



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329

March 10, 2017

Liz Kniss
Council Member
City of Palo Alto
Sent to {redacted email}

Re: FPPC Case No. 2017-00114; Liz Kniss

Dear Ms. Kniss:

The Fair Political Practices Commission has initiated an investigation into whether, based on the information we received (see below, in blue shading), you may have violated the Political Reform Act's campaign requirements and prohibitions. At this time, we have not made any determinations. We are simply providing you with this information and will be contacting you again regarding this matter.

The violations alleged are:

Violation Type: Violation of Rules Regarding Contributions

Code Section: Section 85318

Violation Comments: "Failure to file Form 497 to report a pre-election contribution of \$2,500 within twenty four (24) hours. A contribution of \$2,500 from the California Real Estate Political Action Committee (CREPAC) was made to committee/candidate on October 18, 2016. Even allowing for an extraordinary postal delay, the contribution must be deemed to have arrived in the committee/candidate's (or their agent's) possession prior to election day on November 8. Due to the treasurer's decision not to "open any mail" from October 22 to November 15, the committee/candidate claim that the contribution was not received until November 18.

The candidate and committee treasurer are campaign veterans, well aware of the 24 hour reporting rule for large contributions. According to recent press reports, the campaign was concerned about inadequate funding in the weeks prior to the election and actively solicited additional contributions. Both the treasurer and the candidate have sufficient experience to reasonably anticipate large contributions coming in in those final weeks.

Even if an investigation were to find that the treasurer's alleged unavailability during that time were somehow excusable, the candidate and the committee/treasurer, have an obligation to arrange for alternative systems to ensure proper receipt and reporting of contributions, particularly those received between 10/22/16 and election day.

Their failure to do so resulted in a failure to file the required Form 497 and subsequent inaccurate

disclosures in the Form 460 for the period 10/23/17 - 12/31/17 in complete contravention of the pre-election transparency protected by the 24 hour reporting requirement.”

“Inaccurate Form 460 reporting of date received for monetary contributions. The pre-election CREPAC contribution of \$2,500 made to committee/candidate on October 18, 2016 was not reported as received until November 18, 2016, post election. That contribution should have been reported in the October 22, 2016, pre-election filing. Even in the case of an extraordinary postal delay, the contribution should have been recorded as received long before the November 18 date on the committee's 10/23/16-12/31/16 form 460. Instead, the contribution was "forward dated" as received well after the election.

Failure to file amended Form 410 designating new treasurer during period of treasurer's unavailability. Whether anticipated or not, the treasurer's alleged unavailability during the critical weeks leading up to the election does not excuse the committee/candidate from campaign disclosure requirements. Instead, it triggers a requirement to file an amended form 410 designating a new treasurer. The failure to do so combined with the treasurer's failure to "open any mail" during the 18 days prior to and including election day disregards the rules, on their face and as described in the Campaign Disclosure Manual, renders dark contributions made during that 18 day period prior to the election, and calls into question the accuracy of reporting throughout the 10/23 - 12/31 filing period.”

Violation Type: Campaign Reporting Inaccurate/Incomplete

Code Section: Section 84211

Violation Comments: “Inaccurate Form 460 reporting of date received for monetary contributions. The pre-election CREPAC contribution of \$2,500 made to committee/candidate on October 18, 2016 was not reported as received until November 18, 2016, post election. That contribution should have been reported in the October 22, 2016, pre-election filing. Even in the case of an extraordinary postal delay, the contribution should have been recorded as received long before the November 18 date on the committee's 10/23/16-12/31/16 form 460. Instead, the contribution was "forward dated" as received well after the election.”

Violation Type: Campaign Reporting Inaccurate/Incomplete

Code Section: Occupation/Employer Reporting (85700)

Violation Comments: “Failure to report Occupation/Employer data for individual contributions of \$100 or more. Occupation/Employer data was reported as "unknown/unknown" for 18 individual contributors of \$100 or more, totaling \$9,391 in contributions for the period 10/23/16 to 12/31/16. Nearly a full half of the total \$20,665 in contributions reported for the period lack the required identification for public transparency.”

Violation Type: Violation of Rules Regarding Contributions

Code Section: Returning Contributions (85319)

Violation Comments: “Failure to return individual contributions of \$100 or more for which occupation/employer data was not obtained. Occupation/Employer data was reported as "unknown/unknown" for 18 such individual contributors, totaling \$9,391 in contributions for the period 10/23/16 to 12/31/16. Nearly a full half of the total \$20,665 in contributions for the period

lack the required identification for voter transparency.

