

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

September 1, 1981

Jonathan W. Redding
City Clerk's Department
2180 Milvia Street
Berkeley, CA 94704

A 81-09-034

Dear Mr. Redding:

This letter is sent to follow up my letter of July 5, 1981. You asked whether the Committee for Ronald Dellums, a federal candidate's committee, had incurred any reporting obligations under the Political Reform Act by virtue of its participation in the Berkeley city elections. While it appears likely from our research that federal law would allow the application of state reporting requirements to federal candidates' committees when they participate in state/local elections, there is no federal statute, regulation, or FEC Advisory Opinion nor Commission opinion that expressly deals with this issue.

Section 453 of the Federal Election Campaign Act provides:

The provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.

The Federal Election Commission (FEC) has elaborated on the statutory declaration of preemption:

(a) The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office.

(b) Federal law supersedes State law concerning the--

(1) Organization and registration of political committees supporting Federal candidates;

(2) Disclosure of receipts and expenditures by Federal candidates and political committees; and

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Jonathan W. Redding
September 1, 1981
Page Two

(3) Limitation on contributions and expenditures regarding Federal candidates and political committees.

(c) The Act does not supersede State laws which provide for the--

(1) Manner of qualifying as a candidate or political party organization;

(2) Dates and places of elections;

(3) Voter registration;

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses; or

(5) Candidates; personal financial disclosure.

11 C.F.R. Section 108.7.

As you can see, although the law is clear that states cannot regulate the reporting by federal committees with respect to federal elections, it is silent on the issue of reporting by federal committees with respect to state/local elections. You could infer that subsection (b)(1) prohibits the imposition of state reporting requirements on federal committees as the Dellums Committee asserts, but that interpretation is inconsistent with several FEC Advisory Opinions. See, e.g., AO 1981-18; AO 1980-47; AO 1979-82; AO 1978-37. Cf. AO 1980-36; AO 1978-66; AO 1978-54.

Since the issue is not resolved, we have determined that none of the filing requirements of the Political Reform Act should be imposed at the present time on the Dellums Committee. This determination is subject to change, of course, if either the FEC or the Commission issues a ruling on the matter. In deference to both the Commission's and federal efforts to streamline the filing of campaign statements, we feel that the additional burden that would be placed on the Dellums Committee if it were required to file as a recipient committee under the

Jonathan W. Redding
September 1, 1981
Page Three

Political Reform Act is not justified by significantly increased or different disclosure provided by the Political Reform Act statements than is already provided by the federal statements. The purposes of the Political Reform Act, which are to insure that campaign receipts and expenditures are fully and truthfully disclosed to the voters, are served by the existence and availability of federal statements. The federal statements of the Dellums Committee are on file both in Sacramento with the Secretary of State and in the county in which the largest number of voters who are in the Dellums' district reside. Government Code Section 84217. In addition, the receipt of any contributions made by the Dellums Committee to a local committee is reported on the local committee's statement.

Thank you for your patience. If I can be of further assistance, please feel free to call me at (916) 322-5901.

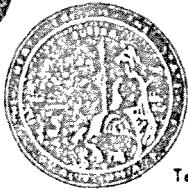
Very truly yours,



Diane Maura Fishburn
Counsel
Legal Division

DMF:plh
cc: Committee for Ronald V. Dellums

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

July 6, 1981

Jonathan W. Redding
City Clerk Department
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Redding:

This letter is sent in response to your letters dated April 23, 1981 and April 29, 1981 requesting advice from this office as to your duties under the Political Reform Act as filing officer for campaign statements for the City of Berkeley. This advice is provided pursuant to Government Code Section 83114(b).1/

The issues raised by your questions are:

1. Whether the provision of mailing labels to Berkeley Citizens Action (BCA), a campaign slate committee, for use in a mass mail fundraising effort through Mal Warwick and Associates by the Committee for Congressman Ronald V. Dellums and the McGovern 80 Committee is a reportable transaction under the Political Reform Act; and, if so, how it should be reported;

2. Whether the Committee for Ronald V. Dellums has incurred any reporting obligations under the Political Reform Act.

As you know, the duties of a filing officer with respect to statements filed pursuant to the Act are to:

- (a) Supply the necessary forms and manuals prescribed by the Commission;
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title;
- (c) Notify promptly all persons and known committees who have failed to file a report or statements in the form and at the time required by this title;

1/ All statutory references are to the Government Code unless otherwise noted.

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- (d) Report apparent violations of this title to the appropriate agencies; and
- (e) Compile and maintain a current list of all reports and statements filed with this office.

Section 81010.

As to the first issue, Section 82015, as interpreted by 2 Cal. Adm. Code Section 18225, provides that contribution includes any non-monetary payment, not supported by full and adequate consideration, received by a committee. An expenditure includes any non-monetary payments by a committee.^{2/} Sections 82025, 82044.

If the mailing labels were provided to BCA without charge to BCA, full and adequate consideration was not received. Then the value of the mailing labels would most likely be reportable as an in-kind contribution to BCA on Schedule C. On the other hand, if there were a binding arrangement between BCA and the donors of the labels and the labels to be exchanged were of equivalent value, it could be reportable as an expenditure by BCA. Another possibility, depending on the details of the transaction, is that it is reportable both as an in-kind contribution and an expenditure if BCA provided some but not full value in the exchange. In any event, it is reportable on BCA's campaign statements.

Since it has been reported as an in-kind contribution on Schedule C, on the face of the statement, there is compliance with the Act. Unless there is evidence of bad faith or of an intent to violate the Act, in which case the matter should be referred to the civil enforcement authority, your duty to see that campaign statements conform on their face with the requirements of the Act has been performed.

On the related issue of the value of the mailing labels, Section 81011 provides that:

Whenever in this title the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services, or facilities shall be appended to the report of statement.

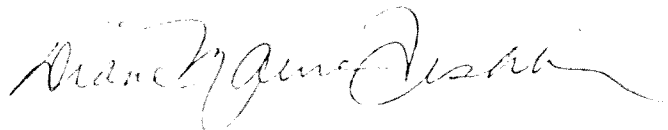
^{2/} The definition of payment includes a "distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." Section 82044.

July 3, 1981

As the Information Manual points out on page 29, fair market value is the value to the recipient, not the cost to the donor. It is determined by the amount which would have to be paid to acquire similar goods or services on the open market. We do not have enough facts about the market for the mailing labels at issue here to determine their fair market value. However, the value is probably not the cost to the Dellums or McGovern 80 Committees of duplicating the labels. However, unless there is evidence that the valuation was not done in good faith and thus that there was an intent to violate the Act, we see no reason to go behind the valuation that was given since it is the responsibility of the filer to assign a valuation to in-kind contributions. Your duty to see that statements are filed promptly and completely has been done.

As to the second question you raised, we are still looking into the matter. We will inform you as to our determination in the matter as soon as we have come to a conclusion. Until that time, the Committee for Ronald V. Dellums need not file statements under the Political Reform Act.

