

CITY OF OAKLAND

Public Ethics Commission

Jonathan Stein, Chair
Jodie Smith, Vice-Chair
Lisa Crowfoot
James E. T. Jackson
Gail Kong
Krisida Nishioka



TO: Public Ethics Commission
FROM: Campaign Finance Compliance Team (Investigator Simon Russell, Lead Analyst Suzanne Doran, Enforcement Chief Milad Dalju, and Executive Director Whitney Barazoto)
DATE: October 26, 2018
RE: Campaign Finance Compliance for the 2018 Election

This year marks the first time the Public Ethics Commission served as filing officer for campaign statements for a full election cycle. In taking on this responsibility, the Commission's goal was to align its education, outreach, disclosure, and compliance work to achieve maximum compliance with campaign finance requirements by Oakland candidates and committees. To that end, Commission staff has significantly enhanced its education and compliance work in 2018 to ensure that candidates and committees understand and adhere to campaign finance requirements, that campaign data is accurate and up-to-date for the public, and that non-compliance is detected and corrected quickly. This includes staff reaching out to candidates and committees to immediately correct any filing deficiencies that were evident from facial campaign statement reviews, among a variety of other activities that will be summarized comprehensively following the election.

In addition to working directly with candidates and committees, Commission staff initiated a proactive review of all candidate committees – once in August and again in October – to check for contributions received by candidates over the contribution limit (\$800 for individuals, \$1,600 for broad-based political committees). This memorandum provides an overview of Commission staff's findings from this contribution limit compliance review and describes staff's actions to achieve full compliance by all committees. In some cases, issues identified by Commission staff's review were also the subject of later complaints submitted by members of the public; those complaints are addressed in this report with the exception of one dismissal letter, which is attached to the Enforcement Report for this agenda.

Again, the goal of this compliance review, and this report, was to review all candidate committees across the board for compliance with local campaign contribution limits and to obtain compliance with these limits by committees in advance of the November election. This aims to serve the public interest in receiving timely and accurate information about contributions in advance of the imminent election, and to ensure that any money received over the limit was not used by the committee for the election and instead forfeited to the City.

Review of Campaign Filings

As of the time of Commission staff's review, a total of 5,406 contributions had been reported by all candidate committees combined for the 2018 election. During its review, Commission staff found roughly 25 instances in which over-the-limit contributions were corrected proactively by candidates through refunds to the contributor. While some of these refunds could be considered legal violations if the original checks had been deposited by the campaign, Commission staff did not pursue any action for these contribution limit violations that were proactively self-corrected by committees.

Overall, candidates have overwhelmingly adhered to contribution limits with minor exceptions:

1. Multi-Year Contributions Resulting in Forfeiture

One issue that became clear from the contribution limit review is that candidates who began their campaigns in 2017 have occasionally missed detecting overages where a donor contributed once in 2017 and again in 2018. Making or accepting a contribution to a candidate committee of more than \$800 per person, or more than \$1,600 per broad-based political committee, for each election is a violation of the Oakland Campaign Reform Act.¹ These amounts apply for each election cycle and include contributions made over the span of multiple years.

In cases where staff found duplicate contributions across multiple years, staff contacted the committees to confirm the violation and request forfeiture of excess contributions. Committees were quick to respond and voluntarily forfeit the overages. Some noted that the software the committee uses does not aggregate an individual's contributions across multiple years even though the campaign form has a category for "per-election to date," but that they will add additional safeguards to avoid future violations.

Voluntary forfeitures in these cases allowed staff to address minor violations expeditiously and ensure that the overage is eliminated from the committee in advance of the election, and it facilitated timely disclosure of the information so that the public is promptly informed and contributor information is accurate and in compliance across campaigns.

Below is a summary of multi-year contribution overages that were reported by the committees and forfeited to the City.

Candidate Committee	Contributor	First Contribution	Second Contribution	Third Contribution	Overage Forfeited to the City
<i>Desley Brooks for City Council 2018</i>	Frank Tucker	\$500 07/04/2017	\$500 04/26/2018		\$200
<i>Desley Brooks for City Council 2018</i>	Lenny Williams	\$300 07/04/2017	\$400 03/12/2018	\$200 07/04/2018	\$100
<i>Desley Brooks for City Council 2018</i>	Mark Tran	\$800 07/18/2017	\$800 07/18/2017		\$800
<i>Abel Guillen for City Council 2018</i>	Oakland Police Officer's Assoc.	\$1,500 11/02/2017	\$1,500 08/31/2018		\$1,400

¹ O.M.C. 3.12.040 and 3.12.050.

