



California Fair Political Practices Commission

August 29, 1986

Susan Propper
Assistant General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: Your Request for Comments
Our File No. I-86-268

Dear Ms. Propper:

Thank you for the opportunity to provide comments relating to Congressman Stark's advisory opinion request concerning a proposed slate mailing. Your letter to Roger Brown has been referred to me for a response.

In applying the Political Reform Act (California Government Code Sections 81000-91015) to slate mailers, the Fair Political Practices Commission has distinguished between slate mailers prepared and sent by a state or local candidate who is being voted upon, and slate mailers prepared and sent by independent contractors. A state or local candidate who prepares and sends a slate mailer must disclose all contributions received, and all contributions and expenditures made in connection with a slate mailer. In contrast, an independent contractor who is in the business of sending slate mailers is not a "committee" and has no campaign disclosure responsibilities under state law.

With regard to a slate mailer prepared by a state or local candidate, any time the candidate includes an endorsement of another candidate free of charge in his or her literature at the behest of that nonpaying candidate, the candidate sending the mailing has made a reportable in-kind contribution to the nonpaying candidate. When the candidate sending the mailing includes in his or her literature an endorsement of another candidate, but the endorsement is not at the behest of the other candidate, the candidate sending the mailing is generally not required to report the expenditure as an independent expenditure. The candidate sending the mailer would be required to report the expenditure as an independent expenditure only if the mailer is sent to a jurisdiction in which the candidate sending the mailing is not being voted upon. This conclusion is based on the assumption that a candidate who includes other candidates in a mailing sent within his or her own jurisdiction ordinarily includes the other candidates only for his or her own benefit, rather than to advocate the election of the other candidates. However,

when the mailer is sent to another jurisdiction, or when the other candidate is included because he or she has so requested, then the candidate sending the mailing is acting for the purpose of benefiting the other candidates.

As to an independent contractor slate mailer organization, which is in the business of producing slate mailers for political campaigns, we have concluded that such an organization acts primarily for business purposes, rather than political purposes, and thus has no campaign disclosure responsibilities under the Political Reform Act. In our opinion, the operation of a profitable business is the primary motivation behind the slate mailer organization's decisions to include certain candidates on the slate mailer free of charge. Therefore, we have concluded that expenses incurred by the slate mailer organization in connection with including nonpaying candidates in the slate mailer are neither contributions to those candidates nor independent expenditures because they lack the requisite political purpose. Furthermore, payments received by the slate mailer organization from candidates who wish to appear in the slate mailer are not contributions from the candidates, because the service provided by the slate mailer organization is equal consideration for the payments it receives. Therefore, we have consistently advised independent contractor slate mailer organizations that they are not "committees" under the Political Reform Act, and are not subject to the state campaign disclosure requirements. However, these organizations must provide the paying state and local candidates included in the slate mailer with information regarding expenditures incurred by the slate mailer organization in connection with the mailer, other than overhead or normal operating expenses, so that the paying candidates can report those expenditures in their campaign statements. You should note that we may reconsider our advice to independent contractor slate mailer organizations in light of the decision in Federal Election Commission v. Californians for Democratic Representation.

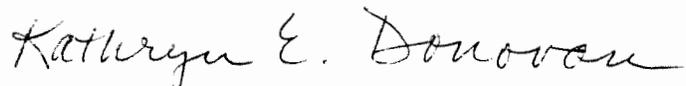
Independent contractor slate mailer organizations which receive payments from candidates included in the slate mailer must provide, on the mailer itself, certain information concerning the sender of the mailer, and who paid for it. Specifically, on the inside and outside of the mailer must appear a statement that the mailer is published by the slate mailer organization. In addition, the outside of the mailer must include a statement that the mailer is paid for by the candidates or committees whose names appear inside. Inside, the names of the paying candidates must be marked with an asterisk, and it must be stated that the mailer was sent or paid for by the candidates and committees that are so marked.

Susan Propper
August 29, 1986
Page 3

In Congressman Stark's situation, we would consider him to be subject to the same requirements as an independent contractor slate mailer organization. This conclusion is based on the fact that he is not a candidate for state or local office in California, and thus has no reporting requirements under the state law. Therefore, although Congressman Stark would have no campaign disclosure responsibilities under state law, he would be required to provide certain information to state and local candidates who purchase space in his mailer, and he would be required to include information on the inside and outside of the mailer concerning the identity of the sender and the paying candidates. We suggest you refer Congressman Stark to our Technical Assistance and Analysis Division, at (916) 322-5662, for more specific assistance as to his duties under state law. As mentioned above, it is possible that the Fair Political Practices Commission will change its advice with respect to the reporting requirements of independent contractor slate mailer organizations in light of the recent developments in the federal law. Accordingly, Congressman Stark should check back with us if, in future years, he wishes to produce a slate mailer which includes candidates for state or local office.

Thank you again for the opportunity to provide these comments. If you have any questions regarding this letter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 8, 1986

Roger Brown
Enforcement Chief
California Fair Political Practices
Commission
P.O. Box 807
Sacramento, CA 95804

Dear Roger:

I am enclosing the materials relating to Congressman Stark's advisory opinion request. We would be happy to receive any comments you may have. Since I will be out of the office during the last two weeks of August, you may want to contact Brad Litchfield if you are going to send us something after August 18.