Very truly yours,



Diane Maura Fishburn
Counsel
Legal Division

DMF:gs

cc: ✓ Berkeley Citizens Action
Committee for Ronald V. Dellums

City of Berkeley

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CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

August 4, 1981

Bob Stern, General Counsel
FAIR POLITICAL PRACTICES COMMISSION
P.O. Box 807
Sacramento, CA 95804

SUBJECT: Advice Letter Dated July 6, 1981;
Request for Opinion

Dear Mr. Stern:

The advice letter of Diane Fishburn dated July 6, 1981, did not answer the most important questions relative to the valuation of the mailing lists under the circumstances described in my request for opinion. As the FPPC has never rendered an opinion as to the valuation of mailing lists, please consider this letter a request for opinion as initially requested on April 23, 1981.

For the record, this matter was treated as a request for advice, at the request of staff of the FPPC. I did not require staff to reiterate the duties of the filing officer, and would not have requested an opinion from the Commission if it had not been necessary to do so. At issue is the interpretation of the fair market value standard when applied to such intangibles as computer mailing lists, especially on an exchange basis. Staff's response makes no mention of the relevant facts of the case, and as such, constitutes a serious irresponsibility from my point of view.¹

Furthermore, your response, "...Unless there is evidence of bad faith or of intent to violate the Act...", has been misinterpreted by persons filing under the Political Reform Act to question my authority to request amendments even in cases where the information contained in the statements is inaccurate on its face. I can hardly believe that it is the position of Fair Political Practices Commission that a finding on my part of intent to violate the Act or bad faith is a necessary prerequisite for requesting an amendment, when the information on the statement is inaccurate. Please clarify your statements in this regard immediately, as they serve to make the job of the filing officer exceedingly difficult.

¹ Section 83113(c) states that the Commission shall ..."Provide assistance to agencies and public officials in administering the provisions of this title."

Bob Stern, General Counsel
August 4, 1981
Page Two

The documents previously submitted to the FPPC contains, I believe, the necessary facts to establish the fair market value of the mailing labels.

I will be most happy to provide you with additional details on the transactions in question if you need them. Your prompt attention to this opinion request will be appreciated.

Very truly yours,

EDYTHE CAMPBELL
City Clerk

By:

Jonathan W. Redding
Jonathan Redding

EC/JW:ko

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City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

July 6, 1981

Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

SUBJECT: Opinion requests of April 23, 1981 & April 30, 1981

Dear Sirs:

On April 23, 1981 I made an official request for opinion regarding the provision of mailing lists by the Committee for Congressman Ronald V. Dellums & the McGovern 80 Committees.

On April 29, 1981 I requested an opinion to determine whether or not Congressman Ronald V. Dellums was required to file campaign statements pursuant to the Political Reform Act.

In May, 1981 Stella Levy of your Legal Division requested that the matter be treated as a request for advice since it could be considered more rapidly by the staff and I could reserve the right to submit the matter to the Commission for the issuance of an Opinion. Although I felt the questions raised by my inquiries merited an official opinion, I agreed to have the matter treated as a request for advice.

Please advise me as to the status of this request and when a detailed response will be forthcoming. In addition I request that copies of all correspondence and memos pertinent to this advice letter be promptly sent to this office.

Your cooperation in these matters is appreciated.

Sincerely,

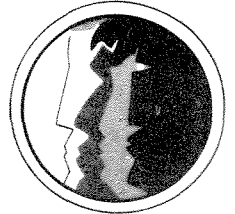
Edythe Campbell
City Clerk

By Jonathan W. Redding
Jonathan W. Redding

F P P C

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City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

June 2, 1981

Fair Political Practices Commission
ATTN: Stella Connell Levy, Counsel
Legal Division
1100 K Street Building
Sacramento, California 95814

Dear Ms. Levy:

Jonathan Redding, an Associate Administrative Analyst, was hired by the City Clerk's Department in January 1981 to perform the functions of the filing officer for campaign statements for the City of Berkeley.

In making the Request for Opinion to the Fair Political Practices Commission and in all other activities related to the performance of these duties of the filing officer, he acts as the filing officer for the City of Berkeley.

If I can be of further assistance, don't hesitate to call me at 644-6480.

Very truly yours,

Edythe Campbell
Edythe Campbell
City Clerk

CITY OF BERKELEY

DATE: August 27, 1981

Memorandum

in
RECEIVED
AUG 31 1981
OFFICE OF CITY CLERK

TO: EDYTHE CAMPBELL, City Clerk
Attention: Jonathan Redding

FROM: NATALIE E. WEST, City Attorney

SUBJECT: OPINION REGARDING MAILING LISTS AS CAMPAIGN CONTRIBUTIONS

ISSUES

1. Does the provision of mailing lists and labels to a political committee constitute a non-monetary contribution?
2. If so, what is their value? Is it based on the list's commercial value or on the cost of production associated with using labels.

CONCLUSIONS

1. The provision of mailing lists and labels to a campaign committee is a reportable transaction. The transaction may be reportable as a contribution or as an expenditure, depending on the facts of the individual case.
2. The value of the list is their fair market value.

ANALYSIS

The Berkeley Fair Campaign Practices Committee requested an opinion on the above issues from the California Fair Political Practices Committee as well as this office. On July 6, 1981, the FPPC issued a written advice letter which answers those questions and which is attached hereto. Under the facts, as I understand them, Congressman Dellums and Senator McGovern furnished printed mailing labels to Berkeley Citizens' Action (BCA), a campaign slate committee, for use in a mass mailing fund raising effort during the recent campaign that preceded the April 21, 1981 election. BCA received a total of 10,552 mailing labels from the committee for Congressman for Ronald B. Dellums. These labels are available commercially at a cost of \$50 per 1000 which would make the total value of the transaction \$527.60. However, the labels were reproduced at a cost to the Dellums Committee of \$11.90 per thousand labels. If the labels are valued on the basis of cost of reproduction, the value of the transaction is \$125.57. The McGovern 80 Committee furnished 2,500 labels at a commercial value of \$45 per thousand. The transaction had a fair market value of \$112.50. On the other hand, the cost of reproduction is \$29.75.