The FPPC Campaign Disclosure Manual indicates that "A contribution of \$100 or more must be returned within 60 days of receipt if the committee has not obtained the contributor's name, address, and, in the case of a contributor who is an individual, his or her occupation and employer. If the committee returns the contribution for lack of information, and the check is not cashed by the contributor within 90 days, the committee must, within the next 30 days, forward the amount to the general fund of the local jurisdiction."

Having filed Form 460 and Form 410 Termination statements on 1/12/17, it is clear the candidate/committee has no intention of complying with this requirement."

Violation Type: Violation of Rules Regarding Contributions

Code Section: Post-Election Fundraising (85316)

Violation Comments: "Inconsistent and apparently inaccurate reporting during period of treasurer's unavailability calls into question the accuracy of the entire 10/23 - 12/31 Form 460 filing. Having "forward dated" (to November 18, 2016) a \$2,500 contribution made on October 18, 2016, the candidate and committee avoided the pre-election 24 hour reporting requirement. They claim that the late date is because the treasurer "did not open any mail" during the period from October 22, 2016 to November 15, 2016, however the filing registers four other contributions during that period in which the treasurer was allegedly unavailable, including October 26, October 29 and October 30.

Even if one could overlook the effective absence of a treasurer in the critical days leading up to the election, that inconsistency calls into question the accuracy of the entire filing, including five additional contributions of \$1,000 or more for which no Form 497 was filed. The Form 460 in question reports those additional large contributions as received on November 18 and November 20. However, if in fact those additional contributions were in the candidate/committee's (or agent's) possession during those 18 days prior to the election, (as was the misreported CREPAC donation of \$2,500), Form 497 reports would have been required.

The candidate/committee's failure to assure prompt and accurate disclosure and reporting consistent with financial disclosure requirements hid the CREPAC contribution from voters. The candidate/committee's inconsistent and inaccurate reporting undermines public confidence in campaign finance transparency, creates the appearance that candidates/committees may freely "sit" on pre-election contributions in order to manipulate the system, and may well have hidden the existence, source and amount of several large, pre-election contributions from the voting public."

Violation Type: Violation of Rules Regarding Contributions

Code Section: Post-Election Fundraising (85316)

Violation Comments: "HIDING THE MONEY

Despite bragging about not taking "developer" money during the campaign, she actually solicited such funds (according to at least one such donor), then hid them from the public. In some cases failing to fully identify the sources and in at least one case, failing to report them for an entire month – until after the election.

She's quoted above as saying "[w]e didn't hide anything," yet she failed to report the

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occupation/employer of several significant individual donors. According to the FPPC Campaign Disclosure Manual, “[a] contribution of \$100 or more must be returned within 60 days of receipt if the committee has not obtained ... in the case of an individual, his or her occupation and employer.”

Despite being a decades-long politician, served by a veteran campaign treasurer, she claims innocence for having delayed reporting of a \$2,500 donation for almost an entire month due to her treasurer’s absence.

GAMING THE SYSTEM AND FLAUTING THE RULES

She and her veteran campaign treasurer well know that FPPC rules require reporting of pre-election donations over \$1,000 within 24 hours of receipt and they know that under the rules “[a] contribution is received on the date the candidate, committee, or an agent of the committee obtains possession or control of the ... contribution” The real estate PAC (CREPAC) reported its donation as made on October 18, but the Kniss campaign didn’t report its receipt until November 18.

They claim that because the treasurer was busy “doing reports for two campaigns” and then had surgery, he “did not open any mail” between October 22 and November 18 and didn’t start posting contributions until he returned from surgery. Yet the recent Kniss filing shows that he did post \$1,300 in smaller contributions to the campaign during the same period he was supposedly unavailable.

Even if that inconsistency and meager excuse could pass the smell test in terms of honesty, it still violates campaign finance rules. The FPPC Campaign Disclosure Manual is clear about the responsibilities of the treasurer. Among other things, a campaign treasurer is required to:

1. “Establish a system of recordkeeping sufficient to ensure that contributions and expenditures are recorded promptly and accurately in compliance with the Act’s recordkeeping and disclosure requirements”; and
2. “Take steps to ensure all of the Act’s requirements are met regarding receipt, expenditure, and reporting of campaign funds.”

Furthermore, “[i]f the treasurer is unavailable to carry out his or her duties, a new treasurer must be designated and the committee’s Statement of Organization (Form 410) amended.”

Liz Kniss and her campaign committee failed on all those counts.