As we discussed, I am also sending you the court's opinion in FEC v. NCPAC. The judgment against the defendants is attached at the end of the opinion. It will not be published. Note that the case is now on appeal in the Second Circuit and that the court has denied the defendant's request for a stay. I hope you find the decision helpful.

It was good to talk with you again. Good luck with your case.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Propper".

Susan Propper
Assistant General Counsel

Congressman

PETE STARK

Democrat

86 AUG 6 P 4: 48
August 2, 1986

Proposed
86 AUG 5 P 12: 16
AOR 1986-29

86 AUG 5 P 3: 45

GENERAL COUNSEL

Mr. N. Bradley Litchfield
Assistant General Counsel
Federal Election Commission
Washington, DC 20463

Dear Mr. Litchfield:

Thank you for your letter of July 28 asking for more specific details about the proposed slate mailer described in my letter of July 21.

1. Will the slate mailing include candidates for Federal office, other than yourself? Yes, one candidate for U.S. Senate, but no other Federal candidates since it would be our purpose to limit the distribution of the slate mailer to the 9th Congressional District of California.

2. Will Federal candidates, other than yourself, be included on the slate mailing with their cooperation, consent, or authorization? Yes, I will seek to obtain such consent and authorization. If it is not provided, we will not list the Senate candidate.

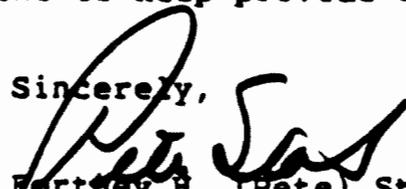
3. Who will decide which candidates are included or listed on the slate mailing? The Pete Stark Re-election Committee (PSRC) and the Alameda County Democratic Central Committee. The mailing will be sponsored by a Committee which will be given a name (yet to be determined).

4. Who will pay for and sponsor the slate mailing? The PSRC will pay for the mailing, but will seek proportional contributions from each of the candidates listed in the mailing. For example, if ten candidates are listed, each will be asked to contribute one-tenth. If one or more candidates do not want to contribute any or all of their share, the PSRC will pay for that portion. The Committee mentioned in #3 above will sponsor the mailing.

5. How will the slate mailing be distributed to the voters, i.e., passed out by hand by volunteers or sent through the mails, etc.? We would like to design the slate card so that it can be mailed, but also can serve as a "hand out" in public places and used as a "door handle" hanger (i.e., can be inserted on door knobs, etc.). We would anticipate that the majority of the cards would be mailed through some form of bulk postal permit.

I hope this information is sufficient to help provide advice on this issue.

Sincerely,



Portney H. (Pete) Stark
Candidate, 9th Congressional
District



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 28, 1986

**The Honorable Fortney H. Stark
House of Representatives
1125 Longworth House Office Building
Washington, D.C. 20515**

Dear Congressman Stark:

This responds to your letter of July 21, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a proposed slate mailing.

As you know, the Act authorizes the Commission to issue an advisory opinion in response to a written request that presents a specific factual situation involving the requesting person and concerning proposed future activity. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The regulations also provide that this office shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. 11 CFR 112.1(d).

In order for the Commission to provide you with proper guidance regarding a proposed slate mailing, it is necessary for you or a member of your staff to describe this proposed activity in greater detail. Specifically, this description should include these areas:

(1) will the slate mailing include candidates for Federal office, other than yourself?

(2) will Federal candidates, other than yourself, be included on the slate mailing with their cooperation, consent, or authorization?

(3) who will decide which candidates are included or listed on the slate mailing?

(4) who will pay for and sponsor the slate mailing?

The Honorable Fortney H. Stark
Page 2

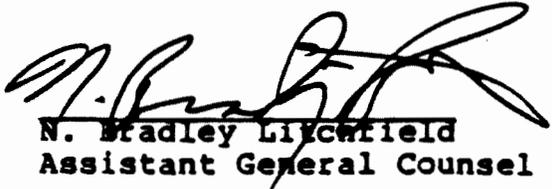
(5) how will the slate mailing be distributed to the voters, i.e. passed out by hand by volunteers or sent through the mails, etc.?

Upon receipt of this information, this office and the Commission will give further consideration to your inquiry as an advisory opinion request. If you have any questions regarding this letter or the advisory opinion process, please feel free to contact the undersigned. Mr. Litchfield's number is (202) 376-5690.

Very truly yours,

Charles N. Steele
General Counsel

by:


N. Bradley Litchfield
Assistant General Counsel

cc: Pete Stark Re-Election Committee
Post Office Box 5303
Oakland, CA 94605

Congressman

PETE STARK

Democrat

July 21, 1986

69 JUL 23 AM 11:20

Hon. Joan Aikens
Chair
Federal Elections Commission
1325 K Street NW
Washington, DC 20463

Dear Ms. Aikens:

Pursuant to the highlighted portions of the FEC's letter of July 8, 1986, I am requesting by separate letter an advisory opinion on the enclosed matter.

Thank you for your assistance.

Sincerely,



Fortney H. (Pete) Stark

69 JUL 23 AM 11:32



FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20463

July 8, 1986

The Honorable
Fortney H. Stark
House of Representatives
1125 Longworth House Office Building
Washington, D. C. 20515

Dear Congressman Stark:

Your letters dated June 13, 1986, addressed to the Honorable Joan Aikens, have been referred to the Office of General Counsel. The first letter inquires about a possible violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), while the second letter seeks guidance regarding the application of the law.

