

Gayathri Thaikkendiyil
Acting Executive Director

Patrick Ford
Director of Enforcement

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

| | | |
|--|---|---|
| In the Matter of |) | SFEC Complaint No. 2021-316 |
| |) | |
| Progress San Francisco; Vince Courtney, Jr.; and |) | |
| Shawnda Deane; |) | |
| |) | STIPULATION, DECISION, AND ORDER |
| Respondents. |) | |
| |) | |
| _____ |) | |

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and between Progress San Francisco (“the Committee”), Vince Courtney, Jr. (“Courtney”), Shawnda Deane (“Deane”) and the San Francisco Ethics Commission (“the Commission”). The Committee, Courtney, and Deane will be collectively referred to as the Respondents.

2. Respondents and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Respondents represent that Respondents have accurately furnished to the Commission all information and documents that are relevant to the conduct described in Exhibit A. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondents

regarding the violations of law described in Exhibit A, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondents related to such violations. Respondents understand and knowingly and voluntarily waive all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

3. Respondents acknowledge responsibility for and agree to pay an administrative penalty as set forth in Exhibit A. Respondents agree that the administrative penalty set forth in Exhibit A is a reasonable administrative penalty.

4. Within ten business days of the Commission's approval of this Stipulation, Respondents shall either pay the penalty through the City's online payment portal or otherwise deliver to the following address the sum as set forth in Exhibit A in the form of a check or money order made payable to the "City and County of San Francisco":

San Francisco Ethics Commission
Attn: Enforcement & Legal Affairs Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

5. If Respondents fail to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondents under Section C3.699-13 of the San Francisco Charter for any available relief.

6. Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondents understand and acknowledge that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating with or assisting any other government agency in its prosecution of Respondents for any allegations set forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

8. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9, which shall survive.

9. In the event the Commission rejects this Stipulation, and further administrative proceedings before the Commission are necessary, Respondents agree that the Stipulation and all references to it are inadmissible. Respondents moreover agree not to challenge, dispute, or object to the participation of any member of the Commission or its staff in any necessary administrative proceeding for reasons stemming from his or her prior consideration of this Stipulation.

10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement between the parties hereto and supersedes any and all prior negotiations, understandings, and agreements with respect to the transactions contemplated herein. This Stipulation may not be amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties and approved by the Commission at a regular or special meeting.

11. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable.

12. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document.

Dated: 06-02-2023 | 09:59:46 PDT  B248CC9FC96449D...

GAYATHRI THAIKKENDIYIL, ACTING EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 06-02-2023 | 08:28:03 PDT  D372D7BDF52C4D8...

Vince Courtney, Jr.

Dated: 06-01-2023 | 16:36:09 PDT  81E4BC143B1A4BE...

Shawnda Deane

Dated: 06-02-2023 | 08:28:03 PDT  D372D7BDF52C4D8...

Progress San Francisco (Principal Officer Vince Courtney, Jr.,
signing on behalf of the Committee)

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of "Progress San Francisco, Vince Courtney, Jr., and Shawnda Deane, SFEC Complaint No. 2021-025," including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

YVONNE LEE, CHAIRPERSON

SAN FRANCISCO ETHICS COMMISSION

Exhibit A

I. Introduction

Progress San Francisco (“the Committee”) was a general purpose committee, variously designated as a city committee filing with the City and County of San Francisco (“the City”) and as a state committee filing with the State of California. During all times relevant to this matter, Vince Courtney, Jr. was the Committee’s principal officer and Shawnda Deane was the Committee’s treasurer.

Respondents violated City law when they failed to properly report certain campaign contributions to the San Francisco Ethics Commission as required by law. The Committee switched from City to State jurisdiction during three consecutive elections despite qualifying as a City committee. In doing so, the Committee reported those campaign contributions to the State but failed to report them to the City. Because the Committee was predominantly involved in City elections, this behavior deprived City residents of having all of those reports located on the Ethics Commission's website, in the process depriving residents of ready access to important election information and undermining the law’s purpose of providing City voters with comprehensive information in the location prescribed by state law and violating Article I, Chapter 1 of the San Francisco Campaign and Governmental Conduct Code (“SF C&GCC”). Respondents also failed to timely report one campaign contribution on the necessary campaign statement.

