



# NEWS RELEASE

CALIFORNIA SECRETARY OF STATE **BRUCE McPHERSON**

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## **Federal Commission Concludes Investigation of Kevin Shelley Era Abuses – California Taxpayers Must Pay Back Millions for Shelley’s Misconduct**

*Secretary of State Bruce McPherson Calls on Attorney General to Take Legal Action on  
Behalf of California’s Taxpayers to Recover Funds from Kevin Shelley*

SACRAMENTO, CA – Secretary of State Bruce McPherson announced today that he has received the final U.S. Election Assistance Commission (EAC) report, which is the result of a yearlong investigation into the abuse of power and misuse of funds by California’s former Secretary of State Kevin Shelley. The EAC has ruled that California must repay \$2,917,583, from the state’s general fund, to replace the funds that were misspent by Kevin Shelley and his administration. Of that, \$536,122.00 will be repaid to the U.S. Treasury. \$2,381,461.00 will be repaid to California’s Help America Vote Act (HAVA) election fund.

Upon receiving the final EAC report, Secretary McPherson today requested 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.

“This flagrant abuse of public trust and public money demands personal accountability of the official who committed the abuse. When public officials are not held to account for their actions and the taxpayers’ hard earned dollars are not protected, we are neglecting our responsibility as leaders, entrusted by the people to stand up for what is right and to conduct business in an ethical and non-partisan way,” said McPherson.

“It’s unfair and unacceptable that California’s taxpayers be forced to foot the bill for Kevin Shelley’s personal political ambition and mismanagement of this office. California’s tax dollars should be used to fund the education, public safety and transportation needs of Californians. These hard-earned taxpayer dollars should not have to be wasted because of Kevin Shelley’s misuse of funds and abuse of power,” concluded McPherson.

Today’s final EAC report marks the end of two years of state and federal audits and investigations to uncover the extent of the abuse of power and misuse of funds that occurred under Kevin Shelley.

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The audits began with an investigation by the California Bureau of State Audits (BSA), which was conducted at the direction of the Joint Legislative Audit Committee. Based on the results of the BSA audit, the U.S. Election Assistance Commission began its own federal audit in the summer of 2005. Today's final report marks the conclusion of the EAC audit. In his written request to the state's chief law enforcement official, Secretary McPherson outlined examples of abuse and mismanagement that were revealed in federal and state investigations.

The BSA audit findings regarding the Shelley administration include the following:

- 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;
- 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.

Visit the Election Assistance Commission website to view the entire EAC findings and report: [www.eac.gov](http://www.eac.gov).

Visit the Bureau of State Audits website to view the entire Bureau of State Audits report: <http://www.bsa.ca.gov/pdfs/reports/2004-139.pdf>.



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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.

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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