The 1976 amendments to the Act and the Commission regulations require that a complaint meet certain specific requirements. Since your letters do not meet these requirements, the Commission can take no action at this time to investigate this matter.

However, if you desire the Commission to look into the matter discussed in your letters to determine if the FECA has been violated, a formal complaint as described in 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4 must be filed. Specifically, as relevant here, a complaint must be sworn to and signed in the presence of a notary public and should be notarized. (2 U.S.C. § 437g(a)(1))

Enclosed are excerpts of the Commission's regulations, and your attention is directed to 11 C.F.R. §§ 111.4 through 111.10 that deal with preliminary enforcement procedures. I trust these materials will be helpful to you should you wish to file a legally sufficient complaint with the Commission. The file regarding this correspondence will remain confidential for a fifteen-day time period during which you may file an amended complaint as specified above. Please forward to us any additional information or correspondence that you may have regarding this matter.

If the second letter was not intended to be a part of the complaint, it should not be submitted with the complaint. Under 2 U.S.C. § 437f, a person may make a written request for an Advisory Opinion concerning the application of the Act with respect to a specific transaction or activity by the person. If you seek guidance from the Commission regarding specific activity of your campaign committee, you are encouraged to submit a separate request for an advisory opinion.

The Honorable
Fortney H. Stark

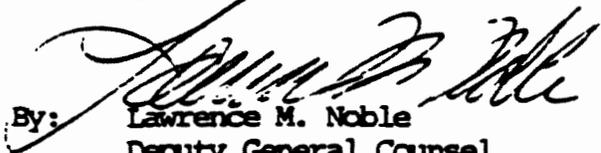
- 2 -

July 8, 1986

If I can be of any further assistance, please do not hesitate to contact me at (202) 376-8200.

Sincerely,

Charles N. Steele
General Counsel


By: Lawrence M. Noble
Deputy General Counsel

Enclosures
Excerpts
Procedures

cc: Respondents

Congressman

PETE STARK

Democrat

June 13, 1986

Hon. Joan Aikens
Chair
Federal Election Commission
1325 K Street NW
Washington, DC 20463

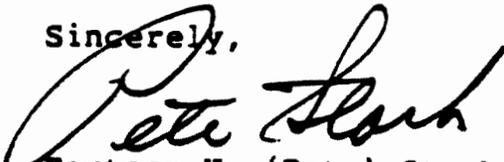
Dear Ms. Aikens:

Because of a recent experience in the improper use of my name in a slate mailer (see my letter to you of June 13), my campaign committee is considering developing its own slate card in which my candidacy and that of a number of friends would be supported.

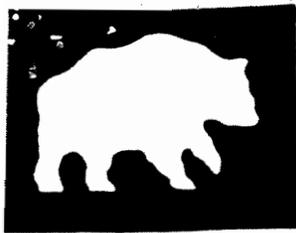
In studying the law in this area, however, I have encountered two separate memos on how slate cards must be reported and operated. There are differences between the two legal memos, and I would therefore appreciate your critique of the memos. Specifically, can you advise me which is a more accurate description of the law.

Any additional materials you may have relevant to the establishment and operation of a slate card program for a combination of Federal, state, and local candidates would be most deeply appreciated.

Sincerely,



Fortney H. (Pete) Stark



April 8, 1986

MEMORANDUM

TO: California Democrats
FROM: Debbie McFarland
RE: Slate Cards/1986 Campaigns

California
Democratic
Congressional
Delegation

503 House Annex 1
Washington, D.C. 20515
(202) 224-2313

- Hon. Dan Edwards, Chairman
- Hon. Glenn M. Anderson
- Hon. Jim Batts
- Hon. Anthony C. Bonason
- Hon. Howard L. Berman
- Hon. Douglas H. Bosco
- Hon. Barbara Bower
- Hon. George E. Brown, Jr.
- Hon. Sam Burton
- Hon. Tony Coelho
- Hon. Ronald V. Dellums
- Hon. Julius C. Dincin
- Hon. Mervyn Dymally
- Hon. Vic Fazio
- Hon. Augustus F. Hawkins
- Hon. Tom Lantos
- Hon. Richard H. Lehman
- Hon. Mel Levine
- Hon. Matthew G. Martinez
- Hon. Robert T. Matsui
- Hon. George Miller
- Hon. Norman Y. Mineta
- Hon. Leno E. Rosten
- Hon. Edward R. Roybal
- Hon. Ferny H. (Pete) Stark
- Hon. Estan Torres
- Hon. Henry A. Waxman
- Hon. Harry Reid, Nev.

Debbie McFarland, Director

Most of our campaigns have been part of slate card mailings in the past several elections. Some legal questions exist about what may be done lawfully under federal election law. If you are thinking about or planning to participate in slate cards in the '86 election, you may be interested in the following discussion.

This memo attempts to outline what we know about the current state of the law. Distinctions are made based upon the status of the organization putting the slate together and candidate payments.

1. Non-party Slate Cards.

A) FEC v. Californians for Democratic Representation. This case, filed in March, 1985, came out of an FEC enforcement action concerning the 1982 election cycle. BAD Campaigns formed a state political committee, Californians for Democratic Representation (CDR), which was registered with California's FPPC. CDR issued slate cards listing, among others, federal Democratic candidates, some of whom paid CDR and some of whom did not.