<i>Libby Schaaf for Mayor 2018</i> ²	Terrence McGrath	\$800 06/30/2017	\$800 05/31/2018		\$800
<i>Libby Schaaf for Mayor 2018</i>	Tomiquia Moss	\$500 06/30/2017	\$800 06/30/2018		\$500
<i>Libby Schaaf for Mayor 2018</i>	James Vohs	\$800 12/22/2017	\$800 06/30/2018		\$800

Commission staff notes the following mitigating factors: 1) the committees timely and accurately reported all the relevant contributions, showing no intent to conceal the overage or information about the contributions and indicating that the receipt of duplicate contributions was inadvertent; 2) this type of mistake appears to be common among the campaigns that received contributions across multiple years; and 3) the committees each responded immediately to Commission staff's inquiries, request for documentation, and request to forfeit the excess contributions to the City.

Staff Recommendation: Commission staff recommends closing the above contribution limit matters (PEC No. 18-21 *Desley Brooks for City Council 2018*; 18-22 *Libby Schaaf for Mayor 2018*; and 18-36 *Abel Guillen for City Council 2018*) with forfeiture letters to the committees describing the violations and noting each committee's voluntary forfeiture. These letters will also serve as notice to the committees to fix their internal process to avoid future violations. Commission staff also recommends sending warning letters to the reported contributors to alert them of the law. Lastly, Commission staff will include this issue, and suggested approaches to ensure compliance, in its education efforts in future election cycles.

2. Minor Overage Resulting in Forfeiture

Commission staff's contribution limit review also identified a minor overage by the *Sheilagh Polk "Cat Brooks" for Mayor 2018* committee in the amount of \$25. When contacted by Commission staff, the committee confirmed the contributions and agreed to staff's request to voluntarily forfeit the overage to the City. The committee said the contribution was made through an online web portal and that it was an oversight that the committee had intended to refund.

Candidate Committee	Contributor	First Contribution	Second Contribution	Overage Forfeited to the City
<i>Sheilagh Polk "Cat Brooks" for Mayor 2018</i>	Scott Clifford	\$800 08/26/2018	\$25 08/26/2018	\$25

Commission staff notes the following mitigating factors: 1) the committee timely and accurately reported all the relevant contributions, showing no intent to conceal the overage or information about the contributions and indicating that the receipt of excess contributions was inadvertent; 2) the committees each responded immediately to Commission staff's inquiries, request for information, and request to forfeit the excess contributions to the City; and 3) the amount of the overage was relatively minor compared to the total amount of contributions received by the committee.

² When Commission staff contacted the *Libby Schaaf for Mayor 2018* committee about the other listed overages, the committee conducted its own search for repeat contributors and self-reported this additional excess contribution from Terrence McGrath.

Staff Recommendation: Commission staff recommends closing this matter (PEC No. 18-20) with a forfeiture letter describing the violation and the committee’s voluntary forfeiture. This letter will also serve as notice to the committee to fix its internal process to avoid future violations. Commission staff also recommends sending a warning letter to the reported contributor to alert them of the law.

3. Contribution Limit Errors or Overages Corrected

The following errors were minor and technical, and were corrected immediately by the committees:

- A. *Sheilagh Polk “Cat Brooks” for Mayor 2018* committee received a \$1,000 contribution from a business (Adnan Market) that she said she thought was a broad-based political committee. Accepting a contribution of more than \$800 per person (including a business) is a violation of the Oakland Campaign Reform Act.³ When contacted by Commission staff, the committee responded immediately and corrected the error. In addition, the committee asserted that the check was not deposited into the committee’s bank account until after the committee issued the refund. A contribution is not “received” if not deposited or used and if returned to the donor within 5 days of the campaign statement filing deadline.⁴

On October 8, 2018, the Commission received a formal complaint (PEC No. 18-34) regarding four other contributions received over the limit and corrected by the committee. The complaint alleged that the *Sheilagh Polk “Cat Brooks” for Mayor 2018* committee accepted excess contributions on four occasions, which the committee then refunded instead of returning.