As principal officer, Mr. Courtney was primarily responsible for approving the committee’s political activity and expenditures (see Gov Code § 82047.6) but was not actively involved in the decisions to classify as a City or state Committee.

II. Applicable Law

Article I, Chapter 1 of the SF C&GCC and its implementing regulations govern campaign finance in the City and County of San Francisco. The SF C&GCC incorporates into City law provisions of the California Political Reform Act (California Government Code section 81000 *et seq.* and any subsequent amendments, hereinafter the “PRA”), as it applies to local elections. SF C&GCC § 1.106.

Campaign Finance Disclosures – Filing Jurisdiction

A general purpose committee is a political committee that makes contributions or expenditures supporting or opposing multiple candidates or ballot measures, often across multiple elections or jurisdictions. A general purpose committee qualifies as a city general purpose committee if it “makes more than 70 percent of its contributions or expenditures to support or oppose candidates or measures voted on in only one city, or in one consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county.” 2 CCR § 18227.5(c)(1). In calculating that number, a committee must:

count contributions and expenditures made to support or oppose candidates or measures during whichever of the following time periods most accurately reflects the current and upcoming activities of the committee:

(A) the immediately preceding 24 months [“24-month Test”]; or

(B) the current two-year period, beginning with January 1 of an odd-numbered year and ending with December 31 of the following even-numbered year [“Current Period Test”].

Id. at § 18227.5(d)(3) (defined terms added).

If a general purpose committee does not qualify as a city committee (or a county committee), it is a state committee. A general purpose committee is responsible for determining and verifying whether it qualifies as a state or city general purpose committee, and for complying with the requirements of the relevant jurisdiction. A committee must verify its filing jurisdiction quarterly (at the end of March, June, September, and December) by reviewing its contributions and expenditures. 2 CCR § 18227.5(d)(1). In San Francisco, City general purpose committees are required to file campaign statements and reports with the Ethics Commission. Gov’t Code § 84215(d). State committees, on the other hand, are required to file campaign statements and reports with the California Secretary of State. 2 CCR 18227.5(b)(1).

A committee whose status changes from one jurisdiction to another must amend its Statement of Organization (Form 410) to reflect the change. 2 CCR 18227.5(e)(1).

Late Contribution Reporting – Form 497

City law incorporates the PRA’s definition of *contribution*. SF C&GCC § 1.104. The PRA defines *contribution* as “a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment[.]” Gov’t Code § 82015(a).

A late contribution is any contribution that totals \$1,000 or more and is made to a candidate, a candidate-controlled committee, or a primarily formed committee to support or oppose a candidate or measure during the 90-day period preceding the date of the election. Gov’t Code § 82036. Any City committee in San Francisco that makes or receives a late contribution is required to report the late contribution within 24 hours to the Ethics Commission via a Form 497. *Id.* § 84203(a), 84215(d).

Campaign Statements

Committees are required to file campaign statements that disclose their financial activity via a Form 460. Gov’t Code § 84200(a). Campaign statements covering activity from July 1 through December 31 are due by the following January 31. (*Id.*). These statements must include information for all expenditures and contributions over \$100. Gov’t Code § 84211(i), (k).

III. Material Facts and Analysis

Background

The Committee registered with the California Secretary of State as a qualified state general purpose committee on April 11, 2016 and terminated on March 11, 2021. Deane and Courtney served as Treasurer and Other Principal Officer, respectively, starting from at least April 26, 2016. At the height of its activity, in less than one year from March 2018 to March 2019, the Committee reclassified back-and-forth between City and state jurisdictions five times, even though 98.5% of its contributions went to support City candidates or measures during that period.

Figure 1: Contribution Totals by Election Cycle for Contributions Not Reported to the Ethics Commission

| Election Cycle | Contributions Not Reported to Ethics Commission | Total Amount of Contributions Not Reported to the Ethics Commission |
|-----------------------|--|--|
| June 2018 | 9 | \$430,000 |
| November 2018 | 13 | \$694,900 |
| November 2019 | 2 | \$35,000 |

June 2018 Special Election

On February 28, 2018, three months before the June 5, 2018, Statewide Primary Election (“June 2018 election”), the Committee filed an amended Statement of Organization (“Form 410”) to reclassify itself from a City committee to a state committee. As of February 28, 2018, the Committee had made 87.7% of its contributions and expenditures to support City candidates or measures over the prior 24 months. From January 1, 2017, through February 28, 2018, the Committee made no contributions or expenditures.

