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BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

STATE OF CALIFORNIA

In the Matter of:

FPPC Case No. 18/1205

FRIENDS OF DAVID MURPHY FOR
YOLO COUNTY BOARD OF
EDUCATION TRUSTEE OF AREA 2,
DAVID MURPHY, AND SHARON
TOBAR

STIPULATION, DECISION AND ORDER

Respondents.

INTRODUCTION

Respondent, David Murphy (“Murphy”) was a candidate for the Yolo County Board of Education, Trustee of Area 2, in the November 6, 2018, General Election. Respondent, Friends of David Murphy for Yolo County Board of Education, Area 2 (the “Committee”) was Murphy’s controlled-committee. Respondent, Sharon Tobar (“Tobar”) served as the Committee’s treasurer.

The Political Reform Act (the “Act”)¹ requires candidates, committees, and treasurers to file campaign statements prior to the election to disclose contributions received and expenditures made for the associated reporting period.

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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 are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to this source.

1 **Period Covered by Campaign Statement**

2 “Period covered” by a campaign statement means the period beginning the day after the closing
3 date of the most recent campaign statement which was required to be filed and ending with the closing
4 date of the statement in questions.⁹ If a person has not previously filed a campaign statement, the period
5 covered begins on January 1.¹⁰

6 **Joint and Several Liability of Committee, Candidate, and Treasurer**

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

10 **Liability for Violations**

11 Any person who violates any provision of the Act, who purposely or negligently causes any
12 other person to violate any provision of the Act, or who aids and abets any other person in the violation
13 of any provision of the Act, is liable for administrative penalties up to \$5,000 per violation.¹³

14 **SUMMARY OF THE FACTS**

15 Murphy was unsuccessful in his bid for Yolo County Board of Education, Trustee Area 2,
16 receiving 26.7% of the public’s votes in the November 6, 2018, General Election. The Committee
17 qualified as a committee on July 16, 2018 and was terminated on December 6, 2018. The Committee
18 reported receiving a total of \$16,886 in contributions and making \$16,717 in expenditures.

19 This case was opened in response to a sworn complaint alleging the Committee, Murphy, and
20 Tobar filed inaccurate and incomplete campaign statements which failed to disclose contributions
21 received and expenditures made.

22 **Failure to Accurately Disclose Campaign Activity**

23 The first pre-election statement for the November 6, 2018 election was required to have a
24 reporting period of July 1, 2018 to September 22, 2018, due on September 27, 2018, unless the
25 committee had not previously filed a campaign statement. If the committee had not previously filed a
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27 ⁹ Section 82046, subdivision (b).

¹⁰ *Id.*

¹¹ Sections 81004, 84100, and Regulation 18427.

¹² Sections 83116. 5 and 91006.

¹³ Sections 83116 and 83116. 5.

1 campaign statement, then the first pre-election statement was required to have a reporting period of
2 January 1, 2018 to September 22, 2018. The first pre-election statement was the first campaign
3 statement required to be filed by Murphy, the Committee, and Tobar.

4 On September 27, 2018, Murphy, the Committee, and Tobar timely filed the first pre-election
5 statement for the incorrect reporting period of July 1, 2018 through August 31, 2018. For this reporting
6 period, the Committee reported receiving \$12,565.65 in contributions and making \$7,421.43 in
7 expenditures.

8 On October 16, 2018, Murphy and Tobar were notified by the Enforcement Division of the
9 complaint received against the Committee. Tobar admitted it was her understanding that a reporting
10 period was for two calendar months rather than specified reporting periods. On October 23, 2018, 26
11 days late and 14 days prior to the election, the Committee filed an amended first pre-election statement
12 for the reporting period of July 1, 2018 through September 22, 2018. For this reporting period, the
13 Committee properly reported all contributions received, \$15,981, and expenditures made, \$13,178.

14 Prior to amending the first pre-election statement, Murphy, the Committee, and Tobar failed to
15 report approximately 21.37% of contributions received for the associated reporting period ($\$15,981 -$
16 $12,565.65 = \$3,415.35 / 15,981 = 0.2137$). Also, prior to amendment, Murphy, the Committee, and
17 Tobar failed to report approximately 43.68% of expenditures made for the associated reporting period
18 ($\$13,178 - 7,421.43 = \$5,756.57 / 13,178 = 0.4368$).

19 VIOLATIONS

20 **Count 1: Failure to Accurately Disclose Campaign Activity**

21 Murphy, the Committee, and Tobar failed to accurately disclose campaign activity on the first
22 pre-election campaign statement for the reporting period of January 1, 2018 to September 22, 2018, due
23 by September 27, 2018, in violation of Government Code Section 84211, subdivisions (a) and (b).

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1 **PROPOSED PENALTY**

2 This matter consists of one count. The maximum penalty that may be imposed is \$5,000 per
3 count. Thus, the maximum penalty that may be imposed here is \$5,000.¹⁴

4 In determining the appropriate penalty for a particular violation of the Act, the Commission
5 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the
6 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of
7 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or
8 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective
9 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior
10 record of violations.¹⁵

11 The violation committed here resulted in Murphy, the Committee, and Tobar failing to disclose
12 approximately 21.37% of the total contributions received and 43.68% of the total expenditures made for
13 the associated reporting period. Withholding this amount of campaign activity increases the seriousness
14 of the violation as voters were unaware of a high percentage of the Committee’s campaign activity.
15 Although, the evidence supports there was no intent to conceal, deceive or mislead the public as to the
16 Committee’s campaign activities because the campaign statement was amended immediately after being
17 notified by the Enforcement Division of its errors and filed 14 days prior to the election. Further, Tobar
18 admits to making an incorrect assumption regarding the reporting periods for campaign statements.

