respectively. Both pre-election statements
27 were filed well after the election, and both were charged as a single count—for which a penalty in the
28 amount of \$3,000 was approved.

1 In the current case, Count 1 also involves failure to file two pre-election campaign statements
2 before the election. However, average receipts and expenditures per reporting period are approximately
3 \$33,075 and \$26,110, respectively. This is much higher than *Gioia*. Under these circumstances, a penalty
4 in the amount of \$3,500 is recommended for Count 1.

5 Regarding the semi-annual campaign statements in *Gioia*, average receipts and expenditures per
6 reporting period were approximately \$830 and \$1,154, respectively. Six counts were charged for all 14
7 campaign statements, and penalties in the amount of \$1,500 per count were approved.

8 In the current case, Count 2 involves failure to file a single semi-annual campaign statement.
9 However, receipts and expenditures for the reporting period are approximately \$19,800 and \$33,742,
10 respectively. This is much higher than *Gioia*, and in that case, the penalty that the Commission imposed
11 worked out to an average of about \$642 per campaign statement. Under these circumstances, a penalty in
12 the amount of \$1,500 is recommended for Count 2.

13 Regarding the 24-hour reports in *Gioia*, two involved contributions that were received by the
14 respondents, and three involved contributions that were made to others. For the contributions that were
15 received, average reportable activity was \$1,125 per report. For the contributions that were made,
16 average reportable activity was \$1,450 per report. These reports were supposed to provide pre-election
17 disclosure for the public, but none of the reports were filed before the relevant elections. Although the
18 reportable activity in question was disclosed on respondents' other campaign statements, these statements
19 were not filed until after the pertinent elections. All five reports were charged as a single count—for
20 which a penalty in the amount of \$2,000 was imposed.

21 In the current case, Count 3 involves failure to file four 24-hour reports regarding the committee's
22 receipt of several contributions of \$1,000 or more—totaling \$16,500. About 88% of this amount was
23 reported before the election on other campaign filings—such as donor campaign statements—so there
24 was some disclosure for the public. However, the average reportable activity per 24-hour report is \$4,125
25 in the current case. This is much higher than *Gioia*, and in that case, the penalty that the Commission
26 imposed worked out to an average of \$400 per 24-hour report. Under these circumstances, a penalty in
27 the amount of \$2,500 is recommended for Count 3 (which works out to about \$625 per report).

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1 Higher penalties are not being sought in this case because Borba and the Yes on P committee
2 cooperated with the Enforcement Division by agreeing to an early settlement—and by entering into a
3 tolling agreement regarding the statute of limitations.

4 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
5 in the amount of \$7,000 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to File Pre-Election Campaign Statements	\$3,500
2	Failure to File Semi-Annual Campaign Statement	\$1,500
3	Failure to File 24-Hour Reports	\$2,000
		Total: \$7,000

10 CONCLUSION

11 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
12 Respondents Yes on P for Quality Schools and James Rod Borba hereby agree as follows:

- 13 1. Respondents violated the Act as described in the foregoing pages, which are a true and
14 accurate summary of the facts in this matter.
- 15 2. This stipulation will be submitted for consideration by the Fair Political Practices
16 Commission at its next regularly scheduled meeting—or as soon thereafter as the matter may be heard.
- 17 3. This stipulation resolves all factual and legal issues raised in this matter—for the purpose
18 of reaching a final disposition without the necessity of holding an administrative hearing to determine the
19 liability of Respondents pursuant to Section 83116.
- 20 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
21 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through 18361.9.
22 This includes, but is not limited to the right to appear personally at any administrative hearing held in this
23 matter, to be represented by an attorney at Respondents' own expense, to confront and cross-examine all
24 witnesses testifying at the hearing, to subpoena witnesses to testify at the hearing, to have an impartial
25 administrative law judge preside over the hearing as a hearing officer, and to have the matter judicially
26 reviewed.
- 27 5. Respondents agree to the issuance of the decision and order set forth below. Also,
28 Respondents agree to the Commission imposing against them an administrative penalty in the amount of

1 \$7,000. One or more cashier's checks or money orders totaling said amount—to be paid to the General
2 Fund of the State of California—is/are submitted with this stipulation as full payment of the
3 administrative penalty described above, and same shall be held by the State of California until the
4 Commission issues its decision and order regarding this matter.

5 6. If the Commission refuses to approve this stipulation—then this stipulation shall become
6 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
7 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
8 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing
9 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
10 Director, shall be disqualified because of prior consideration of this Stipulation.

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