



NEWS RELEASE

CALIFORNIA SECRETARY OF STATE **BRUCE McPHERSON**

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FOR IMMEDIATE RELEASE
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Secretary of State Bruce McPherson Urges Legislative Leaders to Join Him in Calling on the Attorney General to Recover Funds Misspent by Kevin Shelley

Calls on Election Committee Chairs to join request for immediate legal action on behalf of California's taxpayers

SACRAMENTO, CA - Secretary of State Bruce McPherson sent a letter to the chair of the Senate Elections, Reapportionment and Constitutional Amendments Committee, Senator Debra Bowen and the Assembly Elections and Redistricting Committee, Assemblyman Tom Umberg urging them to join him in requesting that the Attorney General take legal action on behalf of California's taxpayers to recover nearly \$3 million misspent by Kevin Shelley.

The Election Assistance Committee (EAC) released the final findings of its audit of the mismanagement of Help America Vote Act (HAVA) funds by former Secretary of State Kevin Shelley on Monday. The EAC has informed Secretary McPherson that due to the misuse of funds and the dereliction of duty on the part of the Shelley administration, the California taxpayers will be required to pay back a total of \$2,917,583 in general fund dollars.

On Monday, Secretary McPherson sent a letter to Attorney General Bill Lockyer urging immediate action to hold Kevin Shelley personally responsible for the nearly \$3 million dollars so the burden does not unfairly fall on California's hardworking taxpayers.

Below is the letter to Senator Bowen and Assemblyman Umberg.
Attached is the letter to Attorney General Lockyer.

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October 18, 2006

The Honorable Debra Bowen
Chair, Senate Elections, Reapportionment and
Constitutional Amendments Committee
State Capitol
Sacramento, CA 95814

The Honorable Tom Umberg
Chair, Assembly Elections and Redistricting Committee
State Capitol
Sacramento, CA 95814

Dear Senator Bowen and Assemblyman Umberg:

The federal Election Assistance Commission (EAC) has just released the final findings of its audit of the mismanagement of Help America Vote Act (HAVA) funds by former Secretary of State Kevin Shelley. The EAC has informed my office that due to the misuse of funds and the dereliction of duty on the part of the Shelley administration, the California taxpayers will be required to pay back a total of \$2,917,583 in general fund dollars.

When I became Secretary of State on March 30, 2005 following the resignation of Kevin Shelley, two state audits had been concluded and the EAC had announced its intention to conduct a federal audit. The federal audit was prompted by allegations of waste, mismanagement, negligence, and misuse of HAVA funds entrusted to Kevin Shelley. Those allegations were confirmed in the findings of the Bureau of State Audits (BSA) December 2004 performance audit report. The BSA audit documented disregard for proper stewardship of public funds, poor planning and poor oversight and spending for work that had little, if anything, to do with HAVA.

Unfortunately, the \$2,917,583 represents general fund monies that Californians will not be able to use to pay for the many critical needs facing our state, such as education, public safety and transportation, to name just a few. For example, \$3 million would pay for 44,000 new textbooks or 51 California Highway Patrol Officers. These hard-earned taxpayer dollars must not be lost because of Kevin Shelley's mismanagement and abuse of power.

Just this week the San Francisco Chronicle reported, "Audits by first the state and then the federal government sparked the refund demand. Auditors found slipshod management by Shelley. State employee salaries were wrongly paid with federal dollars, consultants and employees attended partisan events and purchases were made of promotional items such as buttons and balloons."

Upon receiving the final EAC report, I requested in the strongest terms that Attorney General Bill Lockyer take immediate legal action on behalf of the taxpayers of California to recover the funds that were misused by Kevin Shelley. It is imperative that you, as the respective Chairs of the Senate and Assembly Elections Committees, join in my

request for immediate legal action, because the taxpayers of California deserve your unqualified support in sending a strong bi-partisan message to the Attorney General to take swift and effective action on these clearly documented abuses.

In the past you deferred to either the state audits or the EAC to ferret out the misconduct of the Shelley administration. I am certain you agree that there is no reason for you to defer demanding legal action now to remedy the wrongs done to the taxpayers of California.

Therefore, I strongly urge you today to join me in requesting the Attorney General to take legal action on behalf of California's taxpayers to recover this money from Kevin Shelley. It is, I am sure you agree, essential that public officials be held accountable when their misconduct materially damages our state.

Attached is the previous letter I sent to the Attorney General. I hope we can work together to resolve this issue of Kevin Shelley's flagrant misuse of taxpayer dollars.

Sincerely,

BRUCE McPHERSON
Secretary of State

cc: Senate President ProTempore Don Perata
Assembly Speaker Fabian Núñez
The Honorable Dick Ackerman
The Honorable George Plescia

Attachment



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BY HAND AND U.S. POSTAL SERVICE

October 16, 2006

The Honorable Bill Lockyer
Attorney General
State of California
Department of Justice
1300 I Street, Suite 125
PO Box 944255
Sacramento, CA 94244-2550

Dear Mr. Lockyer:

The federal Election Assistance Commission (EAC) has just released the final finding of its audit of the mismanagement of Help America Vote Act (HAVA) funds by former Secretary of State Kevin Shelley. The EAC has informed my office that due to the misuse of funds and the dereliction of duty on the part of the previous administration, the California taxpayers will be required to pay back \$2,917,583 in general fund dollars – money that was misspent by Kevin Shelley and his administration.

