

1 JAMES M. LINDSAY
Chief of Enforcement
2 THERESA GILBERTSON
Senior Commission Counsel
3 Fair Political Practices Commission
1102 Q Street, Suite 3050
4 Sacramento, CA 95811

5 Telephone: (279) 237-5960
6 Email: tgilbertson@fppc.ca.gov

7 Attorneys for Complainant

8
9 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
10 STATE OF CALIFORNIA

11 In the Matter of:

12 FRIENDS OF JOHN MCMAHON FOR
SB COUNTY SHERIFF-CORONER
13 2018, JOHN MCMAHON, and MARVIN
REITER,

14 Respondents.

FPPC Case No. 19-01800

STIPULATION, DECISION AND ORDER

Date submitted to Commission: March 2024

15
16 **INTRODUCTION**

17 Respondent Friends of John McMahan for SB County Sheriff-Coroner 2018 (“Committee”) was
18 the candidate-controlled committee for John McMahan (“McMahan”) during his successful re-election
19 run for Sheriff in the June 5, 2018 Primary Election. Marvin Reiter (“Reiter”) was the treasurer for the
20 committee. McMahan retired from office on July 15, 2021. The Political Reform Act¹ (“Act”) holds that
21 remaining campaign funds are considered “surplus” 90 days after leaving office and are subject to
22 restrictions as to how those funds may be used. The Committee, McMahan, and Reiter violated the Act
23 when utilizing campaign funds in a manner that was not consistent with the Act’s rules on the use of
24 surplus funds.
25
26

27
28 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 This case arose from a referral from the Audit Division of the Fair Political Practices Commission
2 (“FPPC”). In addition, this case is part of the FPPC's partnership with the County of San Bernardino to
3 enforce the Act and the County's campaign finance ordinance for the officials of San Bernardino County.

4 **SUMMARY OF THE LAW**

5 The Act and its regulations are amended from time to time. All legal references and discussions
6 of law are intended to be citations to statutes and regulations as they existed at the time of the violations
7 in this case.

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

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

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

18 Another purpose of the Act is to provide adequate enforcement mechanisms so that the Act will
19 be “vigorously enforced.”⁷

20 **Surplus Funds**

21 The Act defines surplus funds as funds remaining in a campaign account 90 days after a
22 triggering event, including when the candidate leaves the elective office or following the post-election
23 reporting period after the defeat for elective office.⁸ Surplus campaign funds must be reported and may
24 be used only for the following purposes: the payment of outstanding campaign debts or elected officer's
25

26 ² Section 81001, subdivision (h).

27 ³ Section 81003.

28 ⁴ Section 81002, subdivision (a).

⁵ Sections 84200, *et seq.*

⁶ Section 81002, subdivision (f).

⁷ Section 81002, subdivision (f).

⁸ Section 89519, subdivision (a).

1 expenses, the repayment of contributions, donations to any bona fide charitable, educational, civic,
2 religious, or similar tax-exempt, nonprofit organization, contributions to a political party committee,
3 contributions to support or oppose any candidate for federal office, any candidate for elective office in a
4 state other than California, or any ballot measure, the payment for professional services reasonably
5 required by the committee to assist in the performance of its administrative functions.⁹

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

7 It is the duty of a committee treasurer and the candidate to ensure that the committee complies
8 with the Act's campaign reporting.¹⁰ A treasurer and candidate may be held jointly and severally liable
9 with the committee for violations committed by the committee.¹¹

10 **SUMMARY OF THE FACTS**

11 McMahon left office on or around July 15, 2021. At that time, the Committee had a cash balance
12 of approximately \$123,427. As of October 14, 2021, the remaining committee funds became surplus
13 funds. The Committee made several expenditures that were not consistent with the use of surplus funds.

14 Contributions to California state or local candidates are not one of the enumerated appropriate
15 uses of surplus funds. Despite this, the Committee made \$14,700 in contributions to support candidates.
16 Specifically, on October 21, 2021, the Committee made a monetary contribution of \$2,500 to support
17 James Ramos, a candidate for Assembly in 2022. On November 11, 2021, the Committee made a
18 monetary contribution of \$2,400 to support James Ramos and another monetary contribution of \$4,900 to
19 support Jason Anderson, a candidate for District Attorney of San Bernardino in 2022. On December 22,
20 2021, the Committee made a monetary contribution of \$4,900 to support Thurston Smith, a candidate for
21 Assembly in 2022.

22 The remainder of the expenditures are consistent with the use of surplus funds, such as civic
23 donations and payments for professional services required for the administration of the committee.

24
25
26 //

27
28 ⁹ Section 89519, subdivision (b).

¹⁰ Sections 81004, 84100, 84104, and Regulation 18427.

¹¹ Sections 83116.5 and 91006.

1 **VIOLATIONS**

2 **Count 1: Prohibited Use of Surplus Funds**

3 The Committee, McMahon, and Reiter made contributions totaling \$14,700 using surplus
4 campaign funds, in violation of Government Code Section 89519.

5 **PROPOSED PENALTY**

6 This matter consists of one proposed count. The maximum penalty that may be imposed is \$5,000
7 per count.¹² Thus, the maximum penalty that may be imposed is \$5,000.