The U.S. District Court for the Central District of California has now concluded:

(1) payment by a federal candidate for inclusion on the slate is not a "contribution" to the CDR nor is the printing and distribution of the slate an in-kind contribution to the paying federal candidates; but

(2) the listing of federal candidates who do not pay for such services constitutes an "expenditure" on behalf of the candidate and, perhaps, an in-kind contribution to the candidate if the expenditure is not a true "independent expenditure."

From the candidate's perspective, the difficulties with the second conclusion are several. First, the CDR's funds were commingled corporate/state candidate/federal candidate funds. So, if CDR was making "contributions" to our candidates' campaigns, such contributions were unlawful. However, even if CDR's funds had not been commingled, the value of any in-kind contribution would probably have been over the FECA limits (\$5,000 if the CDR was qualified as a multi-candidate committee).

The FEC has not brought into enforcement any of the federal candidates listed in the case or on the slates. And, the FEC has taken no action, of which I am aware, concerning 1984 slate cards. There is some discussion at the FEC about an appeal because the General Counsel maintains that payments to a committee like CDR constitute a "contribution" and the resulting candidate listing constitutes an in-kind contribution to the paying candidate (\$1,000 or \$5,000 limit depending upon the legal status of the CDR). Whether or not the General Counsel can get 4 Commission votes to appeal is an open question at the moment.

B) FEC Advisory Opinion 1984-62, issued on March 21, 1985, to BAD Campaigns, Inc. This opinion concerns an incorporated consulting firm's use of slate cards. The FEC concluded in this AO:

(1) So long as a federal candidate pays the "usual and normal" charge, no prohibited contribution or expenditure would be made; but

(2) A prohibited corporate contribution or expenditure would result if BAD listed a federal candidate free or at less than the "normal and usual charge for advertising and mailing services."

From the candidate's perspective, acceptance of an unlawful or prohibited contribution by the candidate would result if the candidate in any way consented to the use of his/her name on a slate without making full payment.

2. State or Local Committees of a Political Party issuance of Slate Cards.

The FECA excludes from the definition of "contribution" and "expenditure," costs of slate cards produced by such committees. But the regulations and law contain exceptions to this exemption, so read the regulations carefully: 2 USC 431(8)(B)(v), 11 CFR 100.7(b)(9) and 2 USC 431(8)(B)(iv), 11 CFR 100.8(b)(10). For example:

(9) The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards.

Please remember that this is just an outline of the issues, primarily from the candidates' perspective. Other issues could well exist with regard to any particular slate. The above, however, should give you some idea of what questions need to be asked when considering a slate.

MEMO = <
= = =

April 21, 1986

Memorandum to: California Democratic Congressional Delegation
From: Daniel Lowenstein
Subject: FEC and slate mail

I am sending you this memorandum to assure you there are no legal risks created for Congressional candidates by the Berman & D'Agostino slate mail program.

Recently you received a memorandum from Debbie McFarland of the Delegation staff regarding the legal status of slate mail in light of the recent court decision in FEC v. Californians for Democratic Representation (CDR). I represented the defendant in that action. (In addition, as you are probably aware, I am one of the attorneys representing the Delegation in the redistricting litigation and am a professor of law at UCLA specializing in election law.) The purpose of this memorandum is to clear up confusion that might have been caused inadvertently by Ms. McFarland's memorandum.

Ms. McFarland's memorandum was accurate on most specific points. However, the complexity of her memorandum could easily have created a misimpression that there is some sort of legal jeopardy created for Congressional candidates by the existence of slate mail programs.

The reality is that the CDR decision makes it clear that the slate mail program operated by Berman & D'Agostino Campaigns is entirely consistent with the federal election campaign laws and creates no legal jeopardy either for candidates who purchase advertising in the slate or for those who are endorsed but who do not purchase advertising. The same should be true for any other slate mail program that is properly advised and properly managed.

The following specific points are pertinent:

1. CDR won on the only important issue in its litigation against the FEC, namely whether the payments it received or the services it provided constituted "contributions." Judge Ideman's ruling is now final, since the FEC voted (subsequent to Ms. McFarland's memorandum) not to appeal.

2. Even when the FEC incorrectly believed aspects of the CDR slate violated the federal campaign law, their action was brought only against CDR. No participating candidates were sued or incurred any legal costs. As stated above, the FEC action against CDR was unsuccessful on the major issue.

3. The issues on which the FEC was successful involved only CDR's disclosure obligations. The Berman & D'Agostino slates will of course comply with the court's ruling (indeed, we would have been happy to concede this issue in a settlement). This will have no effect whatsoever on any candidate endorsed or purchasing advertising in the slate.

4. In order to avoid any possible legal problems, Berman & D'Agostino Campaigns will not seek authorization from nor consult with candidates who are endorsed by but decline to purchase advertising in the slate. This will be a continuation of the policy Berman & D'Agostino have followed for previous slate mail programs. The FEC has never even alleged that there were any violations in this regard.

5. The FEC advisory opinion issued to Berman & D'Agostino in 1985 and referred to in Ms. McFarland's memorandum has no relevance to any of Berman & D'Agostino's activities in 1986 or in the future. That opinion deals with a situation in which a slate is published by Berman & D'Agostino, which is incorporated. In all present and future slate mail projects, Berman & D'Agostino acts merely as consultant. The slate is actually published by an unincorporated association.

