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

11  
12 In the Matter of:

FPPC No. 16/19757

13 COMMITTEE TO ELECT AL MURRAY  
BERKELEY CITY COUNCIL 2016 and  
14 AL G. MURRAY,

STIPULATION, DECISION, AND ORDER

15 Respondents.  
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17 **STIPULATION**

18 Complainant, the Enforcement Division of the Fair Political Practices Commission and  
19 respondents Committee to Elect Al Murray Berkeley City Council 2016 and Al G. Murray (Respondents)  
20 hereby agree that this Stipulation will be submitted for consideration by the Fair Political Practices  
21 Commission (Commission) at its next regularly scheduled meeting.

22 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this  
23 matter and to reach a final disposition without the necessity of holding an additional administrative hearing  
24 to determine the liability of Respondents.

25 Respondents understand, and hereby knowingly and voluntarily waive, any and all procedural  
26 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of  
27 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to  
28 personally appear at any administrative hearing held in this matter, to be represented by an attorney at

1 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to  
2 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over  
3 the hearing as a hearing officer, and to have the matter judicially reviewed.

4 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing to  
5 timely file a pre-election statement in violation of Government Code sections 84200.5, subdivision (a),  
6 and 84200.8, subdivision (a), all as described in Exhibit 1. Exhibit 1 is attached hereto and incorporated  
7 by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of the facts in this  
8 matter.

9 Respondents agree to the issuance of the Decision and Order, which is attached hereto.  
10 Respondents also agree to the Commission imposing an administrative penalty in the total amount of  
11 \$2,500. Respondents submitted with this Stipulation a cashier's check in said amount, made payable to  
12 the "General Fund of the State of California," as full payment of the administrative penalty that shall be  
13 held by the State of California until the Commission issues its Decision and Order regarding this matter.  
14 The parties agree that in the event the Commission refuses to accept this Stipulation, it shall become null  
15 and void, and within fifteen (15) business days after the Commission meeting at which the Stipulation is  
16 rejected, all payments tendered by Respondents in connection with this Stipulation shall be reimbursed to  
17 Respondents. Respondents further stipulate and agree that in the event the Commission rejects the  
18 Stipulation, and a full evidentiary hearing before the Commission becomes necessary, neither any member  
19 of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this  
20 Stipulation.

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22 Dated: \_\_\_\_\_  
23 Galena West, Chief, on behalf of the Enforcement  
24 Division of the Fair Political Practices Commission

25 Dated: 4/3/18 \_\_\_\_\_  
26 Al G. Murray, individually and on behalf of Committee  
27 to Elect Al Murray Berkeley City Council 2016  
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1 **DECISION AND ORDER**

2 The foregoing Stipulation of the parties “In the Matter of Committee to Elect Al Murray Berkeley  
3 City Council 2016 and Al G. Murray,” FPPC No. 16/19757, including all attached exhibits, is hereby  
4 accepted as the final decision and order of the Fair Political Practices Commission, effective upon  
5 execution below by the Chair.

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7 IT IS SO ORDERED.

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9 Dated: \_\_\_\_\_

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11 Joann Remke, Chair  
12 Fair Political Practices Commission  
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## **EXHIBIT 1**

### **INTRODUCTION**

Respondent Al G. Murray (“Murray”) was an unsuccessful candidate for Berkeley City Council District 3 in the November 8, 2016 election. Respondent Committee to Elect Al Murray Berkeley City Council 2016 (the “Committee”) is his candidate-controlled committee.

Under the Political Reform Act (the “Act”),<sup>1</sup> a candidate-controlled committee must timely file campaign statements disclosing the contributions it receives and the expenditures it makes. The Committee violated the Act by failing to timely file one pre-election statement. As the candidate, Murray is liable, along with the Committee, for the Committee’s campaign reporting violation.<sup>2</sup>

### **SUMMARY OF THE LAW**

An express purpose of the Act is to ensure that campaign contributions and expenditures are fully and truthfully disclosed so that voters are fully informed and improper practices are discouraged.

In furtherance of this purpose, the Act requires candidate-controlled committees to file pre-election statements during election years.<sup>3</sup> Before a general election, a committee must file a pre-election statement no later than 40 days before the election for the statement period ending 45 days before the election.<sup>4</sup>

### **SUMMARY OF THE FACTS**

The Committee first qualified as a committee on July 1, 2016. The Committee and Murray failed to file a pre-election campaign statement for the period of July 1, 2016 through September 24, 2016 by the September 29, 2016 deadline.

The Berkeley City Clerk referred the Committee and Murray to the Enforcement Division for failing to timely file the first pre-election campaign statement.

Enforcement Division staff attempted to contact the Committee and Murray six times between October 13, 2016 and October 26, 2016 to request that they file the pre-election statement due on September 29, 2016. The Committee and Murray did not respond or file the delinquent statement.