There are two factual issues which must be resolved in order to determine BCA's specific reporting obligation. (1) There is a difference of opinion as to whether the transactions were contributions or exchanges. In any event they are reportable and BCA has reported the transactions as a contribution on its amended campaign statement filed April 17, 1981. (2) There is a difference of opinion as to whether the value of the mailing list is their commercial value or the cost of reproduction. Both the State and local Campaign Disclosure Acts require that the value of the goods be reported as the "estimated fair market value at the time received or expended". Govt. Code Section 81011, Berkeley Municipal Code Section 2.12.055. As the Fair Political Practices Committee stated, "Fair market value is the value to the recipient not the cost to the donor. It is determined by the

Memorandum

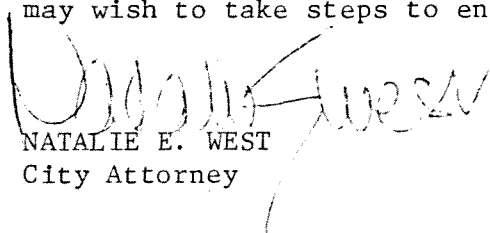
DATE: August 27, 1981

TO: EDYTHE CAMPBELL, City Clerk
Attention: Jonathan Redding

FROM: NATALIE E. WEST, City Attorney

SUBJECT: OPINION REGARDING MAILING LISTS AS CAMPAIGN CONTRIBUTIONS

amount which would have to be paid to acquire similar goods or services on the open market." The FPPC further observed that "the value is probably not the cost to the Dellums or McGovern 80 Committees of duplicating the labels." The determination of fair market value is a factual conclusion, not a legal conclusion, and does not properly rest with this office. The Berkeley FCPC has apparently made a determination that the fair market value of the mailing list is the commercial rate for the use of the Dellums and McGovern mailing lists. (See FCPC minutes, April 15, 1981 at 2). Accordingly the commission may wish to take steps to enforce its opinion.


NATALIE E. WEST
City Attorney

Attachments

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

May 25, 1981

Mr. Jonathan W. Redding
City Clerk Department
2180 Milvia Street
Berkeley, CA 94704

RE: FPPC No. GC-81/04-01

Dear Mr. Redding:

As we discussed by telephone on May 21, 1981, it is Commission staff policy that matters such as those you have addressed in your recent correspondence to us be pursued at the local level as authorized by Government Code Section 91001(b).

As I mentioned, the Commission staff will provide legal/technical assistance to the District Attorney as requested.

We appreciate the time and effort you have put into this matter. If I can be of further assistance, please do not hesitate to contact me at (916) 322-5772 or ATSS 492-5772.

Very truly yours,

A handwritten signature in cursive script that reads "Cyrus J. Rickards".

Cyrus J. Rickards
Counsel
Enforcement Division

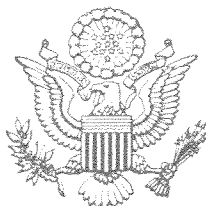
CJR:sf
cc:Bob Blasier
Stella Levy

The Committee for Congressman
RONALD V. DELLUMS

81 002

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May 1, 1981

Luke Abrams
Hugh Bassette
Robert Benson
Betty Berry
Staffana Broadhead
Roberta Brooks-Halterman
Charles Brown
Keith Carson
Louise Clark
Joe Close
Dona Cutting
Margot Dashiell
Michael Dieden
Mamie Dillard
Lodi Dupree
Leandro Duran
Walter J. Edwards
Rick Ellis
Nate Everett
Carmen Flores
Susie P. Gaines
Vivian Gales
John George
Mike Gleason
Lenny Goldberg
Gigi Guerrero
H. Lee Halterman
Larry Hansen
Donald R. Hopkins
Robert Johnson
William Lightbourne
Carlos Lopez
Pat McClintock
John McElheney
Beth Meador
Gus Newport
Steve Paskowitz
Tim Reagan
Gwendolyn E. Reed
Wilson Riles, Jr., Chairperson
Gil Romero
Kaye K. Rosso
Robert A. D. Schwartz
Maudelle Shirek
William Short
Arlene Slaughter
Rick Smith
Nancy Snow
Andrew Sun
Sandra Swanson
Elijah Turner
Kunio Uehara
Mal Warwick
Bobbie Williams
Micheale Williams
Patricia Wright
Frank Yoon

Chair and Members
Fair Political Practices Commission
1100 "K" Street
Sacramento, CA 95814

Dear Chair and Members:

We are in receipt of Mr. Jonathan W. Redding's April 29, 1981 letter to the FPPC entitled SUBJECT: REQUEST FOR OPINION AND NOTIFICATION OF APPARENT VIOLATIONS OF THE POLITICAL REFORM ACT.

I would appreciate the Commission's consideration of the following:

1. We urge that the request for opinion regarding the filing requirement of the Committee for Ron Dellums (hereinafter the Committee) under State statute and local ordinance be separated from the request for opinion regarding the issue as to whether or not the exchange of mailing lists can be characterized as a political contribution within the meaning of Federal and State law and local ordinance. These issues will be referred to as issue one and issue two respectively.

We believe that fundamentally different questions are involved in these two issues and propose that a division of the questions would allow for a clearer expostulation of the facts and legal theories involved in each.

2. We urge the Commission to reject the request for opinion on issue one. It is our contention that Federal law governing the filing of statements preempts and supersedes State law and, a fortiori, local ordinance. See, 2 FPPC Opinions 61, No. 75-117; 2 U.S.C. 453; 11C.F.R.108.7(b)(2); Cal Gov't. Code 82007; and, 1974 U.S. Code, Cong. & Admin. News 5587, 5668 and 1972 U.S. Code, Cong. & Admin. News 1773, 1800.

It is the position of the Committee that while a transfer of funds from it to another political committee might be a contribution for the purposes of the receiving committee that it is, in fact, an expenditure which the Committee has undertaken in order to pursue the electoral interests of its principal: The Federal candidate. No decision to spend money, and a relatively insubstantial portion of the Committee's money is spent attending functions, purchasing tickets from other committees or transferring funds to another committee, is undertaken without first determining that it will benefit the political interest of its candidate. It is, therefore, an expenditure which is ultimately



3126 Shattuck Avenue
Berkeley, CA 94705

Fair Political Practices Commission
 May 1, 1981
 Page 2

in connection with a federal election and is, therefore, reported to the Clerk, U.S. House of Representatives.

Moreover, the language of 11C.F.R.108.7(b) contains no words limiting its operation to direct expenditures in federal elections only. It covers all expenditure disclosure.

It was precisely for the purpose of avoiding multiple filings that the Congress undertook specifically to preempt the field and to supersede any existing state laws. And, since the interest of "timely" disclosure is served by the fact that the State/local controlled committee must report the receipt of the funds in a timely fashion, it cannot be imagined that the Congress would have intended that such a filing requirement could also be imposed upon a Federal committee.