19 Here, the violation does not appear deliberate, as Murphy and Tobar admit they were not
20 sophisticated with the Act and had no experience managing a candidate-controlled committee. The
21 violation committed here was an isolated incident as Murphy and Tobar have not had prior enforcement
22 history.

23 The Commission considers penalties in prior cases with the same or similar violations and
24 comparable facts.

25 *In the Matter of Roger Gaylord III and Roger Gaylord for Folsom City Council 2014*; FPPC No.
26 15/097. Respondent, an unsuccessful candidate and his controlled-committee, failed to report financial
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28 ¹⁴ Section 83116, subdivision (c).

¹⁵ Regulation 18361. 5, subdivision (d).

1 activity on two pre-election campaign statements. On the first pre-election campaign statement, Gaylord
2 and the Committee failed to report seven itemized expenditures totaling \$1,288.85, unitemized
3 expenditures totaling \$319.54, and contributions totaling \$390. Additionally, Gaylord and the
4 Committee under reported loans from Gaylord of \$7,400 by \$3,590, failed to report \$3,300 of Gaylord's
5 loans to the Committee were repaid, over reported and under reported expenditures by \$201.91 and
6 \$85.89, respectively. On the second pre-election campaign statement, Gaylord and the Committee failed
7 to report two itemized expenditures of \$200, unitemized expenditures of \$73.89, under reported loans
8 from Gaylord of \$11,187.63 by \$2,815.28, over reported expenditures by \$1,406.12, and failed to report
9 \$680.99 of Gaylord's loans to the Committee were repaid. Over two years late, Gaylord and the
10 Committee amended the pre-election campaign statements to report the missing information. On
11 February 16, 2017, the Commission approved a penalty of \$2,000 for this count.

12 A lesser penalty than that approved in the *Gaylord* case is recommended. Unlike *Gaylord*,
13 Murphy and Tobar failed to report financial activity on only the first pre-election campaign statement.
14 Murphy and Tobar failed to report approximately \$3,415.35 in contributions received and \$5,756.57 in
15 expenditures made for this reporting period. Also, unlike *Gaylord*, Murphy and Tobar immediately
16 amended the first pre-election campaign statement after they received contact from the Enforcement
17 Division advising them of the correct reporting periods. In mitigation, Murphy and Tobar were able to
18 amend the first pre-election campaign statement prior to the election. Therefore, a penalty of \$1,000 is
19 recommended.

20 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty
21 in the amount of \$1,000 is justified.

22 CONCLUSION

23 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
24 Respondents Friends of David Murphy for Yolo County Board of Education Trustee of Area 2, David
25 Murphy, and Sharon Tobar hereby agrees as follows:

26 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate
27 summary of the facts in this matter.

1 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at
2 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.

3 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose
4 of reaching a final disposition without the necessity of holding an administrative hearing to
5 determine the liability of Respondents pursuant to Section 83116.

6 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all
7 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through
8 18361.9. This includes, but is not limited to the right to appear personally at any administrative
9 hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to
10 confront and cross-examine all witnesses testifying at the hearing, to subpoena witnesses to
11 testify at the hearing, to have an impartial administrative law judge preside over the hearing as a
12 hearing officer, and to have the matter judicially reviewed.

13 5. Respondents agree to the issuance of the decision and orders set forth below. Also,
14 Respondents agree to the Commission imposing against them an administrative penalty in the
15 amount of \$1,000. One or more cashier’s checks or money orders totaling said amount – to be
16 paid to the General Fund of the State of California – is/are submitted with this stipulation as full
17 payment of the administrative penalty described above, and same shall be held by the State of
18 California until the Commission issues its decision and order regarding this matter.

19 6. If the Commission refuses to approve this stipulation – then this stipulation shall become
20 null and void, and within fifteen business days after the Commission meeting at which the
21 stipulation is rejected, all payments tendered by Respondents in connection with this stipulation
22 shall be reimbursed to Respondents. If this stipulation is not approved by the Commission, and if
23 a full evidentiary hearing before the Commission becomes necessary, neither any member of the
24 Commission, nor the Executive Director, shall be disqualified because of prior consideration of
25 this stipulation.

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1 7. The parties to this agreement may execute their respective signature pages separately. A
2 copy of any party's executed signature page, including a hardcopy of a signature page
3 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.
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6 Dated: _____
7 Galena West, Chief of Enforcement
8 Fair Political Practices Commission
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10 Dated: _____
11 David Murphy, individually and on behalf of
12 Friends of David Murphy for Yolo County Board of
13 Education Trustee of Area 2, Respondents

14 Dated: _____
15 Sharon Tobar, Respondent
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18 The foregoing stipulation of the parties "In the Matter of Friends of David Murphy for Yolo
19 County Board of Education Trustee of Area 2, David Murphy, and Sharon Tobar," FPPC Case No.
20 18/1205, is hereby accepted as the final decision and order of the Fair Political Practices Commission,
21 effective upon execution by the Chair.
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23 IT IS SO ORDERED.
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25 Dated: _____
26 Richard C. Miadich, Chair
27 Fair Political Practices Commission
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