MANIPULATING THE PRESS

When called on their finance shenanigans by the Weekly, the Kniss campaign sought to cover their tracks by releasing newly obtained, informal “advice” from the FPPC, (based on the campaign’s own description of events), suggesting that a contribution may be deemed “received” when it is opened.

Although the Weekly reported on the informal nature of the advice today, the Daily Post on Wednesday reported the content of that limited, hot-line advice as fact, implying that the FPPC had ruled that there had been no campaign finance violation. In REAL FACT, there has been no investigation and no finding that “Palo Alto Vice Mayor Liz Kniss did not violate any rules.” Indeed, there has been no decision at all by the FPPC on this matter. With this shrewd, preemptive

manipulation of the Daily News, Liz Kniss sought to once again pull the wool over the eyes of Palo Alto voters.”

“This is a complaint about Liz Kniss’s recent campaign for the 2016 Palo Alto City Council. Of major concern in the election season was contributions from property developers, as the City Council decides each year whether to approve many controversial projects, each often worth tens of millions of dollars. The Kniss campaign appears to have used a number of techniques to obscure how much support it raised from developers, including:

* Claiming contributors were “Unknown.” Kniss’s 10/21/16..12/11/16 Form 460 lists 21 donors without full occupation or employment Combined, these parties gave \$10,491 in contributions. Yet many are well-known people involved in development. For example, her campaign filing shows Charles Keenan III gave \$999 on 11/20/16 and is listed as “Unknown Unknown” but is he a major local developer (see <http://keenanland.com/aboutchop.html>). Similarly, his employee Mark Gates Jr. (see <http://keenanland.com/aboutmark.html>) gave \$999 on the same day and is also listed as “Unknown Unknown.” Well-known local realtor Joseph Martignetti, Jr (see http://www.realtor.com/realestateagents/Joseph-Martignetti_Palo-Alto_CA_027489808) is listed as giving \$1,000 on 11/18/16 and yet is listed as “Unknown Self.”

* Claiming contributions came in after the election: <http://www.paloaltoonline.com/news/2017/01/27/kniss-says-she-didnt-break-campaign-finance-law> quotes Kniss’s campaign treasurer Tom Collins saying he didn’t open donation envelopes after October 22 and before November 15 and thus consider them “received” until after the election. But the article points out several small contributions were logged in during that period, while \$19,340 in major ones were not listed as received until November 18. Furthermore, if the large checks were not processed in a timely manner, how did her campaign manage to pay election expenses without this money? No new indebtedness is shown on the form. Since Kniss’s campaign had possession of the envelopes containing checks and spent money in anticipation of cashing the checks, clearly it acted as if it had “received” the money at the earlier date, regardless of when it actually opened the envelopes. Furthermore, Collins filed Form 460 reports on October 25 for Don McDougall, on October 26 for Kniss, and a later report for McDougall showing 32 donations all received during the very time he was reportedly unavailable to open envelopes.

* Using reimbursements rather than loans: Kniss’s campaign reimbursed her \$10,147.34 on her 10/23/16 .. 12/31/16 Form 460 rather than disclosing it as a loan she made to her campaign. So it is unclear when those expenses were actually incurred. If they were incurred in a prior reporting period, this had the effect of making her campaign efforts seem smaller and not funded as heavily by developers. It also hides the exact nature of the expenses by bundling them into reimbursements rather than as direct payments to vendors. For example, one such reimbursement is labeled as “Numerous Tech companies used during elections.”

* Possibly hiding more expenses: Kniss’s campaign gave her a final reimbursement of \$1,842.22 that zeroed out her campaign. It seems unlikely that her reimbursed expenses would match what her campaign raised to the penny. Rather, Kniss may have further campaign expenses that were never disclosed.

* Not disclosing contributions promptly: Kniss failed to file the pre-election Form 497 in a timely fashion or in some cases at all for contributions, transfers from prior campaigns, loans, and unreported loans (later reimbursed).

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* Not reporting reimbursement contributions as gifts: With Kniss taking on personal debt of over \$13,000, late contributions to her campaign actually went to increase her personal worth. As such, they were effectively gifts to her, but not reported as such.

We thank the FPPC for its efforts to support campaign transparency and honesty and hope it can address the above concerns.

Palo Alto Residents”

Should you have any comments on the allegation(s), your comments **must** be submitted in writing directed to Adrienne Korchmaros at akorchmaros@fppc.ca.gov. Please include the Case Number listed above in your response.

Sincerely,
Enforcement Division
Fair Political Practices Commission