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014, and 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, and all regulatory references are to this source.

<sup>2</sup> Sections 83116.5 and 91004.

<sup>3</sup> Section 84200.5, subdivision (a).

<sup>4</sup> Section 84200.8, subdivision (a).

On October 27, 2016, the Committee and Murray timely filed the second pre-election statement for the period of September 25, 2016 through October 22, 2016 after meeting with the Berkeley City Clerk for assistance. This statement showed the Committee received \$20,000 prior to September 25, 2016. The Committee and Murray failed to file the first pre-election statement on October 27, 2016 despite assuring Enforcement staff the day before that they would. Murray told the Berkeley City Clerk he did not believe the Committee needed to file the first pre-election statement because the only contribution to the Committee was a loan from Murray.

On November 1, 2016, the Enforcement Division filed a civil complaint against the Committee and Murray in Alameda Superior Court, seeking an injunction compelling the Committee to file the delinquent pre-election statement. On November 7, 2016, Alameda County Superior Court issued an injunction to compel the Committee and Murray to file the first pre-election campaign statement no later than 1:00 p.m. that day, which was the day before the election. The Committee and Murray filed the first pre-election campaign statement before the deadline. The filed statement disclosed a \$20,000 loan from Murray to the Committee and a \$10,000 expenditure for campaign posters and signs.

Murray did not win the Berkeley City Council District 3 seat in the November 8, 2016 election.

## **VIOLATION**

### **Count 1: Failure to Timely File a Pre-Election Statement**

The Committee and Murray failed to timely file a pre-election statement for the period of July 1, 2016 to September 24, 2016, in violation of Sections 84200.5, subdivision (a), and 84200.8, subdivision (a).

## **CONCLUSION**

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).

In determining the appropriate penalty for a particular violation of the Act, the Commission considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Commission considers the facts and circumstances of the violation in context of the factors set forth in Regulation 18361.5, subdivision (d)(1)-(6): the seriousness of the violations; the presence or lack of intent to conceal, deceive or mislead; whether the violation was deliberate, negligent, or inadvertent; whether the Respondents demonstrated good faith in consulting with Commission staff; whether there was a pattern of violations; and whether the violator, upon learning of the violations, voluntarily filed amendments.

The Commission also considers penalties in prior cases involving similar violations. Recent similar cases include the following:

- *In the Matter of Patricia Lopez, Patty Lopez for Assembly 2014, and Carolina Perez*, FPPC Nos. 15/313 and 15/314. (Commission approved a stipulated decision on March 17, 2016.) The respondents failed to timely file two pre-election statements and one semi-annual statement. During the periods in question, the committee received \$13,242.01 and expended \$10,965.95. The statements were ultimately filed after the relevant election, which the candidate won, making the public harm significant. The Commission imposed a penalty of \$2,500.
- *In the Matter of Robert E. Bernosky and Bernosky for Assembly 2012*, FPPC No. 13/1162. (Commission approved a stipulated decision on August 20, 2015.) The respondents, an unsuccessful Assembly candidate and his controlled committee, failed to timely file a semi-annual campaign statement. The respondents were well aware of their filing duties because the Commission had previously fined them for failing to timely file a pre-election statement. The Commission imposed a penalty of \$2,500.

A central purpose of the Act is to ensure receipts and expenditures in election campaigns are fully and truthfully disclosed.<sup>5</sup> Although the details of the aggravating factors in this case are different than those of previous similar cases, the level of public harm and the respondents' knowledge of their duty to file the first pre-election campaign statement are comparable.

The Committee and Murray disregarded Enforcement Division requests to file the statement for 25 days. The delinquent statement was not filed until one day before the election—39 days after it was due—which denied Berkeley voters important information regarding contributions received and expenditures made by the Committee.

The Committee and Murray were well aware of their duty to file. The Berkeley City Clerk and the Enforcement Division provided information to the Committee and Murray about how to file the statement. The Committee and Murray timely filed the second pre-election campaign statement. Further, Murray was a member of Berkeley's Fair Campaign Practices Commission from May 2012 through May 2016, so he had knowledge of campaign filings even though he was a first-time candidate.

In mitigation, Murray was not elected to the Berkeley City Council, coming in last place with 123 votes, or 1.82 percent of total votes cast. In addition, the public had some earlier knowledge that Murray had loaned the Committee \$20,000 because Murray disclosed it in media interviews prior to filing the first pre-election campaign statement.

### **PROPOSED PENALTY**

After considering the factors of Regulation 18361.5, the penalties imposed in prior cases, and other relevant information, a penalty of \$2,500 is recommended.

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<sup>5</sup> Section 81002, subdivision (a).