Under the state laws governing committee designation, consisting of the two tests described above, the Committee inappropriately reclassified from a City committee to a state committee on February 28, 2018. This is because the committee’s activity in the past 24 months was more than 70% in San Francisco, and the Committee had no activity in the current two-year period to analyze under the other test.

Following the redesignation, from April through the June 2018 election, the Committee made a total of \$0 in contributions to support candidates or measures voted on in non-City elections and a total of \$615,000 in contributions to support City candidates or measures. This activity included nine contributions for a total of \$430,000 within 90 days of the June 2018 election for which the Committee did not timely file Form 497s with the Ethics Commission. The Committee timely filed its late contribution reports (“Form 497s”) with the Secretary of State. Further, the Committee timely filed its campaign statements (Form 460s), including its pre-election campaign statements, with both the Secretary of State and Ethics Commission.

Because the Committee should have remained a City committee and was required to report all late contributions to the Ethics Commission, Respondents violated City and state law by not reporting the late contributions to the Ethics Commission. SF C&GCC § 1.106; Gov’t Code § 84203.

November 2018 Election

Between the June 2018 election and the November 6, 2018 General Election (“November 2018 election”), the Committee reclassified back-and-forth between being a state committee and a City committee three separate times. On July 2, 2018, the Committee amended its Form 410 to reclassify itself from a state committee to a City committee. On September 21, 2018, the Committee filed another amended Form 410 to reclassify itself from a City committee back to a state committee. And on October 11, 2018, the Committee filed another amended Form 410 to reclassify itself from a state committee back to a City committee.

July—September 20 – Incorrect Filing while Correctly Designated as a City Committee

On July 2, 2018, the Committee correctly reclassified to become a City committee. From July through September 20, 2018, the Committee made a total of \$10,000 in contributions to support non-City candidates or measures and a total of \$244,900 in contributions to support City candidates or measures. Therefore, as of September 20, the Committee was correctly classified as a City committee.

On September 20, 2018, the Committee made three contributions to support City candidates within 90 days of the November 2018 election for which it did not file any Form 497s with the Ethics Commission. The Committee, however, filed the late contribution reports (“Form 497s”) with the Secretary of State.

The Committee was correctly classified as a City committee but violated the law by failing to report three late contributions to the Ethics Commission.

September 21 – October 11 – Incorrect Filing while Inappropriately Designated as a State Committee

The Committee reclassified to become a state committee on September 21. As of that day, the Committee had made 99.2% of its contributions and expenditures to support City candidates or measures over the prior 24 months. From January 1, 2017, through September 21, 2018, the Committee had made 98.9% of its contributions and expenditures to support City candidates or measures. Per the applicable rules, the Committee inappropriately reclassified from a City committee to a state committee on September 21, 2018.

From September 21, 2018, through October 11, 2018, while inappropriately classified as a state committee, the Committee made a total of \$0 in contributions to support non-City candidates or measures, and a total of \$620,000 in contributions to support City candidates or measures. This activity included eight contributions to support City candidates within 90 days of the November 2018 election for which the Committee did not file any Form 497s with the Ethics Commission. Instead, the Committee disclosed these contributions on Form 497s filed with the Secretary of State.

However, because it was inappropriately classified as a state committee, the Committee violated the law by failing to report late contributions to the Ethics Commission.

October 11 – November 6 – Incorrect Filing while Correctly Designated as a City Committee

On October 11, the Committee correctly reclassified to become a City committee. From October 12 through the November 2018 election the Committee made a total of \$22,000 in contributions to support non-City candidates or measures, and a total of \$535,000 in contributions to support City candidates or measures. This activity included two contributions to support candidates for City office within 90 days of the November 2018 election for which the Committee did not file any Form 497s with the Ethics Commission. Instead, the Committee timely disclosed those contributions on Form 497s filed with the Secretary of State.

The Committee was correctly classified as a City committee but violated the law by failing to report two late contributions to the Ethics Commission.