3. If the Commission determines that it will issue an opinion with regard to issue one, the Committee requests that it be allowed to submit a brief to the points of this question under Comm'n Reg. 18322(b); that it be advised of the draft opinion as an interested party under Comm'n Reg. 18322(c); and, that it be allowed to present oral argument under Comm'n Reg. 18323(b).
 4. Since we contend that the question raised in issue one is largely a question of Federal law, we urge the Commission to solicit the opinion of the General Counsel of the FEC as to this question. See 2, FPPC 61, 63, No. 75-117.
 5. Additionally, since the Committee has relied in good faith upon earlier Commission determinations and interpretations of Federal law which would indicate to a reasonable person that it was exempt from such a filing requirement, we request that any ruling issued by the Commission which would require Federal Committees to file be made prospective only.
 6. With respect to issue two, the Committee requests that the Commission, if it does not reject the request for opinion, allow the Committee to submit a brief under Comm'n Reg. 18322(b); that it allow the Committee to receive a draft of the opinion under Comm'n Reg. 18322(c); and that it allow the Committee to present oral argument under Comm'n Reg. 18323(b).
- In addition, we would urge the Commission to solicit the advise and opinion of professionals working in the direct mail business as to the "common business practice" regarding exchanges of mailing lists among political and non-political committees.
7. Finally, the Committee requests that all matters regarding the conformance of BCA to State and local requirements (other than with respect to the issue of contribution in issue two) be separated from any proceeding regarding the Committee.

respectfully submitted,


 H. Lee Halterman
 District Counsel

cc: Lawrence L. Duga, Esq.
 Berkeley FCPC, c/o Steve Maier, Esq., Chair
 Mr. Jonathan W. Redding
 William C. Oldaker, General Counsel, FEC
 Legal Division and Enforcement Division, FPPC
 Natalie West, Berkeley City Attorney

LAWRENCE L. DUGA

ATTORNEY AT LAW

1440 BROADWAY

SUITE 1000

OAKLAND, CALIFORNIA 94612

TELEPHONE (415) 452-1300

P P C

81 002

MAY 11 11 12 AM '81

May 7, 1981

Fair Political Practices Commission
1100 K Street
Sacramento, CA. 95814

ATTENTION: Legal Division

Dear Gentlepeople:

I am in receipt of a copy of a letter sent to you from one Jonathan W. Redding, an employee in the City Clerk's Office in Berkeley. I enclose a copy of that letter with this letter so that you can match up the two. I have several comments to make.

As you are probably aware, the City of Berkeley has its own campaign disclosure law. The commission set up under that ordinance is assigned staff by the City Manager. Mr. Redding, a clerk, has been designated as staff to the commission. At commission meetings, he represents himself as the local compliance officer under the state law. His rationale is that the City Clerk is designated as compliance officer and that since he is "staff" to the local commission, the mantle falls upon his shoulders. I think this a very questionable legal premise. It is likewise very questionable whether Mr. Redding is empowered to speak for the City of Berkeley. He alleges, in his letter, that the opinion he seeks is an official request for opinion from the City of Berkeley. In fact, neither the City Council nor the local commission has requested the opinion. To be sure, any individual may seek an opinion, but I think it is of significance to what follows that Mr. Redding represents himself as a state officer to our commission, but does not describe himself that way to the State Commission, and that he arrogates to himself the power to request opinions in the name of the City when no such power or authorization has been given.

It would be fair to say that I and my client, Berkeley Citizens Action, view Mr. Redding's enforcement of the law as something less than even-handed. Any alleged infraction of the law by B.C.A. is viewed as a major item requiring a flurry of letters, phone calls and placements on the commission agenda. Discrepancies in the filings of our opposition are by and large ignored, even after they are pointed out. Indeed, without the intervention of the chair of the commission, the most major violation would be ignored by Mr. Redding.

Mr. Redding's letter is both inaccurate and incomplete. It is not true that B.C.A. has failed to honor requests for information. In fact, all the information requested was supplied in a timely

and representatives of the organization, as well as Mal Warwick, of Warwick and Associates, appeared at the commission's last meeting and answered all questions asked by the commission.

B.C.A. agreed to file a supplemental report, under protest, so that the information would be available even though we contest the necessity of such a filing. Accordingly, the implication that B.C.A. engaged in a course of conduct designed to hide information from the public is both false and unwarranted.

The crux of the dispute has to do with the practice of exchanging lists among and between mail solicitation firms. Mal Warwick and Associates was hired by B.C.A. to do direct mail solicitation. Mr. Warwick obtained mailing labels from the Committee for Ronald V. Dellums and the McGovern 80 Committee on the promise of supplying to these committees a list of contributors generated by his efforts on behalf of B.C.A. It is our understanding that this is a customary practice and we are prepared to supply you with a statement to that effect from one or more mail solicitation firms, if you so desire. All payments to Warwick and Associates by B.C.A. have been reported as have all contributions received by B.C.A. as a result of his efforts.

A secondary issue is the fair market value of these lists. The supplemental report filed under protest, indicates the fair market value of the lists is determined by the list management fee and the cost of duplicating the labels in a usable form. Mr. Redding is of the view that a different higher figure should be used as the fair market value.

I would suggest that you obtain a transcript of the proceedings relative to this issue which took place before the commission. Unfortunately, there is no transcript, and record keeping by our local commission is far from sufficient. Accordingly, I offer to answer any questions for you, as I am able to, or in the alternative, to find any information that you need in order to render your opinion.

Very truly yours,

Lawrence L. Duga
LAWRENCE L. DUGA

LLD:GB
enc/

APR 30 10 39 AM



City of Berkeley

CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

April 29, 1981

Fair Political Practices Commission
State of California
Legal Division and Enforcement Division
1100 Kay Street
Sacramento, California 95814

Gentlemen:

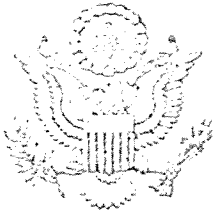
SUBJECT: REQUEST FOR OPINION AND NOTIFICATION OF APPARENT VIOLATIONS OF THE
POLITICAL REFORM ACT

On April 27 and 28, 1981 I spoke with Lynn Montgomery regarding the necessity of Congressman Dellums to file campaign statements pursuant to the Political Reform Act. Pursuant to our conversation, I am forwarding a letter from the Committee for Congressman Ronald V. Dellums (Federal I.D. 004332) in which his district counsel alleges some sort of immunity from complying with California State law and contests staff's determination that the lists provided by the Committee for Congressman Ronald V. Dellums constitutes an in-kind contribution.

Please consider this letter as an official opinion request to determine whether or not Congressman Ron Dellums must file campaign statements pursuant to the Political Reform Act and notification pursuant to 81010(d) of apparent violations of the Political Reform Act if it is found that Congressman Dellums should file. In addition, I bring to your attention the apparent failure of BCA to report the \$1,000 late contribution from Congressman Ron Dellums' Committee, as well as contributions from Ilona Hancock, Teresa Bergman and Mark Goldowitz, within 48 hours of receipt.

For your information, my preliminary investigation leads me to believe that neither Congressman Dellums or any committee which he controls has filed a campaign statement in the City of Berkeley or in the State of California in compliance with the Political Reform Act although he has likely met threshold requirements for a number of years.