I hope the foregoing makes it clear that all doubts about the legality of the Berman & D'Agostino slates have been resolved conclusively and favorably. If you have any additional questions, you are welcome to contact me.

9439

96 JAN 13 P 3: 42

RECEIVED
GENERAL COUNSEL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FEDERAL ELECTION COMMISSION

CASE NUMBER

PLAINTIFF(S)

CV 85-2086 JMI

VS

CALIFORNIANS FOR DEMOCRATIC
REPRESENTATION

NOTICE OF ENTRY

DEFENDANT(S)

TO THE ABOVE NAMED PARTIES AND TO THEIR ATTORNEY(S) OF RECORD:

You are hereby notified that JDMT & ORDER: Ct grants defts motn
for partial S/J as to cts III, IV, V & VII; Grants pltf's motn
for S/J as to cts I, II & VI; Denies defts motn for atty fees &
assesses penalty of \$15,000 in the above entitled case was entered in
against deft.
the docket on 1-9-86

You are also notified that if this case was tried and you introduced
exhibits into evidence, they must be claimed at this office after the expiration
of thirty days from the receipt of this notice. (After sixty days in cases in
which the United States, its officers or agencies were parties) Unless they
are claimed within thirty days after the expiration of the above period, they
will be destroyed pursuant to Local Rule 29.2. If an appeal is taken they will,
of course, be held until the Appellate Court finally determines the matter.
Exhibits which are attached to a pleading will not be destroyed but will remain
as a permanent record in the case file.

(over)

CERTIFICATE OF MAILING

I, Clerk of the United States District Court, Central District of California, and not a party to the within action, hereby certify that on 1-9-86, I served a true copy of this notice of entry on the parties in the within action by depositing true copies thereof, enclosed in sealed envelopes, in the United States Mail in the United States Post Office mail box at Los Angeles, California, addressed as follows:

R. LEE ANDERSEN
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
999 E STREET N.W.
WASHINGTON D.C. 20463

DANIEL LOWENSTEIN
UCLA LAW SCHOOL
LOS ANGELES, CA 90024

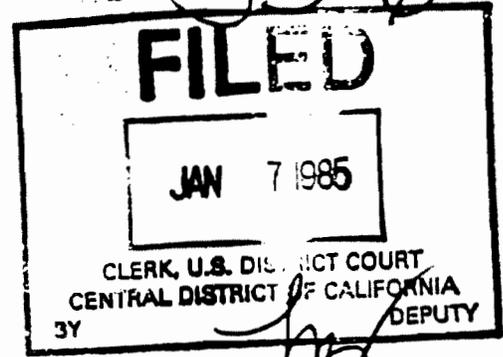
IRVING REIFMAN
11601 WILSHIRE BLVD, #1830
LOS ANGELES, CA 90025

CLERK, U. S. DISTRICT COURT


By STACEY ADAMS
Deputy Clerk

NOTICE

IN ACTIONS ARISING UNDER THE ECONOMIC STABILIZATION ACT, THE EMERGENCY PETROLEUM ALLOCATION ACT, AND THE ENERGY POLICY AND CONSERVATION ACT, NOTICES OF APPEAL TAKEN FROM THIS JUDGMENT MUST BE FILED IN THE TEMPORARY EMERGENCY COURT OF APPEALS IN ACCORDANCE WITH THE RULES OF PROCEDURE OF THAT COURT.



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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ENTERED
JAN 9 1986

FEDERAL ELECTION COMMISSION,
1325 K Street, N.W.
Washington, D.C. 20463

Plaintiff,

v.

CALIFORNIANS FOR DEMOCRATIC
REPRESENTATION,
1435 S. La Cienega Boulevard, #101
Los Angeles, California 90035

Defendant.

Case NO. CV 85-208

CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

JUDGMENT

The Motions of Defendant Californians for Democratic Representation for Partial Summary Judgment and Plaintiff Federal Election Commission for Summary Judgment came on regularly before United States District Judge James M. Ideman. The Court considered the papers and exhibits submitted in support of, and in opposition to, said motions.

The Court, after careful review and being fully advised

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1 herein:

2 Grants Defendant's Motion for Partial Summary
3 Judgment as to Counts III, IV, V and VII;

4 Grants Plaintiff's Motion for Summary Judgment as
5 to Counts I, II and VI;

6 Denies Defendant's Motion for Attorney's Fees, and;
7 Assesses a civil penalty of \$15,000 against
8 Defendant for violations of 2 U.S.C. Sections 433, 434 and
9 441(d). The said amount to be paid to Plaintiff not later than
10 1/27/85.

11 IT IS SO ORDERED.

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13 DATED: 7 Jan 86

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17 JAMES M. IDEMAN

18 United States District Judge
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1 pursuant to 2 U.S.C. §437g(a)(6)(A).

2 3. CDR was formed for the purpose of operating slate
3 mailing programs endorsing federal and non-federal candidates,
4 and ballot issues.

5 4. CDR "featured" candidates in its slate mailings for a
6 fee. Featuring consisted of pictures, write-ups or other forms
7 of advertising.

