

1 GALENA WEST  
Chief of Enforcement  
2 JENNA C. RINEHART  
Commission Counsel  
3 **FAIR POLITICAL PRACTICES COMMISSION**  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
4 Telephone: (916) 323-6302  
5 Email: JRinehart@fppc.ca.gov

6 Attorneys for Complainant  
7 Enforcement Division of the Fair Political Practices Commission

8  
9 **BEFORE THE FAIR POLITICAL PRACTICES COMMISSION**

10 **STATE OF CALIFORNIA**

11 In the Matter of:

FPPC Case No. 20/391

12 DAVID ERNST and DAVID ERNST  
13 FOR ASSEMBLY 2018,

**STIPULATION, DECISION AND ORDER**

14 Respondents.  
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16

17 **INTRODUCTION**

18 Respondent, David Ernst (“Ernst”), was an unsuccessful candidate for California State  
19 Assembly, District 19, in the June 5, 2018 Primary Election. Respondent, David Ernst For Assembly  
20 2018 (ID# 1405218) (the “Committee”), is Ernst’s controlled-committee. Ernst serves as the  
21 Committee’s treasurer.

22 The Political Reform Act (the “Act”)<sup>1</sup> requires committees and treasurers to timely file certain  
23 campaign statements and reports to disclose contributions received and expenditures made. The  
24 Committee and Ernst violated the Act by failing to timely file pre-election and semi-annual campaign  
25 statements, and 24-hour contribution reports.  
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27 <sup>1</sup> The Political Reform Act – sometimes simply referred to as the Act – is contained in Government Code sections  
28 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 **SUMMARY OF THE LAW**

2 The Act and its regulations are amended from time to time. The violations in this case occurred  
3 in 2018 and 2019. For this reason, all legal references and discussions of law pertain to the Act’s  
4 provisions as they existed at that time.

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

6 When enacting the Act, the people of California found and declared that previous laws regulating  
7 political practices suffered from inadequate enforcement by state and local authorities.<sup>2</sup> Thus, it was  
8 decreed the Act “should be liberally construed to accomplish its purposes.”<sup>3</sup>

9 A central purpose of the Act is to promote transparency by ensuring that receipts and  
10 expenditures in election campaigns are fully and truthfully disclosed so that voters are fully informed  
11 and improper practices are inhibited.<sup>4</sup> Another purpose of the Act is to provide adequate enforcement  
12 mechanisms so that the Act will be “vigorously enforced.”<sup>5</sup>

13 **Committee**

14 “Committee” means any person or combination of persons who directly or indirectly receives  
15 contributions totaling \$2,000 or more in a calendar year.<sup>6</sup> This type of committee is generally referred to  
16 as a recipient committee.

17 **Controlled Committee**

18 “Controlled committee” means a committee that is controlled directly or indirectly by a  
19 candidate in connection with the making of expenditures.<sup>7</sup> A candidate controls a committee if he or she  
20 has a significant influence on the actions or decisions of the committee.<sup>8</sup>

21 **Pre-Election Campaign Statements**

22 All candidates appearing on the ballot to be voted on at the next election, and their controlled  
23 committees, shall file the applicable pre-election campaign statements.<sup>9</sup> The first pre-election campaign  
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25 <sup>2</sup> Section 81001, subdivision (h).

26 <sup>3</sup> Section 81003.

27 <sup>4</sup> Section 81002, subdivision (a).

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

<sup>6</sup> Section 82013, subdivision (a).

<sup>7</sup> Section 82016, subdivision (a).

<sup>8</sup> *Id.*

<sup>9</sup> Section 84200.5, subdivision (a).