The Committee for Congressman
RONALD V. DELLUMS



Luke Abrams
Hugh Bassette
Robert Benson
Betty Berry
Staifana Broadhead
Roberta Brooks-Halterman
Charles Brown
Keith Carson
Louise Clark
Joe Close
Dona Cutting
Margot Dashiell
Michael Dieden
Mamie Dillard
Lodi Dupree
Leandro Duran
Walter J. Edwards
Rick Ellis
Nate Everett
Carmen Flores
Susie P. Gaines
Vivian Gales
John George
Mike Gleason
Lenny Goldberg
Gigi Guarrera
H. Lee Halterman
Larry Hansen
Donald P. Hopkins
Robert Johnson
William Lightbourne
Carlos Lopez
Pat McClintock
John McSheney
Bath Medendorp
Cus Newport
Steve Pastowitz
Tim Reagan
Gwendolyn E. Reed
William R. Robinson
John Romero
Kaye K. Russo
Robert A. D. Schwartz
Maudelle Snarex
William Short
Arlene Slaughter
Rick Smith
Marcy Snow
Andrew Sun
Sandra Swanson
Bijan Turner
Eunice Venara
Mal Warwick
Bobbie Williams
Michele Williams
Patricia Wright
Frank Young

April 23, 1981

Mr. Steve Mayer, Chair
Berkeley Fair Campaign Practices Commission
2180 Milvia St., City Hall
Berkeley, CA 94704

Dear Mr. Mayer:

We have received a copy of Mr. Duga's April 21, 1981 letter to you regarding the required reporting of the "in kind contributions from the Dellums' Committee and the McGovern Committee" required by the Commission. As you are aware, I was present when the Commission issued this order.

While the Commission has no jurisdiction with respect to Committees controlled under Federal law, we would appreciate the opportunity to make a special appearance in order to argue against this determination. Because it is our desire to promote the effective operations of all of the election reform laws and because of conflicts which might appear between your determination and that of the FEC, we believe that it is important for us to appear. Your cooperation in advising us of the Hearing and scheduling us for the presentation of testimony would be appreciated.

For your information, I will be on vacation the week of 4 May 1981, but am otherwise available for a Hearing at the Commission's pleasure.

Sincerely,

H. Lee Halterman
District Counsel

cc: Lawrence L. Duga, Esq.

RECEIVED

APR 27 1981

OFFICE OF CITY CLERK

3126 Shattuck Avenue
Berkeley, CA 94705

-81-07-034



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 16 P 5: 03

November 16, 1981

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1981-46

H. Lee Halterman
District Counsel
The Committee for Congressman
Ronald V. Dellums
3126 Shattuck Avenue
Berkeley, California 94705

Dear Mr. Halterman:

This responds to your letter dated September 18, 1981, supplemented by your letters dated September 22 and 23, 1981, requesting an advisory opinion on behalf of the Committee for Congressman Ronald V. Dellums concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and Commission regulations to certain aspects of the Committee's direct mail fundraising program.

You explain that the Committee has retained the firm of PARKER/DODD and Associates to do direct mail fundraising. PARKER/DODD has developed a direct mail program to raise funds for the Committee, and acts as a "custodian/broker" of the Committee's contributor list. In return, the firm is paid a "standard industry fee" by the Committee.

You indicate that a part of the service package offered by the fundraising firm involves the firm's negotiation with other organizations for the use of their mailing lists to increase the list of names from which the Committee may solicit contributions. Two commercially acceptable ways of "paying for" the use of another organization's mailing list are 1) for the user to pay the list owner a fee "determined by the market's view of the value of the list;" and 2) for the user to exchange names of corresponding value with the

list owner. The exchange may be a direct exchange of the same number of names, a multiple use of a smaller number of names or some other variation which the parties believe is an exchange of equal value. Both payment methods, you indicate, are accepted in the industry as full consideration. The Commission responds to your specific questions about the described industry practices in the order in which they appear in your request.

You ask first whether the Committee's exchange of names from its contributor list for the use of names of corresponding value from the list of another political committee, non-profit organization, individual or corporation is considered by the Commission to be payment of the "usual and normal charge" for goods within the meaning of 11 CFR 100.7(a)(1)(iii)(B) and if so, whether the transaction is reportable under the Act.

As you know, the regulations provide that "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution." 11 CFR 100.7(a)(1)(iii)(A). A mailing list or a contributor list would fall within that provision. The regulations provide further that the "'usual and normal charge' for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution..." 11 CFR 100.7(a)(1)(iii)(B).

In response to your first question, the Commission concludes that if the exchange of names on a contributor list is an exchange of names of equal "value" according to accepted industry practice, the exchange would be considered full consideration for services rendered.*/ Thus, no contribution or expenditure would result and the transaction would not be reportable under the Act.

With regard to a situation where a corporation exchanges names with the Committee, the issue arises as to whether the equal exchange represents a "payment" which would constitute a corporate contribution prohibited by 2 U.S.C. §441b. The Commission again concludes that an exchange of this kind is not a prohibited corporate contribution but rather, a bargained-for exchange of consideration in a commercial transaction.

*/The Commission adopted a similar approach with respect to direct mail fundraising practices in Advisory Opinion 1979-36, copy enclosed. There, the Commission based its conclusion that the proposed activity was permissible under the Act on the requestor's assertion that the proposed activity was consistent with "normal industry practice."

Your second question is whether a contribution would result if the Committee provides names to another "Federal political committee" or another kind of organization in exchange for a future use of a corresponding number of names belonging to that committee.

The Commission concludes, based on its response to your first question, that a current use of names in exchange for a future use of the names of another political committee does not result in a contribution within the definition of 2 U.S.C. §431(8) (A). Based on the assertion that this kind of exchange is an accepted practice in the field of direct mail fundraising, the Commission takes the position that when the Committee provides names to another political committee in exchange for its own future use of a corresponding number of names which are of equal value, that this constitutes an arms length business transaction between the committees and is not a reportable contribution under the Act. Of course, this conclusion assumes the fact that the future use will occur. If that future use does not occur for any reason a contribution may result depending on the circumstances of the particular situation and the status of any person who does not provide or obtain the promised future use.

The result is not altered if the Committee arranges for a future exchange with a "non-profit organization." The exchange would not be a contribution and would not be reportable. Similarly, if the non-profit organization is incorporated, an arrangement for the future use of names in exchange for a current use does not result in a contribution provided the value to be exchanged represents the "usual and normal charge." Nor would the §441b prohibition against corporate contributions apply. Thus, the transaction would be neither reportable nor subject to the limits of 2 U.S.C. §441a.

If a profit-making corporation provides names to the Committee in exchange for a future use of a corresponding number of names, no contribution would result assuming the exchange represents the "usual and normal charge" for the use of contributor lists. The transaction would only become a prohibited corporate contribution if the Committee exchanged names which were of lesser value than those names provided by the corporation for the Committee's future use. 2 U.S.C. §441b.

Your third question concerns the production costs connected with the brokering of contributor lists. You indicate that the production costs of printing address labels are understood in the direct mail fundraising field to be included in the amount that the owner of a list charges for the use of the names on the list.

You ask whether the payment of such production costs is a contribution from the list owner to the list user. The Commission concludes that assuming it is an accepted business practice for the costs of label production to be part of the usual and normal charge for the use of a list, payment of such costs by the list owner is not a contribution to the list user or purchaser.

This conclusion is not altered when the Committee deals with a list owner which is incorporated. No prohibited corporate contribution results unless the corporation provides use of a list that is of greater value (with reference to "usual and normal" rate) than the value of names on the Committee's contributor list. Similarly, if the Committee deals with a list owner who is a state or local committee that receives contributions prohibited by the Act, no contribution would occur for purposes of the Act if the Committee "charged" the state or local committee the "usual and normal" rate for the use of its list. Such transactions are not reportable under the Act. The Commission, however, reaches no issue and expresses no opinion with respect to application of any State or local law in the situation where the Committee exchanges lists with a state or local committee that is not a political committee under the Act or Commission regulations.