Mr. Shelley's misconduct has given California the unfortunate distinction of being the first and still the only state in the country to be investigated and penalized by the EAC for the gross mismanagement of HAVA funds.

Accordingly, it is imperative that you bring legal action at once on behalf of California's taxpayers to recover this money from Kevin Shelley. It is wholly unfair and unacceptable that the taxpayers of California would be required to lose funds that would otherwise be used for education, transportation and public safety, due to the documented misconduct and mismanagement of Kevin Shelley.

My request for a lawsuit on behalf of California taxpayers is based on the conclusive reports of two highly respected state organizations: The Bureau of State Audits (BSA) and the Joint Legislative Audit Committee (JLAC). The facts are as follows:

- 1) When I became Secretary of State on March 30, 2005 following the resignation of Kevin Shelley, two state audits had been concluded and the EAC had announced its intention to conduct a federal audit. The federal audit was prompted by allegations of waste, mismanagement, negligence, and misuse of HAVA funds entrusted to Mr. Shelley. Those allegations were confirmed in the findings of the BSA December 2004 performance audit requested by the JLAC, which documented disregard for proper stewardship of public funds, poor planning and poor oversight, and spending for work that had little, if anything, to do with HAVA.

- 2) The EAC audit was preceded by an audit performed by the California BSA at the request of the JLAC. The BSA Audit findings include:
 - ◆ The office “failed to document the time spent by its staff members on HAVA activities, as required when salaries and wages are charged to a federal fund source.” A review of supporting documentation and interviews with employees showed that HAVA funds were inappropriately used to compensate employees for attending events that were “partisan in nature” and “unrelated to HAVA.” As the BSA Audit report noted, “both federal and state law generally prohibit the use of public funds for partisan political activities for the purpose of affecting the outcome of a campaign.”
 - ◆ The office failed to properly and adequately account for the activities of some of its consultants who were being paid with HAVA funds. For example, some consultants attended events such as candidate fundraisers and a state delegation meeting for the Democratic National Convention, where they were representing then-Secretary of State Kevin Shelley.
 - ◆ The office’s insufficient planning and poor management practices hampered its efforts to promptly implement HAVA.
 - ◆ The office’s disregard for proper controls and its poor oversight of staff and consultants led to questionable uses of HAVA funds;

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- ◆ The office avoided competitive bidding for many contracts paid with HAVA funds by improperly using an alleged exemption from competitive bidding requirements and by not following the State's procurement policies.
 - ◆ The office bypassed the Legislature's spending authority and improperly charged consultant contract costs to its HAVA administration account.
 - ◆ The office overrode and, in many cases, lacked controls in its administration of the HAVA funds. For example, the office failed to document time spent by employees on HAVA related activities, as required by federal cost principles, and as needed to appropriately charge and pay the costs with HAVA funds.
 - ◆ The office split purchase orders to avoid CMAS procurement limits and competitive bidding requirements.
- 3) Using the BSA report as a basis, the EAC requested the federal Office of Inspector General (OIG) to conduct a further review of Kevin Shelley's questionable use of HAVA funds. That agency confirmed the BSA's findings and "took exception to those expenditures related to the purchase of capitalized general purpose equipment, promotional items and memorabilia, costs not related to HAVA, contract costs paid that were outside the terms of a contract, and costs that did not conform to federal cost principles." This "exception" amounted to \$777,502. Further, the OIG classified as "unsupported" \$3,082,859 in HAVA expenditures because they "lacked the support documentation required by both federal and California state regulations." The OIG report provided to the EAC explained in significant detail the federal and state laws and regulations that were violated related to the unsupported and inappropriate use of HAVA funds by Kevin Shelley.

The EAC audit and final finding I have enclosed for your immediate attention confirms the BSA audit and represents a chronicle of exactly the kind of waste, mismanagement, negligence, and misuse of taxpayer dollars by Mr. Shelley.

My responsibility is clear. As Secretary of State I must ensure that California's election administration and the money entrusted to me for that administration is safeguarded.

The Honorable Bill Lockyer
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Over the last year and a half, I have worked hard to turn around an office that was demoralized and in disrepair due to political partisanship and gross mismanagement.

I am required by state law, as you are aware, to inform the Legislature within 30 days that California has been ordered by the EAC to repay \$2,917,583 because of Mr. Shelley's serious misconduct. With that deadline in mind, I urge you to take immediate action to recover the taxpayers' dollars lost by Kevin Shelley's negligence and mismanagement.

Please contact me directly to discuss this matter. I look forward to your prompt reply.

Sincerely,

Bruce McPherson
Secretary of State