8 This matter does not qualify for the Streamline Program because it involves improper use of
9 campaign funds.

10 In determining the appropriate penalty for a particular violation of the Act, the Enforcement
11 Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an
12 emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division
13 considers the facts and circumstances of the violation in the context of the following factors set forth in
14 Regulation 18361.5 subdivision (e)(1) through (8): (1) The extent and gravity of the public harm caused
15 by the specific violation; (2) The level of experience of the violator with the requirements of the Political
16 Reform Act; (3) Penalties previously imposed by the Commission in comparable cases; (4) The presence
17 or absence of any intention to conceal, deceive or mislead; (5) Whether the violation was deliberate,
18 negligent or inadvertent; (6) Whether the violator demonstrated good faith by consulting the Commission
19 staff or any other governmental agency in a manner not constituting complete defense under Government
20 Code Section 83114(b); (7) Whether the violation was isolated or part of a pattern and whether the
21 violator has a prior record of violations of the Political Reform Act or similar laws; and (8) Whether the
22 violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

23 The Act has provisions related to curbing the power of incumbents to influence other elections.
24 The statute regarding surplus funds is one such provision. The public harm here is that the campaign
25 funds raised to support McMahon were used by McMahon to support other candidates even though the
26 campaign funds were restricted in their use due to McMahon’s retirement from office. The Act does not
27 compel committees to terminate on a particular timetable; the Act only governs how campaign funds can
28

¹² See Section 83116, subdivision (c).

1 be used before and after the funds become surplus. In addition to the general limits on how campaign
2 funds can be used, the Act further restricts the use of campaign funds after the candidate has left office. If
3 McMahon had been in office or had made the expenditures within 90 days of leaving office, the
4 contributions would not have been a violation of the Act.

5 McMahon was an experienced candidate. McMahon was appointed to office in 2012 and was on
6 the ballot in both 2014 and 2018. Reiter is a certified public accountant and paid professional treasurer.

7 The Committee reported the activity timely. The treasurer fully cooperated with the Audit
8 Division's auditor and the Enforcement Division's investigator. These facts demonstrate that there was
9 no attempt to conceal the activity. According to McMahon, neither McMahon nor Reiter were aware of
10 the rules regarding the proper use of surplus funds, and they further noted that the activity was close in
11 time to when the funds became surplus. The available evidence suggests that the violations were
12 negligent, rather than deliberate conduct.

13 The Commission has previously considered another stipulation involving misuse of surplus
14 funds: [*In the Matter of Dolores Marquez for School Board 2016, Dolores Marquez for Santa Clara*](#)
15 [*County Board of Education 2014, Dolores Marquez, and Anjelica Frausto*](#), FPPC No. 17/106 (The
16 Commission approved a settlement in this matter on August 15, 2019.) The relevant count was charged
17 because Marquez transferred surplus funds from her 2014 committee to her 2016 committee. This was an
18 improper use of surplus funds. The Commission imposed a penalty of \$2,500 for this count.

19 The Enforcement Division has no information to suggest that McMahon or Reiter sought legal
20 advice from the FPPC. The activity at issue was limited to a single reporting period in 2021, indicating
21 that it was an isolated violation, not a pattern of activity. The Respondents have had no prior enforcement
22 actions in the last five years. In 2015, the candidate's [2014 committee was fined](#) for accepting a \$500
23 cashier's check and paid a \$1,500 penalty for the violation.

24 After considering the factors listed in Regulation 18361.5 and penalties in prior similar cases, a
25 penalty of \$3,500 is recommended for Count 1.

26
27
28 //

1 **CONCLUSION**

2 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
3 Respondents, Friends of John McMahon for SB County Sheriff-Coroner 2018, John McMahon, and
4 Marvin Reiter hereby agree as follows:

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

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

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

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

19 5. Respondents agree to the issuance of the decision and order set forth below. Also,
20 Respondents agree to the Commission imposing against them an administrative penalty in the amount of
21 \$3,500. One or more payments totaling said amount—to be paid to the General Fund of the State of
22 California—is/are submitted with this stipulation as full payment of the administrative penalty described
23 above, and same shall be held by the State of California until the Commission issues its decision and
24 order regarding this matter.

25 6. If the Commission declines to approve this stipulation—then this stipulation shall become
26 null and void, and within fifteen business days after the Commission meeting at which the stipulation is
27 rejected, all payments tendered by Respondents in connection with this stipulation shall be reimbursed to
28 Respondents. If this stipulation is not approved by the Commission, and if a full evidentiary hearing

1 before the Commission becomes necessary, neither any member of the Commission, nor the Executive
2 Director, shall be disqualified because of prior consideration of this Stipulation.

3 7. The parties to this agreement may execute their respective signature pages separately. A
4 copy of any party's executed signature page, including a hardcopy of a signature page transmitted via fax
5 or as a PDF email attachment, is as effective and binding as the original.

6
7 Dated: _____

James M. Lindsay, Chief of Enforcement
Fair Political Practices Commission

8
9
10 Dated: _____

John McMahon
Individually and on behalf of Friends of John McMahon for
SB County Sheriff-Coroner 2018

11
12
13
14 Dated: _____

Marvin Reiter
Individually and on behalf of Friends of John McMahon for
SB County Sheriff-Coroner 2018

1 The foregoing stipulation of the parties Friends of John McMahon for SB County Sheriff-Coroner
2 2018, John McMahon, and Marvin Reiter is hereby accepted as the final decision and order of the Fair
3 Political Practices Commission, effective upon execution below by the Chair.

4
5 IT IS SO ORDERED.

6
7 Dated: _____

_____ Richard C. Miadich, Chair
Fair Political Practices Commission