In total during the November 2018 election cycle, the Committee made a total of thirteen late contributions for a total of \$694,900 to City candidates or measures that it did not report on Form 497s filed with the Ethics Commission. Eight contributions came while the Committee was inappropriately classified as a state Committee from September 21, 2018 through October 11, 2018. Five contributions came while the Committee was appropriately classified as a City Committee before September 21, 2018 and after October 11, 2018. In all cases, the Committee failed to file the required late contribution reports with the Ethics Commission but did file those reports with the Secretary of State. Because it did not file those reports with the Ethics Commission, Respondents violated City and state law. SF C&GCC § 1.106; Gov't Code § 84203.

Post-Election Contribution

On December 31, 2018, while still designated as a City committee, the Committee made a campaign contribution in the amount \$6,512 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018, a primarily formed committee supporting Jessica Ho's candidacy for San Francisco Board of Supervisors District 4. The Committee did not disclose this contribution in its campaign statement Form 460 filed on January 31, 2019, which covered the period from July 1, 2018 to December 31, 2018. The Committee instead disclosed this contribution when it filed an amended Form 460 on July 26, 2019.

Because the Committee failed to disclose this contribution and information about the contributor on the proper campaign statement, Respondents violated City and state law. SF C&GCC § 1.106; Gov't Code § 84211(a), (i), (k).

2019 Election

On January 30, 2019, the Committee filed another amended Form 410 to reclassify itself from a City committee to a state committee. As of January 30, 2019, the Committee had made 98.5% of its contributions and expenditures to support City candidates or measures over the prior 24 months. From January 1, 2019, through January 30, 2019, the Committee made 100% of its contributions and expenditures to support City candidates or measures.

Per the applicable rules, the Committee inappropriately reclassified from a City committee to a state committee on January 30, 2019.

In November 2019, in the days leading up to the November 5, 2019 Municipal Election ("November 2019 election"), the Committee made a total of \$50,000 in contributions to support City candidates or measures. This activity included two contributions for a total of \$35,000 to support candidates for City office within 90 days of the November 2019 election for which the Committee did not file any Form 497s with the Ethics Commission. Instead, the Committee timely disclosed these contributions on Form 497s filed with the Secretary of State.

Because the Committee should have remained a City committee and was required to report all late contributions to the Ethics Commission, Respondents violated City and state law. SF C&GCC § 1.106; Gov't Code § 84203.

Figure 2: Legal Tests to Determine Proper Classification at the Time of the Committee’s Inappropriate Reclassifications from a City Committee to a State Committee

| Election | Reclassification | Date of Reclassification | Classification Test | City Contribution Total | Non-city Contribution Total | % City Contribution |
|-----------|------------------|--------------------------|---------------------|-------------------------|-----------------------------|---------------------|
| Jun. 2018 | City→State | 2/28/2018 | 24-Month | \$1,680,509.96 | \$235,035.94 | 87.7% |
| | | | Current Period | \$0 | \$0 | N/A |
| Nov. 2018 | City→State | 9/21/2018 | 24-Month | \$2,401,400 | \$20,000 | 99.2% |
| | | | Current Period | \$909,000 | \$10,000 | 98.9% |
| Nov. 2019 | City→State | 1/30/2019 | 24-Month | \$2,062,911.93 | \$32,000 | 98.5% |
| | | | Current Period | \$5,500 | \$0 | 100% |

Audit

On February 22, 2021, the Ethics Commission issued an audit report of the Committee for the 2018 calendar year and determined that the Committee failed to properly disclose several late contributions. The audit found that the Committee had improperly redesignated itself as a state general purpose committee and had improperly filed several Late Contributions Reports with California’s Secretary of State instead of with the Ethics Commission.

IV. Conclusions of Law

The conduct at issue in this matter pertains to violations of Article I of the San Francisco Campaign and Governmental Conduct Code. The Commission’s investigation identified, and Respondents acknowledge responsibility for, the following violations of City law:

Counts 1-9

Failure to report nine late contributions for a total of \$430,000 made during the 90 days before the June 2018 election to the Ethics Commission within 24 hours in violation of Gov’t Code § 84203 and SF C&GCC § 1.106.

Count 1: Respondents failed to report a contribution of \$50,000 to San Francisco for London Breed on April 30, 2018 to the Ethics Commission.

Count 2: Respondents failed to report a contribution of \$60,000 to San Francisco for London Breed on May 7, 2018 to the Ethics Commission.

