

AR 23 2001

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
) MUR 5153
Friends of Barbara Boxer)
and Michael Ohleyer, as treasurer)
)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Make an additional reason to believe finding, approve the attached signed counterproposed conciliation agreement, and close the file.

II. BACKGROUND

On November 15, 2000, the Commission found reason to believe that Friends of Barbara Boxer and Michael Ohleyer, as treasurer ("the Committee"), violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48 Hour Notices for contributions totaling \$72,222.77 during the 1998 General Election. The Commission approved a proposed conciliation agreement.

After providing documentation supporting a reduction in the number of section 434(a)(6)(A) violations and discussions with this Office, the Committee has proposed and signed an agreement with an additional violation, contention language, and a civil penalty of \$7,850. Attachment 1. This Office recommends that the Commission accept the attached conciliation agreement. No civil penalty check has been received.

III. DISCUSSION

In the course of negotiations, the Committee provided information that supported fewer violations of 2 U.S.C. § 434(a)(6)(A) than involved in the Commission's reason to believe finding. At the same time, the information demonstrated that the Committee had incorrectly reported some contributions, in violation of 2 U.S.C. § 434(b).

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In its response to the Commission's reason to believe finding, the Committee claimed that it erroneously reported the date of receipt of five contributions from political action committees totaling \$9,000. These contributions include a \$1,000 contribution each from American Veterinary Medical PAC, MEBA PAF, Paul Magliocchetti Associates PAC, and PASS PAC, as well as a \$5,000 direct contribution from EMILY's List. See First General Counsel's Report dated October 25, 2000. The date originally reported by the Committee placed these contributions within the 48 Hour Notice period. However, the Committee filed amended Pre- and Post-General Election Reports with its response, which removed these contributions from the 48 Hour Notice period and placed them in the Pre-General Election Report period.

In addition, pursuant to this Office's request for supporting information, the Committee provided a sworn declaration from a Committee consultant that the contributions were received during the Pre-General Election Report period and not during the 48 Hour Notice period. In further support, the Committee provided a copy of the letter enclosing the EMILY's List contribution, a copy of the Federal Express receipt reflecting the date of receipt by the Committee of the EMILY's List contribution, and a batch cover sheet reflecting the date of receipt by the Committee of the American Veterinary Medical PAC, MEBA PAF, Paul Magliocchetti Associates PAC, and PASS PAC contributions. Based upon its review of these materials, this Office concluded that the Committee had not violated section 434(a)(6)(A) with respect to these \$9,000 in contributions.

While the Committee did not run afoul of the 48 Hour Notice requirement concerning the \$9,000 in contributions, it did report them incorrectly. Since the documentation demonstrated that the Committee received the \$9,000 in contributions during the Pre-General Election Report period, the Committee should have reported them on its Pre-General Election Report, instead of

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on its Post-General Election Report, as required by 2 U.S.C. § 434(b). The Committee failed to amend these reports to reflect the misreporting for over two years, only doing so after it received notice of the reason to believe finding. Through discussions with this Office, the Committee was made aware of the reporting violation as well as the need for this Office to recommend an additional reason to believe finding.

Because the Commission was previously unaware of this violation, this Office now recommends that the Commission find reason to believe that Friends of Barbara Boxer and Michael Ohleyer, as treasurer, violated 2 U.S.C. § 434(b) by failing to report \$9,000 in contributions on its 1998 Pre-General Election Report.

The Committee's response to the reason to believe finding also explained that Handgun Control PAC, to which the Committee owed \$3,222.77 in expenses incurred during the 48 Hour Notice period, notified the Committee after the 48 Hour Notice period that it would donate this amount as an in-kind contribution. The Committee then reported this contribution on the Post-General Election Report as received on the date the services were provided, which was within the 48 Hour Notice period. However, because the Committee did not learn of this contribution until after the 48 Hour Notice period had expired, it could not have reported it on a 48 Hour Notice.

In response to a request by this Office for supporting information, the Committee provided a sworn declaration from the Committee's 1998 Campaign Manager, which stated that the PAC notified the Committee of its intention to treat the expense as an in-kind contribution on November 30, 1998, and a copy of the PAC's letter to the Committee dated November 30, 1998,

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which communicated this information. Since November 30, 1998 post-dated the 48 Hour Notice period, this Office concluded, based on its review of the materials, that the Committee did not violate section 434(a)(6)(A) with respect to this \$3,222.77 contribution.

The Committee's response to the Commission's reason to believe finding further stated that the Committee received a transfer of funds from a joint fundraiser on November 3, 1998, which attributed \$1,000 to four contributors (Marcus, Shaugnessy, Byrne, and Rice). While the contributions were made during the 48 Hour Notice period, the transfer occurred after its expiration. The Reports Analysis Division has informed this Office that it is Commission policy that the date of transfer controls in the filing of 48 Hour Notices. Since this is the case, the failure of the Committee to file 48 Hour Notices for this \$4,000 in contributions is not a violation of section 434(a)(6)(A).

Finally, the Committee's response to the Commission's reason to believe finding addressed a contribution from Maureen Murray received through a joint fundraiser, that was originally reported on the Post-General Election Report in the amount of \$1,000. According to the Committee, it amended its report to reflect a reduced allocation for this contribution to \$333. Since the contribution was less than \$1,000, it fell below the 48 Hour Notice reporting threshold. This Office reviewed the Committee's amended Post-General Election Report dated July 25, 2000, which confirmed the Committee's position. Further, this amendment was filed before commencement of this enforcement action. Therefore, this Office concluded that this contribution (originally thought to be \$1,000) did not violate section 434(a)(6)(A).

In summary, the information provided by the Committee in the course of negotiations supports removing \$17,222.77 in contributions from those the Commission found reason to believe violated section 434(a)(6)(A), and an additional finding of reason to believe that the

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Committee violated section 434(b) by failing to properly report \$9,000 in contributions.

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IV. RECOMMENDATIONS

1. Find reason to believe that Friends of Barbara Boxer and Michael Ohleyer, as treasurer, violated 2 U.S.C. § 434(b).
2. Accept the attached counterproposed conciliation agreement with Friends of Barbara Boxer and Michael Ohleyer, as treasurer.
3. Approve the appropriate letters.
4. Close the file.

Lois G. Lerner
Acting General Counsel

3/23/01
Date

BY: Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

Attachment:

1. Conciliation Agreement

Staff Assigned: Michael E. Scurry

21-04-405-1005



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *pd*
DATE: May 30, 2001
SUBJECT: MUR 5153- General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐
MUR ☐
DSP ☐

STATUS SHEETS ☐
Enforcement ☐
Litigation ☐
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

21-04-405-1006



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner
Acting General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Office of the Commission Secretary

DATE: March 29, 2001

SUBJECT: MUR 5153 - General Counsel's Report #2
dated March 23, 2001.

The above-captioned document was circulated to the Commission
on Monday, March 26, 2001.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	—

This matter will be placed on the meeting agenda for
Tuesday, April 3, 2001.

Please notify us who will represent your Division before the Commission on this
matter.

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