These contributions include the following:

Candidate Committee	Contributor	First Contribution	Second Contribution	Third Contribution	Fourth Contribution	Refund Issued
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Rachel Gelman	\$1,000 05/01/2018				\$200 05/11/2018
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Monica Anderson	\$100 05/03/2018	\$100 05/09/2018	\$1,000 05/17/2018		\$400 05/23/2018
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Katrin Wehrheim	\$54.06 05/09/2018	\$800 05/17/2018			\$54.06 06/08/2018
<i>Sheilagh Polk “Cat Brooks” for Mayor 2018</i>	Cassia Stepak	\$54.06 05/15/2018	\$500 05/17/2018	\$31 05/31/2018	\$250 06/30/2018	\$35.06 06/30/2018

The committee noted that two of the above contributions (Gelman and Stepak) were not deposited into the committee’s bank account before the overage was refunded, and therefore were not technically “received” under the Oakland Campaign Reform Act. For

³ O.M.C. 3.12.040 and 3.12.050.

⁴ O.M.C. 3.12.070.

the remaining two contributions, one was an online contribution that was automatically deposited into the bank account before being refunded within 6 days (Anderson), and the other was the online purchase of tickets to a fundraiser done separately from an \$800 contribution from the same donor (Wehrheim), refunded within 22 days and before the filing deadline.

Staff Recommendation: Because the committee responded immediately to correct the Adnan Market contribution error noted by Commission staff, and because the committee self-corrected the overages listed in the formal complaint on its own within days of each contribution, Commission staff recommends closing this matter (PEC No. 18-34) with an advisory letter to the committee to note the very slight technical violations and subsequent correction by the committee. Commission staff also recommends sending warning letters to the reported contributors to alert them of the law.

- B. *Desley Brooks for City Council 2018* committee received a \$1,600 contribution from LT Liquors, a business, on April 7, 2018. Accepting a contribution of more than \$800 per person (including a business) is a violation of the Oakland Campaign Reform Act.⁵ Commission staff had identified the overage as part of its broad compliance review in August and had contacted the committee regarding the overage. Ms. Brooks explained that the contribution was intended to come from two individuals who co-own the business, and this was corroborated by the two co-owners.

Ms. Brooks responded immediately to Commission staff's inquiries and agreed to correct the overage by properly documenting and reporting the contributions from each contributor.

On September 18, 2018, the Commission received a formal complaint (PEC No. 18-27) regarding the LT Liquors contribution.

Staff Recommendation: Because Ms. Brooks responded immediately to Commission staff's inquiries and corrected the overage, Commission staff recommends closing this matter (PEC No. 18-27) with an advisory letter to the committee to note the technical violation and subsequent correction by the committee. Commission staff also recommends sending warning letters to the contributors to alert them of the law.

4. Self-Loan – No Violation

Commission staff identified a loan reported by *Pamela Price for Mayor 2018* committee for \$2,500 from Ida B. Wells, LLC, on August 17, 2018. Making or accepting a contribution to a candidate committee of more than \$800 per person for each election is a violation of the Oakland Campaign Reform Act.⁶ Loans are considered a contribution from the maker and subject to the contribution limits of the Oakland Campaign Reform Act.⁷

⁵ O.M.C. 3.12.040 and 3.12.050.

⁶ O.M.C. 3.12.040 and 3.12.050.

⁷ O.M.C. 3.12.090.

Commission staff reviewed the loan information and found that, according to state business filings, Pamela Price is the sole manager/member of Ida B. Wells, LLC; therefore, contributions or loans from that entity should be considered contributions from Ms. Price. There is no limit on contributions that a candidate may make to their own campaign. Since there was no violation, staff took no further action on this matter.

Because Commission later received a formal complaint (PEC No. 18-33) regarding this loan, staff includes a dismissal letter in the Enforcement Report on the November meeting agenda as is customary for allegations received for which no violation was found.

Conclusion and Summary of Recommendations

In summary, staff recommends the Commission take the following actions:

1. PEC Case No. 18-20; *Sheilagh Polk “Cat Brooks” for Mayor 2018* – Close with forfeiture letter to the committee and warning letter to the reported contributor
2. PEC Case No. 18-21; *Desley Brooks for City Council 2018* – Close with forfeiture letter to the committee and a warning letter to the reported contributor
3. PEC Case No. 18-22 *Libby Schaaf for Mayor 2018* – Close with forfeiture letter to the committee and a warning letter to the reported contributors
4. PEC Case No. 18-27; *Desley Brooks for City Council 2018* – Close with advisory letter to the committee and warning letters to the contributors
5. PEC Case No. 18-33; *Pamela Price for Mayor 2018* – No action needed, dismissal letter attached to Enforcement Report
6. PEC Case No.18-34; *Sheilagh Polk “Cat Brooks” for Mayor 2018* – Close with advisory letter to the committee and warning letter to the reported contributor
7. PEC Case No. 18-36; *Abel Guillen for City Council 2018* – Close with forfeiture letter to the committee and a warning letter to the reported contributor