To summarize, you have indicated in your request that an accepted method of payment for the use of a committee's contributor list in the direct mail fundraising industry is an exchange of names of corresponding value with another organization. The Commission takes the position that as long as the exchange is for names of equal value, that is, that the exchange represents the "usual and normal" charge required by 11 CFR 100.7(a)(1)(iii) (B), no contribution results. The same conclusion is reached if the consideration for the bargain is the future use of names on the Committee's contributor list. Assuming the exchange of names, either current or future, represents the normal and usual charge for such use, it is permissible for the Committee to exchange names with an incorporated or an unincorporated non-profit organization, a corporation or a state or local political committee which receives corporate or union contributions. Such an exchange is not subject to the prohibitions of 2 U.S.C. §441b or the limitations of 2 U.S.C. §441a, and it is not a reportable transaction under the Act.

AO 1981-46

Page 5

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

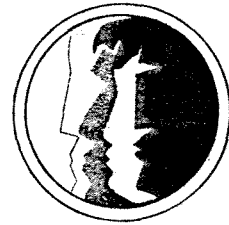
Sincerely,

A handwritten signature in black ink, reading "John Warren McGarry". The signature is written in a cursive style with a large, prominent initial "J".

John Warren McGarry
Chairman for the
Federal Election Commission

Enclosure (AO 1979-36)

CITY OF BERKELEY F P C



NOV 13 9 35 AM '81

FAIR CAMPAIGN PRACTICES COMMISSION (415) 644-6480
2180 MILVIA STREET BERKELEY, CALIFORNIA 94704

November 10, 1981

Mr. Brad Litchfield
Federal Election Commission
1325 K Street
Washington, DC 20024

Dear Mr. Litchfield:

Pursuant to our conversation of November 2, 1981, I have attached the staff report regarding the disclosure of the fair market value of the mailing labels provided by the Dellums Committee to BCA. As I mentioned, I am concerned that the Federal Election Commission's opinion be specific and qualified, and not attempt to propose a rule applicable to committees filing under the California Political Reform Act.

In addition, you may wish to consider the information generated by my investigation before you make a conclusion as to whether (1) an exchange of mailing labels on a name-for-name basis constitutes the rendering of equal value, or (2) the time period for the exchange is material.

If I can be of any assistance, please don't hesitate to call me at (415) 644-6480.

Very truly yours,

Edythe Campbell
City Clerk

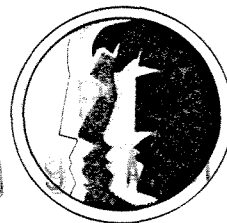
By: Jonathan W. Redding
Jonathan W. Redding

JWR:csr
Enclosures

cc: Diane Maura Fishburn, FPPC
Lee Halterman

Folsom

CITY OF BERKELEY



NOV 13

FAIR CAMPAIGN PRACTICES COMMISSION (415) 644-6480
2180 MILVIA STREET BERKELEY, CALIFORNIA 94704

DATE: November 6, 1981
TO: Fair Campaign Practices Commission
FROM: Staff
SUBJECT: APPROPRIATE DISCLOSURE OF MAILING LABELS PROVIDED BY THE DELLUMS & MCGOVERN COMMITTEES AND UTILIZED BY BCA IN DIRECT MAIL SOLICITATION

BACKGROUND

Through my reading of campaign literature and press reports, I became aware in early March that the Dellums Committee was actively involved in the local campaign on behalf of the BCA slate (see attached article from Daily Cal) and had provided BCA with its mailing lists to be used for a fund raising solicitation. It was my concern then, as it is now, that the contribution limitation contained in Section 600 of Ordinance 4700-N.S. be enforced in a fair and consistent manner which takes into account the provision of goods and services as well as monetary contributions.

After reviewing BCA's campaign statement filed on March 12, 1981, where no mention whatsoever was made of the mailing labels provided by the Dellums and McGovern Committees, I requested BCA to amend their campaign statement to reflect, as a non-monetary contribution, the value of the mailing labels provided by the Dellums Committee. The matter was briefly discussed at the FCPC meeting of March 26, 1981, where Ted Bloom stated that BCA was not given a mailing list, but that it was part of the expenses paid to Mal Warwick & Associates who provided the direct mail services. This position was restated in a letter from Ted Bloom to me, which was received on April 6, 1981, and which indicated that further questions should be directed to Mal Warwick.

On April 9, 1981, Mal Warwick responded to my letter of inquiry indicating that no money had changed hands and that BCA obtained the mailing labels by promising to furnish an equivalent number of mailing labels at some future time.

At the FCPC meeting of April 15, 1981, by unanimous vote the Commission requested that BCA amend its campaign statements to reflect the fair market value (i.e., the commercial rental rate) of the mailing lists as contributions to BCA. The treasurer of BCA agreed to do this. On April 17, 1981, BCA filed under protest an amended statement disclosing non-monetary contributions by the Dellums and McGovern Committees, at the production cost of \$11.90/thousand labels as opposed to \$50.00/thousand labels (which Warwick indicated would be the cost to a person who came to the list broker and asked to use the list).⁽¹⁾ As a result, instead of disclosing a value of \$527.60

⁽¹⁾ At the April 30, 1981, FCPC meeting, Staff reported that the fair market value had not been disclosed, and Mr. Duga asserted that Mal Warwick did not represent BCA insofar as determining the fair market value of the list, and that BCA had in fact disclosed the fair market value of the lists.

November 6, 1981

for the 10,552 Dellums labels and \$125.00 for the McGovern labels, BCA disclosed receiving non-monetary contributions of only \$125.57 and \$29.75, respectively. In the case of the Dellums labels, the valuation is especially important since the Dellums Committee made a \$1,000 monetary contribution to BCA on April 14, 1981, bringing their total monetary contributions to BCA to \$1,100.

In light of the complexities of the issue and the differences of opinion between BCA and myself, on April 20, 1981, I requested an opinion from the Fair Political Practices Commission and recommended that the FCPC defer consideration of the matter until we had their opinion (see minutes of April 30, 1981). The FPPC responded in July 1981 stating, among other things, that the transaction was reportable as either a contribution, if full and adequate consideration was not provided to the donors, or as an expenditure, if a binding agreement between BCA and the Dellums Committee was made to exchange labels of equivalent value. With regard to the valuation issue, the Fair Political Practices Commission stated that the "...fair market value is the value to the recipient, not the cost to the donor. It is determined by the amount which would have to be paid to acquire similar goods or services on the open market."⁽²⁾ Our City Attorney has written to the FCPC in similar fashion, stating that the proper method of reporting this transaction depends upon the facts of the individual case.