1 statement, for the period ending 45 days before the election, shall be filed no later than 40 days before  
2 the election.<sup>10</sup> The second pre-election campaign statement, for the period ending 17 days before the  
3 election, shall be filed no later than 12 days before the election.<sup>11</sup>

#### 4 **Semi-Annual Campaign Statements**

5 Recipient committees shall file semi-annual campaign statements each year no later than July 31  
6 for the period ending June 30, and no later than January 31 for the period ending December 31.<sup>12</sup>

#### 7 **24-Hour Contribution Reports**

8 A “late contribution” is a contribution that totals in the aggregate \$1,000 or more and is made to  
9 or received by a candidate or controlled committee during the 90-day period preceding the date of the  
10 election, or on the date of the election, at which the candidate is to be voted on.<sup>13</sup> Each candidate or  
11 committee that makes or receives a late contribution shall report the late contribution within 24 hours of  
12 the time it is made or received.<sup>14</sup>

#### 13 **Joint and Several Liability of Committee and Treasurer**

14 It is the duty of a committee treasurer to ensure the committee complies with the Act.<sup>15</sup> A  
15 treasurer may be held jointly and severally liable for violations committed by the committee.<sup>16</sup>

#### 16 **Liability for Violations**

17 Any person who violates any provision of the Act is liable for administrative penalties up to  
18 \$5,000 per violation.<sup>17</sup>

### 19 **SUMMARY OF THE FACTS**

20 This case was opened in response to referrals from the Secretary of State for the Committee and  
21 Ernst’s failure to file certain campaign statements.

22 The Committee was established on April 20, 2018 when it filed its initial statement of  
23 organization. According to campaign statements, between establishment and December 31, 2019, the  
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25 <sup>10</sup> Section 84200.8, subdivision (a).

26 <sup>11</sup> Section 84200.8, subdivision (b).

27 <sup>12</sup> Section 84200.

28 <sup>13</sup> Section 82036, subdivision (a).

<sup>14</sup> Section 84203, subdivision (a)-(b).

<sup>15</sup> Sections 81004, 84100, and Regulation 18427.

<sup>16</sup> Sections 83116. 5 and 91006.

<sup>17</sup> Sections 83116 and 83116. 5.

1 Committee raised and spent \$8,928 in contributions and \$8,642 in expenditures. To date, the Committee  
2 remains open.

### 3 **Failure to Timely File Pre-Election and Semi-Annual Campaign Statements**

4 Since Ernst appeared on the June 5, 2018 Primary Election ballot, the Committee and Ernst were  
5 required to file both pre-election campaign statements. Since the Committee remained open following  
6 the June 5, 2018 Primary Election, the Committee and Ernst are required to file semi-annual campaign  
7 statements twice a year until the Committee is terminated. For the reporting periods between January 1,  
8 2018 and December 31, 2019, the Committee and Ernst filed the following campaign statements:

9 STATEMENT	REPORTING PERIOD	DUE DATE	DATE FILED	ACTIVITY
10 First Pre-Election	01/01/2018 - 04/21/2018	04/26/2018	04/30/2020 (735 days late)	CTB = \$8,928 EXP = \$7,890
11 Second Pre-Election	04/22/2018 - 05/19/2018	05/24/2018	04/30/2020 (707 days late)	
12 Semi-Annual	05/20/2018 - 06/30/2018	07/31/2018	04/30/2020 (639 days late)	
13 Semi-Annual	07/01/2018 - 12/31/2018	01/31/2019	04/30/2020 (455 days late)	CTB = \$0 EXP = \$212
14 Semi-Annual	01/01/2019 - 06/30/2019	07/31/2019	04/30/2020 (274 days late)	CTB = \$0 EXP = \$270
15 Semi-Annual	07/01/2019 - 12/31/2019	01/31/2020	04/30/2020 (90 days late)	CTB = \$0 EXP = \$270

### 18 **Failure to Timely File 24-Hour Contribution Reports**

19 The 90-day period preceding the June 5, 2018 Primary Election began on March 7, 2018. The  
20 Committee's campaign statements revealed late contributions received that required 24-hour  
21 contribution reports to be filed as follows:

22 DUE DATE	CONTRIBUTOR	AMOUNT	DATE FILED
23 04/30/2018	James Rutt	\$1,000	Not filed
24 05/10/2018	Daniel Tierney	\$4,400	Not filed
25 05/21/2018	Stephen Schuler	\$2,200	Not filed
26 <b>TOTAL:</b>		<b>\$7,600</b>	

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1 **VIOLATIONS**

2 **Count 1: Failure to Timely File Pre-Election and Semi-Annual Campaign Statements**

3 The Committee and Ernst failed to timely file two pre-election campaign statements for the  
4 reporting periods ending April 21, 2018 and May 19, 2018, by the April 26, 2018 and May 24, 2018 due  
5 dates, respectively, and four semi-annual campaign statements for the reporting periods ending June 30,  
6 2018, December 31, 2018, June 30, 2019, and December 31, 2019, by the July 31, 2018, January 31,  
7 2019, July 31, 2019, and January 31, 2020 due dates, respectively, in violation of Government Code  
8 Sections 84200.5, 84200.8, and 84200.