8 5. The amounts paid to CDR by candidates purchasing
9 advertising ("featured" candidates) in the slate mail were
10 equal to the fair market value of the advertising services
11 provided to these candidates by CDR. CDR received no payments
12 other than those payments made in exchange for such advertising
13 services.

14 6. The amounts paid to CDR by or on behalf of federal
15 candidates for the purchase of advertising, and the value of
16 the advertising provided by Defendant in return, exceeded
17 \$5,000 in many instances.

18 7. In some instances, CDR received payments from
19 corporations for advertising on state or local ballot measures,
20 and in many instances CDR received payments for advertising
21 from state or local campaign committees that had accepted
22 contributions from corporations and labor unions.

23 8. CDR's slate mailings often "listed" candidates or
24 measures not paying for advertising. Listed candidates paid no
25 fees.

26 9. CDR featured federal candidate Anderson on 8,000 slate
27 post cards during the 1982 general election and received no

28 //

1 payment from Anderson or his authorized committee. The value of
2 this featuring was approximately \$400.

3 10. CDR listed Senatorial candidate Jerry Brown on
4 2,325,000 pieces of mail sent during the 1982 Primary Election
5 for no fee.

6 11. Approximately 292,000 pieces of mail referred to in
7 Paragraph 10 took the format of a tabloid, which resembled
8 "featuring" purchased by other candidates. This featuring was
9 provided to give prominence to the two candidates at the top of
10 the ticket, Brown and gubernatorial candidate Tom Bradley.

11 12. Federal candidates Waxman, Berman and Torres paid CDR
12 \$15,000 each for featuring provided for the 1982 Primary
13 Election. For said payment, the candidates received 227,000,
14 251,000 and 231,000 pieces of mail respectively.

15 13. Preceding the 1982 Primary Election, CDR listed the
16 following federal candidates on the respective number of pieces
17 of mail at no charge: Goldhammer (113,000), Bethea (26,000),
18 Beilenson (221,000), Roybal (138,000) Dixon (74,000), Hawkins
19 (44,000), Anderson (155,000) and Servelle (141,000).

20 14. Preceding the 1982 General Election, CDR listed the
21 following federal candidates on the respective number of pieces
22 of mail at no charge: Brown (1,847,000), Servelle (120,000),
23 Boxer (75,000), Dellums (170,000), Edwards (55,000), Lantos
24 (110,000), Lynch (10,000), Coelho (22,000), Panetta (48,000),
25 Frost (140,000), Bethea (28,000), Beilenson (200,000), Roybal
26 (120,000), Dixon (80,000), Hawkins (50,000), Anderson
27 (112,000), Erwin (500), Verges (60,000), Haseman (60,000),

28 //

1 Stark (70,000), Dymally (35,000) and Spellman (50,000).

2 15. Preceding the 1982 Primary Election, CDR featured the
3 following federal candidates in the respective number of pieces
4 of mail at the following rate: Waxman (237,000, \$15,000),
5 Berman (251,000, \$15,000), Levine (218,000, \$15,000), Torres
6 (231,000, \$15,000), Martinez (204,000, \$13,000), Dymally
7 (92,000, \$10,000), Spellman (53,000, \$2,500), Webb (37,000,
8 \$2,200).

9 16. In the 1982 General Election, CDR featured the
10 following federal candidates in the respective number of pieces
11 of mail at the following rate: Brown (1,500,000, \$96,000),
12 Burton (240,000, \$15,000), Waxman (184,000, \$15,000), Berman
13 (192,000, \$15,000), Levine (226,000, \$15,000), Martinez
14 (143,000, \$15,000), Torres (150,000, \$13,000), Stark (100,000,
15 \$10,000), Dymally (65,000, \$5,000), Patterson (78,000, \$5,000),
16 Spellman (70,000, \$4,000).

17 17. CDR failed to file a statement of organization as a
18 political committee pursuant to 2 U.S.C. §433.

19 18. CDR failed to file its receipts and disbursements
20 pursuant to 2 U.S.C. §434.

21 19. Mailings made by CDR in 1982, which advocated the
22 election of federal candidates failed to state whether the
23 candidates named authorized the mailings and who paid for the
24 mailings pursuant to 2 U.S.C. §441d.

25 20. CDR failed to establish a separate federal account as
26 a means to accept only contributions subject to the
27 prohibitions and limitations of the Federal Election Campaign

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1 Act of 1972, as amended (the "Act").

2 21. Any Finding of Fact deemed to be contained in the
3 Conclusions of Law is included herein by reference.

4
5 CONCLUSIONS OF LAW

6
7 1. The listing of the federal candidates named in Findings
8 of Fact Numbers 10 and 13, during the 1982 Primary Election,
9 were expenditures by CDR to the named federal candidates as
10 defined by 2 U.S.C. §431(9).

11 2. The listing of the federal candidates named in Finding
12 of Fact Number 14, during the 1982 General Election, were
13 expenditures by CDR to the named candidates as defined by 2
14 U.S.C. §431(9).

15 3. The featuring of federal candidate Anderson during the
16 1982 General Election was an expenditure by CDR to the Anderson
17 campaign, pursuant to 2 U.S.C. §431(9).

18 4. The collective expenditures referred to in Paragraphs
19 1, 2 and 3 exceeded the statutory limit for a calendar year,
20 thereby qualifying CDR as a political committee, pursuant to 2
21 U.S.C. §431(4)(A).