At various times during the past months, I have contacted several business organizations involved in the direct mail business to question them about standard business practices and the valuation of mailing lists.⁽³⁾ I have also questioned Mal Warwick and Lee Halterman in some detail. My purpose was to ascertain:

1. The fair market value of the mailing lists.
2. Whether or not the specific circumstances surrounding the provision of the mailing labels by the Dellums Committee to BCA was a standard and normal business practice.
3. How the transaction should be reported.

Throughout this report, I make generalizations about the normal business practices of politicians and direct mail firms relative to the rental or exchange of mailing lists. As individual circumstances vary tremendously, I am not attempting to make definitive statements about the standards of the industry, but rather to indicate what factors might be considered by the Commission as it evaluates the specific circumstances to determine whether or not the arrangement made between BCA and the Dellums and McGovern Committees for use of their mailing lists constitutes a non-monetary contribution or an exchange of equivalent values which should be reported as an expenditure.

⁽²⁾Letter from Diane Maura Fishburn, FPPC Counsel to Jonathan Redding, dated July 6, 1981.

⁽³⁾I have surveyed by telephone the following firms: 101 Methods; The Mailing Mart; Names in the News; Packer/Dodd & Associates; California Mailing Services; Mal Warwick & Associates.

What is the Fair Market Value of the Dellums and McGovern Mailing Labels?

Mailing lists range in value from \$5.00 to \$1,000 per thousand labels, with an average price in the \$30-\$50 range. The value of mailing lists is based on a variety of factors as follows:

1. The age of the list. The older the list is the less valuable it is as people may have moved out of town or the list may have been overused.
2. The number of times the list has been used. The value of a mailing list goes down with usage as there is a limit to the amount an individual will contribute.
3. The components of the list. Does the list contain the names and addresses of contributors in the \$5-\$50 range, the \$50-\$100 range, or the \$100-\$500 range, or all three? The larger the contributors, the more the list will cost.
4. The selectivity of the list. How effective is the list at generating funds or customers? Is it targeted to the right persons?

Mailing lists are typically made available for one-time use, whether or not they are sold or exchanged. Politicians exchange lists or make a gift of them if there is a strong political affiliation, otherwise they guard their lists to prevent overuse. It is rare, according to one of the firms I spoke with, for a politician's list to be sold outright, as apparently is done with lists owned by the Dellums and McGovern Committees. Both of these lists are available on the open market for \$50/thousand labels, according to the current list brokers.

In the absence of a commercial price for a mailing list, it might be quite difficult to determine the fair market value of the list (although a percentage of net proceeds might be used). In the case of the McGovern and Dellums mailing lists, however, there is a price of \$50/thousand. In my opinion, this is the fair market value of the mailing lists.(4)

Are the Details of the Transactions Between BCA and the Dellums and McGovern Committees In Accord with Standard Business Practice?

Although exchange of mailing labels on a name-for-name basis is a common method of obtaining lists, in the case of lists owned by politicians, it is generally limited to exchanges among persons who have close political ties. It is possible that transactions between such parties may be "arms-length" in nature; however, the arrangements made between BCA and the Dellums and McGovern Committees for the use of the mailing lists do not appear to constitute a standard agreement for the following reasons:

(4) This view was also expressed to me by Parker/Dodd, the list broker for the Dellums Committee. It is also the position taken by the Dellums Committee in their request for opinion to the FEC, dated September 18, 1981 (see second paragraph, page 2).

A. Lack of Arms-Length Relationship

1. It is customary for a written contract to be made between the parties exchanging mailing lists specifying all terms of the exchange. Halterman, Warwick, and Parker/Dodd are not aware of any such contract in this case.

2. Mal Warwick, who has been actively involved in campaigns for both BCA and Congressman Dellums for many years, made the arrangements to exchange mailing lists for BCA while he continued to be involved in approving exchanges of such lists at the Dellums office. (Both he and Lee Halterman, Dellums' District Counsel, have stated that the official approval rested with Don Hopkins, Dellums' District Administrator.)

3. The fund raising mailer was not a solicitation by BCA, but rather a solicitation by the Congressman for contributions to BCA. It consisted of a three-page letter reproduced on the Congressman's stationery and sent out under his signature (copy attached).⁽⁵⁾

B. The BCA list does not appear to be of equivalent value to the Dellums list.

1. Since the value of a mailing list decreases as it is used, it is not a normal business practice to trade lists on a greater than 2:1 ratio, according to the firm which currently manages the McGovern lists. In other words, if BCA receives 10,000 mailing labels, they should have a minimum of 5,000 labels to return on two occasions. According to Mal Warwick, the BCA list contains about 3,500 names. The trade would thus require the Congressman to use the list three times.

Perhaps Congressman Dellums will use the list to solicit contributions for the June primary, and later for the November general election. Perhaps he will even use the list three times prior to the November 1982 election. However, if he does not, the value of the BCA list may be negligible after this date, depending upon how often it is updated. More specifically, the Dellums list used by BCA in February and March 1981 was a new list from the November 1980 primary, according to Halterman; whereas the BCA list may be in part already over one year old and by September or October 1982 may be two years old.

In light of these circumstances and in light of possible future "exchanges" of the mailing labels between BCA and the Dellums Committee, the Commission should consider whether or not the time period over which the exchange takes place is material. If BCA uses the Dellums list in February 1983, for example, and still owes the Dellums Committee 7,000 names from the prior list exchange, can an agreement to exchange still be considered an expenditure? Perhaps the use of the lists in the period prior to the time of our actual exchange should be treated like a loan. Alternately, depending upon the circumstances, it could be treated as an accrued expense.

(5) I have not attempted to document the close political relationship between BCA and the Dellums Committee as I believe it is well known.

2. Since the value of a list is determined by its ability to generate funds via mail, full and adequate consideration would not be given if names from membership lists were exchanged with names of contributors via direct mail. In the case of the 3,500 names contained in BCA records, Mal Warwick has estimated that:⁽⁶⁾

a. Less than 50% of the contributors' names have been generated by direct mail;

b. More than 50% of the names represent BCA's membership list. Of these names, some are persons who have contributed only membership dues (currently \$10/year), and some are persons who have made contributions in excess of dues.

C. There has been no history of exchange of mailing lists between BCA and other organizations. (This makes it especially difficult to place a value on the BCA list.)

How Should the Transactions be Reported?

The determination of whether the transaction was a non-monetary contribution under Section 206 of Ordinance 4700-N.S. by the Dellums and McGovern Committees to BCA or whether it was an expenditure made by BCA (because of their agreement to exchange lists) under Section 212 is a matter of interpretation which requires that the FCPC make judgments based on the available facts.

BCA and the Dellums Committee will undoubtedly argue that an agreement between two parties to exchange mailing lists, regardless of the specifics of the agreement, can not be questioned. Given the close relationship between BCA and the Dellums Committee and the comparatively larger financial resources of the Dellums Committee, it is quite appropriate, in my opinion, for the Commission to question the valuation of goods and services provided by the Dellums Committee, especially since the City limits the total contributions which may be made by such a committee. Governmental agencies, for example, frequently require independent appraisals when tax dollars are spent to acquire real property, or for purposes of establishing tax liabilities. There is an added need for scrutiny in cases where transactions are not arms-length.