9 **Count 2: Failure to Timely File 24-Hour Contribution Reports**

10 The Committee and Ernst failed to timely file 24- hour contribution reports for three late  
11 contributions received on April 29, 2018, May 9, 2018, and May 18, 2018 totaling \$7,600, by the April  
12 30, 2018, May 10, 2018, and May 21, 2018 due dates, respectively, in violation of Government Code  
13 Section 84203.

14 **PROPOSED PENALTY**

15 This matter consists of two counts. The maximum penalty that may be imposed is \$5,000 per  
16 count. Thus, the maximum penalty that may be imposed here is \$10,000.<sup>18</sup>

17 In determining the appropriate penalty for a particular violation of the Act, the Commission  
18 considers the facts of the case, the public harm involved, and the purposes of the Act. Further, the  
19 Commission considers factors such as: (a) the seriousness of the violation; (b) the presence or absence of  
20 any intention to conceal, deceive or mislead; (c) whether the violation was deliberate, negligent or  
21 inadvertent; (d) whether the violation was isolated or part of a pattern; (e) whether corrective  
22 amendments voluntarily were filed to provide full disclosure; and (f) whether the violator has a prior  
23 record of violations.<sup>19</sup>

24 The public harm inherent in campaign reporting violations is that the public is deprived of  
25 important, time-sensitive information regarding campaign activity. Here, the Committee and Ernst’s  
26 failure to timely file pre-election campaign statements and 24-hour contribution reports prior to the June  
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28 <sup>18</sup> Section 83116, subdivision (c).

<sup>19</sup> Regulation 18361. 5, subdivision (d).

1 5, 2018 Primary Election is aggravated because failing to file these statements and reports resulted in the  
2 public having no knowledge of the Committee and Ernst's campaign activity prior to the election.

3 In this case, there was no evidence to support an intent to conceal, deceive or mislead the public  
4 as to the Committee's receipts and expenditures. The violations here appear to be inadvertent as Ernst is  
5 a first-time candidate with no prior experience with the Act. Also, Ernst filed the outstanding campaign  
6 statements soon after receiving contact from the Enforcement Division. The Committee and Ernst do not  
7 have prior enforcement history.

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

10 *In the Matter of Dan Medina for Gardena Mayor 2017, Dan Medina, and Susana Weltz Medina;*  
11 FPPC Case No. 15/2256. Respondents, an unsuccessful candidate for Mayor of the City of Gardena, his  
12 controlled-committee, and its treasurer, failed to timely file one pre-election and three semi-annual  
13 campaign statements (Count 1) and 24-hour contribution reports for ten late contributions received  
14 totaling \$11,973 (Count 2). In mitigation to Count 1, Respondents filed the pre-election campaign  
15 statement at issue prior to the pertinent election. In aggravation to Count 1, Respondents failed to timely  
16 report \$2,100 in contributions and \$825 in expenditures. In mitigation to Count 2, all of the late  
17 contributions were disclosed on other campaign statements filed prior to the election. Also, 24-hour  
18 contribution reports for eight of the late contributions received at issue here were late-filed prior to the  
19 election. In aggravation to all counts, Medina had prior campaign experience as he was an officeholder  
20 and had an open election committee since 2013 and so knew, or should have known, of the filing  
21 obligations. Throughout 2017, the Respondent committee reported \$21,189 in contributions and \$24,538  
22 in expenditures. On February 20, 2020, the Commission approved a penalty of \$4,000; \$2,500 for Count  
23 1; \$1,500 for Count 2.