22 5. Political committees which engage in business or
23 commercial activity may only do so within the limitation or
24 prohibitions of the Act.

25 6. Payments made to CDR for the purchase of advertising
26 ("featuring") in CDR's slate mailings did not constitute
27 contributions to CDR.

28 //

1 7. The provision of the advertising services for which it
2 had been paid did not constitute an in-kind contribution from
3 CDR to the purchasers of the advertising.

4 8. The Court finds that CDR in its practice of "listing"
5 candidates violated 2 U.S.C. §433 by failing to file a
6 statement of organization as required under the Act.

7 9. The Court finds that CDR in its practice of "listing"
8 candidates CDR violated 2 U.S.C. §434 by failing to report its
9 receipts and disbursements as required under the Act.

10 10. The Court finds that CDR violated 2 U.S.C. §441d in
11 its slate mailings by failing to state whether the candidates
12 named authorized the mailings and who paid for the mailings.

13 11. Any Conclusion of Law deemed to be contained in the
14 Findings of Fact is included herein by reference.

15
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17 DATED: 7 Jan 86

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19 

20 JAMES M. IDEMAN

21 United States District Court
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27
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Memorandum

To : File: Section 82015, 82031

Date : 6/20/86

From : Jeanne Pritchard
FAIR POLITICAL PRACTICES COMMISSION

Subject : Campaign literature, including slate mailers: When is inclusion of an endorsement of a non-paying candidate or a measure an in-kind contribution or independent expenditure?

It was determined at the advice request meeting of June 11, 1986, that the following advice will be applied in determining whether an in-kind contribution or independent expenditure is made when an endorsement of a candidate or a measure is included in campaign literature, including slate mailers, and the candidate or measure committee has not paid for inclusion in the literature.

A. Campaign literature (including slate mailers) paid for by a candidate who is being voted upon:

(1) Any time an endorsement of another candidate or a measure is included in a candidate's literature "at the behest of" the non-paying candidate or measure committee, the candidate sending the mailing has made a reportable in-kind contribution to the non-paying candidate or committee.

(2) When a candidate includes in his or her literature an endorsement of another candidate or a measure, and it is not done at the behest of the other candidate or measure committee, the candidate sending the mailing is not required to report the expenditure as an "independent expenditure," unless the literature is sent to or provided to voters in a jurisdiction in which the candidate sending the mailing is not being voted upon.

This is based on the assumption that when the mailer is distributed in the candidate's jurisdiction, he/she has included other candidates or measures only for his/her own benefit. When the mailer is sent to another jurisdiction it is assumed that it is done to benefit the included candidates or measures.

B. Slate mailers prepared and sent by independent contractors:

When non-paying candidates or measures are included in slate mailers sent by companies in the business of sending slate mailers, neither the company nor the candidates and committees

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June 20, 1986
Page 2

who paid for inclusion in the mailer is required to report contributions or independent expenditures on behalf of the non-paying candidates or measure committees.

This is based on the assumption that the slate companies or paying candidates and committees include other non-paying candidates or measures only for their own benefit.

However, if a candidate or committee pays for another candidate or committee "at the behest of" the second candidate or committee, a reportable in-kind contribution has been made.

A-84-157

F P P C

MAY 23 12 40 PM '84

UCLA Law School
405 Hilgard
Los Angeles, California 90024

May 17, 1984

Barbara Millman
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Re: Berman and D'Agostino
Campaigns, Inc.

Dear Barbara,

This letter is to memorialize our telephone conversation of Tuesday. Also, I should like to thank you and Jeanne Pritchard for your cooperation in responding to my inquiry on such short notice.

We discussed two questions relating to the slate mail program to be published by my client, Berman and D'Agostino Campaigns, Inc. (BAD Campaigns). First was the question of who was the "sender" of the slate, for purposes of the notices required by the Political Reform Act and the FFPC regulations. Second was the question of how the receipts and expenditures of the program will be disclosed.

With respect to the first point, the procedure we agreed upon is as follows. On the outside of each envelope, it will be stated that the mailing is sent by candidates and ballot measure committees named inside. Inside, the names of those candidates and measures who are "participating" in the program (i.e., who are paying BAD Campaigns for "featured" status in the mailings) will be marked with an asterisk. There will be a statement that the mailing was sent or paid for by the candidates and measures that are so marked. Both inside and outside will be the statement that the mailing is published by BAD Campaigns.

With respect to the second point, I indicated that BAD Campaigns regards its status as governed by Government Code Section 84303, and that pursuant to that section it intends to file campaign statements similar to those filed by Californians for Democratic Representation in 1982. That is, BAD Campaigns will file statements indicating the payments it receives from candidates and measures for participation in the slate mailing program. These payments will be reported as "miscellaneous receipts." In addition, the statements will report all the expenditures in connection with the slate program. The participating candidates and measures will be expected to disclose their payments to BAD Campaigns as expenditures, but will not report any additional details relating to the program.

You indicated that although you would prefer that the

details be reported by the participating candidates and measures rather than by BAD Campaigns, you accede to reporting as described in the foregoing paragraph for the primary election.

With respect to the general election and all future elections, you stated that the above reporting procedures would be impermissible because of a new regulation, Section 18431, which has been adopted by the FPFC but will not go into effect until after the primary. You indicated you will send me a copy of the new regulation as soon as possible.