Count 3: Respondents failed to report a contribution of \$50,000 to San Francisco for London Breed on May 14, 2018 to the Ethics Commission.

Count 4: Respondents failed to report a contribution of \$50,000 to San Francisco for London Breed on May 21, 2018 to the Ethics Commission.

Count 5: Respondents failed to report a contribution of \$40,000 to It's Our Time, SF Women Supporting London Breed for Mayor 2018 on May 25, 2018 to the Ethics Commission.

Count 6: Respondents failed to report a contribution of \$60,000 to San Francisco for London Breed on May 30, 2018 to the Ethics Commission.

Count 7: Respondents failed to report a contribution of \$30,000 to Affordable Housing for All, Yes on D on June 4, 2018 to the Ethics Commission.

Count 8: Respondents failed to report a contribution of \$50,000 to San Francisco for London Breed on June 4, 2018 to the Ethics Commission.

Count 9: Respondents failed to report a contribution of \$40,000 to It's Our Time, SF Women Supporting London Breed for Mayor 2018 on June 4, 2018 to the Ethics Commission.

Counts 10-22

Failure to report thirteen late contributions for a total of \$694,900 made in the 90 days before the November 2018 election to the Ethics Commission within 24 hours in violation of Gov't Code § 84203 and SF C&GCC § 1.106.

Count 10: Respondents failed to report a contribution of \$5,500 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on September 20, 2018 to the Ethics Commission.

Count 11: Respondents failed to report a contribution of \$2,500 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on September 20, 2018 to the Ethics Commission.

Count 12: Respondents failed to report a contribution of \$16,900 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on September 20, 2018 to the Ethics Commission.

Count 13: Respondents failed to report a contribution of \$100,000 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on September 26, 2018 to the Ethics Commission.

Count 14: Respondents failed to report a contribution of \$100,000 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on September 26, 2018 to the Ethics Commission.

Count 15: Respondents failed to report a contribution of \$25,000 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on October 2, 2018 to the Ethics Commission.

Count 16: Respondents failed to report a contribution of \$25,000 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on October 2, 2018 to the Ethics Commission.

Count 17: Respondents failed to report a contribution of \$80,000 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on October 3, 2018 to the Ethics Commission.

Count 18: Respondents failed to report a contribution of \$80,000 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on October 3, 2018 to the Ethics Commission.

Count 19: Respondents failed to report a contribution of \$80,000 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on October 10, 2018 to the Ethics Commission.

Count 20: Respondents failed to report a contribution of \$80,000 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on October 10, 2018 to the Ethics Commission.

Count 21: Respondents failed to report a contribution of \$50,000 to San Franciscans for Change, Supporting Johnson & Trauss for Supervisor 2018 on October 24, 2018 to the Ethics Commission.

Count 22: Respondents failed to report a contribution of \$50,000 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on October 24, 2018 to the Ethics Commission.

Counts 23-24

Failure to report two late contributions for a total of \$35,000 made in the 90 days before the November 2019 election to the Ethics Commission within 24 hours in violation of Gov't Code § 84203 and SF C&GCC § 1.106.

Count 23: Respondents failed to report a contribution of \$10,000 to Friends and Neighbors in Support of Vallie Brown for Supervisor 2019 on November 4, 2019 to the Ethics Commission.

Count 24: Respondents failed to report a contribution of \$25,000 to San Franciscans for a Safer City, Supporting Suzy Loftus for SF District Attorney 2019 on November 4, 2019 to the Ethics Commission.

Count 25

Failure to disclose a contribution on the proper semiannual campaign statement in violation of Gov't Code § 84211 and SF C&GCC § 1.106.

Count 25: Respondents failed to report a contribution of \$6,512 to Safe & Clean Sunset Coalition, Supporting Ho for D4 Supervisor 2018 on December 31, 2018 on the Committee's semiannual campaign statement filed on January 31, 2019.

V. Penalty Assessment

This matter consists of twenty-four counts in which Respondents failed to report late contributions to the Ethics Commission and one count in which Respondents failed to disclose a contribution on the proper semiannual campaign statement.

The San Francisco Charter authorizes the Commission to assess a monetary penalty to the general fund of the City of up to \$5,000 for each violation, or three times the amount which the respondents failed to report properly or unlawfully contributed. SF Charter § C3.699-13(c); *see also* SF C&GCC § 2.145(c).