24 A higher penalty than that approved in *Medina* is recommended. Similar to *Medina*, Ernst and  
25 the Committee failed to timely file two pre-election and four semi-annual campaign statements (Count  
26 1) and 24-hour contribution reports for three late contributions received totaling \$7,600 (Count 2).  
27 Unlike *Medina*, the pre-election campaign statements were late-filed after the election and after  
28 receiving contact from the Enforcement Division. Also, unlike *Medina*, Ernst was a first-time candidate

1 with no prior campaign experience. In mitigation, Ernst raised and spent approximately \$8,928,  
 2 respectively, during his campaign, approximately 36% of the amount spent in *Medina*. In aggravation,  
 3 Ernst and the Committee did not file any 24-hour contribution reports prior to the election. Further, the  
 4 late contributions were not reported prior to the election as the pre-election campaign statements were  
 5 late-filed after the election. Following the election, Ernst and the Committee failed to file semi-annual  
 6 campaign statements for four consecutive reporting periods. Therefore, a total penalty of \$4,500 is  
 7 recommended; \$3,000 for Count 1; \$1,500 for Count 2.

8 Under these circumstances, it is respectfully submitted that imposition of an agreed upon penalty  
 9 in the amount of \$4,500 is justified, as reflected in the chart below:

Count	Violation	Penalty
1	Failure to Timely File Pre-Election and Semi-Annual Campaign Statements	\$3,000
2	Failure to Timely File 24-Hour Contribution Reports	\$1,500
	<b>TOTAL:</b>	<b>\$4,500</b>

### 15 CONCLUSION

16 Complainant, the Enforcement Division of the Fair Political Practices Commission, and  
 17 Respondents, David Ernst and David Ernst For Assembly 2018, hereby agree as follows:

- 18 1. Respondents violated the Act as described in the foregoing pages, which are a true and accurate  
 19 summary of the facts in this matter.
- 20 2. This stipulation will be submitted for consideration by the Fair Political Practices Commission at  
 21 its next regularly scheduled meeting – or as soon thereafter as the matter may be heard.
- 22 3. This stipulation resolves all factual and legal issues raised in this matter – for the purpose  
 23 of reaching a final disposition without the necessity of holding an administrative hearing to  
 24 determine the liability of Respondents pursuant to Section 83116.
- 25 4. Respondents understand, and hereby knowingly and voluntarily waive, any and all  
 26 procedural rights set forth in Sections 83115.5, 11503, 11523, and Regulations 18361.1 through  
 27 18361.9. This includes, but is not limited to the right to appear personally at any administrative  
 28 hearing held in this matter, to be represented by an attorney at Respondents’ own expense, to

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

4 5. Respondents agree to the issuance of the decision and orders set forth below. Also,  
5 Respondents agree to the Commission imposing against them an administrative penalty in the  
6 amount of \$4,500. One or more cashier's checks or money orders totaling said amount – to be  
7 paid to the General Fund of the State of California – is/are submitted with this stipulation as full  
8 payment of the administrative penalty described above, and same shall be held by the State of  
9 California until the Commission issues its decision and order regarding this matter.

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

17 7. The parties to this agreement may execute their respective signature pages separately. A  
18 copy of any party's executed signature page, including a hardcopy of a signature page  
19 transmitted via fax or as a PDF email attachment, is as effective and binding as the original.  
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22 Dated: \_\_\_\_\_  
23 \_\_\_\_\_  
24 Galena West, Chief of Enforcement  
Fair Political Practices Commission

25 Dated: \_\_\_\_\_  
26 \_\_\_\_\_  
27 David Ernst, individually and on behalf of  
David Ernst For Assembly 2018,  
28 Respondents



1 The foregoing stipulation of the parties “In the Matter of David Ernst and David Ernst For  
2 Assembly 2018,” FPPC Case No. 20/391, is hereby accepted as the final decision and order of the Fair  
3 Political Practices Commission, effective upon execution by the Chair.

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5 IT IS SO ORDERED.

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7 Dated: \_\_\_\_\_  
8 Richard C. Miadich, Chair  
9 Fair Political Practices Commission  
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