I expressed my opinion that Government Code Section 84303 gives a slate mail publisher such as BAD Campaigns the right to elect to disclose the expenditures of the slate mail program itself rather than requiring the participating candidates and measures to do so. I asserted that if the new regulation purports to eliminate that right it is inconsistent with the statute and therefore invalid. You indicated your disagreement.

Finally, you indicated that some time later this year the Commission is likely to consider regulations relating to slate mail programs. I requested and you agreed that my clients and I will be notified of these proceedings at the earliest stage possible, as we are likely to have comments and suggestions.

Please let me know immediately if you believe any corrections or additions are needed to accurately reflect our agreements. Again, I am grateful for your assistance.

Sincerely,



Daniel H. Lowenstein
Attorney for
Berman and D'Agostino
Campaigns, Inc.

Joseph Remcho
August 14, 1986
Page Two

States District Court decision in Federal Election Commission v. Californians for Democratic Representation, Case No. CV85-2086-JMI (January 9, 1986). We will keep you informed of any changes in our advice.

Although my initial advice to you during our telephone conversation of July 1, 1986, was that Republic need not provide paying candidates and committees with a list of its subvendors in connection with the slate mailer, further consideration and discussion of this question with the Legal Division have resulted in a different conclusion. Enclosed is a copy of FPPC regulation 2 Cal. Adm. Code Section 18431 which outlines the types of payments which must be reported in detail by candidates and committees when the payments are made by an agent of the candidate or committee or by an independent contractor. Payments made by Republic Media Group appear to fall into both subsections (a)(2) and (a)(3) of the regulation and, therefore, the candidates and committees which purchased space on the slate mailer are required to provide the names, addresses and amounts paid by Republic to vendors who received \$100 or more in connection with the mailing. We believe that a list showing the name, address and total amount paid by Republic to each subvendor for the costs associated with each paying candidate's or committee's mailing, along with an indication of the number of paying and the number of non-paying candidates and committees which were included in the mailing, would be sufficient to satisfy this reporting requirement.

I apologize for the inconvenience caused by this change, particularly in light of the fact that all of the candidates and committees which purchased space on the mailer will be required to amend their campaign disclosure filings for the period in which they made payments to Republic. You may wish to provide a copy of this letter to the candidates and committees involved which they can attach to their amended statements to explain the initial lack of subvendor information.

Again, I apologize for the inconvenience. Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,



Carla Wardlow
Political Reform Consultant

CW:cah
Enclosure

Memorandum

To : John Larson, Greg Baugher,
Jeanne Pritchard, Bob Leidigh,
Kathy Donovan and Carla Wardlow

Date : August 14, 1986

RB

From : FAIR POLITICAL PRACTICES COMMISSION
Roger Brown

Subject : Slate Mailers

8/19/86:

Kathy Donovan will handle comment to FEC
Roger will check w/ SOS re: filing and will advise Kathy...
he will also notify FEC that we intend to
comment.

I have been contacted by the Federal Election Commission and asked whether the FPPC would like to provide comments concerning the attached request for advice from Congressman Stark (Oakland).

Congressman Stark wants to set up his own slate mailer operation with the Alameda County Democratic Central Committee. He intends to list both state and federal candidates, some of whom will pay and some be listed for free. He seems to be concerned about how to comply with the law in the light of a recent Federal District Court decision, FEC v. Californians for Democratic Representation (BAD Campaigns, Inc.). I have attached a copy of the decision for your convenience.

The Federal District Court decided that the slate mailer organization has made an expenditure to those candidates who are listed on the slate but who do not pay to be there. If there is coordination, cooperation, etc., there may even be a contribution-in-kind to the non-paying candidate who is listed.

As I understand it, the FPPC has been advising BAD and is proposing to advise another advice requestor that under the Political Reform Act, these same facts result in no reportable transaction.

The Federal District Court decision went on to say that CDR violated the law by not registering as a committee and filing federal campaign statements reporting the expenditures/contributions they make to non-paying candidates listed on their slates.

FPPC advice has been that BAD and others in the slate business should NOT form committees and file campaign statements.

August 14, 1986
Page Two

Since California slate mail operations routinely list both state and federal candidates it seems particularly important here to try to harmonize federal law and state interpretations to minimize confusion and provide the best information for the public. To my knowledge the attached case is the only slate mail reporting decision in existence and it will not be appealed.

I suggest we meet on August 18 or 19 (after Greg returns and before I leave on vacation) to discuss what, if any comment we should make to the FEC and to discuss whether and how to harmonize our advice with federal law in this area.

Attachments
RB:sf

ROUTE SLIP

TO: Kathy Donovan

- | | |
|--|---|
| <input type="checkbox"/> John Larson, Chairman | <input type="checkbox"/> Roger Brown |
| <input type="checkbox"/> Lynn Montgomery | <input type="checkbox"/> Jeanne Pritchard |
| <input type="checkbox"/> Jay Greenwood | <input type="checkbox"/> Bob Tribe |

FROM: GREG BAUGHER, Executive Director

- | | |
|---|---|
| <input type="checkbox"/> For your information | <input type="checkbox"/> Per your request |
| <input type="checkbox"/> Please see me | <input type="checkbox"/> Please file |

REMARKS: I-86-268