Pursuant to its Enforcement Regulations, when determining penalties the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (1) the severity of the violation; (2) the presence or absence of any intention to conceal, deceive, or mislead; (3) whether the violation was willful; (4) whether the violation was an isolated incident or part of a pattern; (5) whether the respondent has a prior record of violations of law; (6) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and (7) the respondent's ability to pay. Enf. Reg. § 9(D).

Late Contribution Violations

The contributions at issue are extensive. In 2018 alone, the Committee failed to report to the Ethics Commission a total of \$1,124,900 in late contributions made to influence City elections. Overall, the Committee failed to report to the Ethics Commission a total of \$1,159,900 in late contributions. Committees are required to comply with specific reporting requirements tied to late contributions. These requirements are designed to ensure that San Francisco voters have clear, comprehensible, and quick access to information on who is spending money to influence elections. If that information is not in the correct place required by state law, voters cannot be expected to know where, when, or how it might be improperly filed – especially for contributions made in the closing days, weeks, and months of an election. And without reliable access to that information, voters cannot come to an informed decision before casting their ballots.

The violations at issue were part of a pattern. Over the course of one year, Respondents switched back-and-forth between City and a State jurisdiction five times despite 98.5% of its contributions going to support City candidates or measures during that period. This indicated a pattern of switching to state jurisdiction despite spending almost exclusively on City elections. In the 20 months from March 2018 to November 2019, the Committee spent \$2.13 million on elections. Of that total, \$2.10 million was spent on City elections. Yet, the Committee spent 14 of those 20 months classified as a State committee, and during that time, failed to properly disclose \$1.16 million in late contributions to the Ethics Commission. Staff considered the amount of money and the pattern of switching jurisdictions in calculating a fair penalty.

There are several factors in mitigation. First, at all times Respondents timely reported the late contributions at issue here to the Secretary of State's office. While this was not the proper form of reporting, the reports did exist and were available online if voters were to know to look elsewhere for them, which mitigates the harm imposed by the violations. Further, Respondents filed all campaign reports (Form 460s), including all pre-election reports that showed some of the contributions at issue here, with both the Ethics Commission and Secretary State during all relevant times from 2018 through 2020. Second, the Committee contends that the redesignations in this case were not based on any intent to conceal, deceive, or mislead. Third, the Committee does not have a prior history of violating City or State campaign finance laws. Fourth, the Committee fully cooperated with the Ethics Commission throughout the audit and this subsequent enforcement action.

The parties look to FPPC Case No. 16/19981, *In the Matter of BluPAC and Douglas Chan* when calculating penalties in this case. In that case, respondent committee BluPAC failed to properly file late independent expenditure reports for nine expenditures totaling \$49,265 with the Santa Clara City Clerk's Office. Just as in this case, the committee filed the reports with the Secretary of State's office instead.

In *BluPAC*, the FPPC and the Santa Clara City Clerk each imposed fines, for a total fine of \$11,880.

There are several ways to calculate a penalty based on aggravating and mitigating factors and the *BluPAC* precedent. The *BluPAC* penalty totals approximately 24% of the total amount of money at issue. In this case, that would result in a penalty of \$278,376, which the parties deem to be unduly harsh.

The *BluPAC* penalty also totals approximately \$1,320 per violation. The parties believe this to be closer to a fair approach in this case. And because Respondents relied on the advice of professionals in at least one reclassification, the parties agree that reducing the penalty to \$1,200 per violation for each failure to report a late contribution to the Ethics Commission is appropriate. This would result in \$28,800 in total penalties for Respondents' twenty-four late contribution violations.

Semiannual Campaign Statement Violation

The Committee failed to report one contribution for a total of \$6,512 on the proper semiannual campaign statement. In doing so, Respondents deprived voters of accurate information. In mitigation, the Committee reported this contribution on the following semiannual campaign statement, six months late.

Parties agree that a penalty of \$500 is appropriate for this violation.

| | | |
|------------------------|---|----------------------------------|
| Counts 1-24 | Failure to Report Late Contributions on Form 497 | \$28,800 (\$1,200 per violation) |
| Count 25 | Failure to Disclose a Contribution on Form 460 | \$500 (\$500 per violation) |
| Total Penalties | | \$29,300 |