Nevertheless, BCA and the Dellums Committee have raised credible and legitimate questions regarding the interpretation of our Ordinance (although I find no merit to BCA's claim that \$125.67 represents the value of the Dellums list). Because of the complexity of the issue, I recommend that the Commission limit its enforcement activity in this regard to requesting BCA to amend its campaign statements to provide appropriate disclosure of the transaction at its full market value with the appropriate narrative description as required by Section 110 as well.

If it is deemed to be an expenditure by virtue of the exchange agreement, I believe the terms should be disclosed in writing as an attachment to the relevant campaign statements and treated as an accrued expense. Further, each "payment" made to the Dellums and McGovern Committees should be similarly disclosed on subsequent campaign statements.

⁽⁶⁾ Warwick maintained in the same conversation that the source of the names (e.g., he stated that a large percentage of the membership dues were obtained as a result of renewal notice) was not really that important and that it had not been raised as an issue in discussions with other organizations with which he was trying to make

In summary, there are two major options available to the Commission:

1. To find that the provision of mailing labels under the circumstances described by BCA and the Dellums Committee constitute an expenditure by BCA since they have agreed to provide an equal number of mailing labels to the Dellums and McGovern Committees. (This approach assumes that the market value of the labels is equivalent.) The advantage of this option is that the Commission does not need to establish the value of the BCA list. The disadvantage of this option is that it might enable committees to circumvent the Section 600 or 602 limitations by enabling committees to receive goods and services in excess of the contribution limitations for use during an election campaign with no restriction whatsoever as to the time period for repayment. It appears to me that this is the reason why some California cities and counties with contribution limitations prohibit the extension of credit for more than 30 days or for more than \$250.
2. To find that the provision of mailing labels by the Dellums and McGovern Committees under the circumstances described by BCA and the Dellums Committee is a non-monetary contribution by BCA because the exchange did not occur within the two reporting periods preceding the election or the single period after the election. This could be accomplished by adopting a regulation to clarify the definition of loans or advances of goods or services between persons, to state that agreements to exchange goods or services must be carried out within 58 days of the election, or they are considered a loan under our ordinance, and hence subject to the contribution limitations of Sections 600 and 602. This option avoids establishing a value to the BCA lists and would prevent the Section 600 and 602 limits from being circumvented. The disadvantage of this option would be the additional paperwork for the committee which has received the "loan."

In the long run, this problem may be best handled by revising Ordinance 4700-N.S. to include a section prohibiting the extension of credit for more than 30 days or \$250, or to include a section similar to the regulation proposed in the second option.

JWR:csr
Attachments

cc: Larry Duga
Lee Halterman
Brad Litchfield, FEC
Mal Warwick

BCA fund raising moves nationwide

By HENRY SCHULMAN
STAFF WRITER

In an unprecedented fundraising "experiment," the left-progressive Berkeley Citizens Action (BCA) coalition is targeting liberals across the country for campaign contributions to support its City Council and school board candidates running in April's municipal elections.

Campaign coordinator Mal

Warwick said he used computerized lists of contributors to the campaigns of U.S. Representative Ron Dellums (D-Oakland) and former U.S. Senator George McGovern (D-South Dakota) to find prospective contributors for the local elections.

Warwick said the coalition sent 16,000 letters to people on the lists. Of these, about 15 percent were mailed outside of California to those on the McGovern list.

SEE PAGE 4

TUESDAY, MARCH 3, 1981

BCA fund raising

FROM FRONT PAGE

Although soliciting out-of-state contributions for congressional candidates and ballot measures has become common, this is the first time a Berkeley council campaign has solicited nationwide contributions.

"We are only testing the possibility of sending letters out of state," said Warwick. "We took a list of names of those who contributed to the McGovern campaign because this seemed to work for Dellums last year."

Warwick, who has helped BCA run election campaigns for 10 years, said this is the first City Council election in which the coalition has used extensive direct mail solicitation.

He said, "We are facing a \$200,000 campaign (by the moderate All-Berkeley Coalition) to defeat us. There is no way we can

get enough money from fund-raising alone."

But Harry Weininger, campaign coordinator for the moderate coalition, said he seriously doubts ABC will receive more than one-quarter of that amount, and he added that the ABC will not use as much mail solicitation as its liberal opponents.

"I think person-to-person campaigning, where the candidate is there, is much more effective," said Weininger.

Direct mail fund-raising has become popular in the past decade, with the aid of computers to provide contribution lists. Howard Jarvis used computer mailings to solicit most of the money used in the successful campaign for Proposition 13.

The BCA letter includes a three-page message by Dellums, written on "simulated official"

congressional stationery, calling for nationwide support for the Berkeley candidates.

The letter says: "The massive defeat of liberalism, which the election of Ronald Reagan represents, is now threatening to undermine the work of progressives everywhere in the United States — even in Berkeley."

Carol Sibley, chair of the moderate coalition, charged Dellums with playing "dirty pool" in writing the letter, which was mailed in a BCA envelope along with descriptions of its four council candidates and two school board candidates.

Dellums "should keep his nose out of local affairs," Sibley said.

But Warwick said that Dellums, who served on the Berkeley City Council before his election to Congress, was not dragged into the local campaign.

"Dellums enthusiastically supports the BCA slate. It was just a matter of taking advantage of his offer to help us in the campaign," Warwick said.

Berkeley Citizens Action presently has a working majority on the council. Independent Carole Davis often votes with the four BCA members to pass measures.

The four contested seats in this election include Davis's and those held by three members of the Berkeley Democratic Club (BDC). Many BDC members now belong to the All-Berkeley Coalition, including Councilmember Gilda Feller, the only incumbent seeking reelection.

The progressive BCA coalition

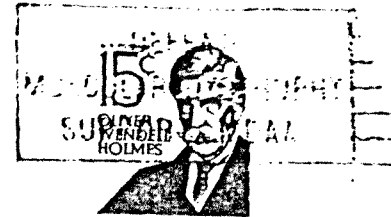
Ron Dellum

Berkeley Citizens Action

3126 Shattuck Avenue

Berkeley CA 94705

94



*How you can help
fight back against
the Radical Right...*

House of Representatives

WASHINGTON D.C. 20515

Ronald W. Dellums

EIGHTH DISTRICT
CALIFORNIA

Dear Friend,

Last November 4th, the American voting public--one-quarter of those eligible to vote--made a decision of profound significance. The massive defeat of liberalism which the election of Ronald Reagan represents is now threatening to undermine the work of progressives everywhere in the United States--even in Berkeley.

We must fight back.

I'm convinced that the Radical Right won not so much because of the money and technical expertise it brought to bear but because it offered an explanation of the ills of U. S. society that millions of people could understand--and because liberals failed to present an attractive alternative.

In Berkeley, we have a unique opportunity to nurture our own truly progressive vision of a society in which we all care for each other and for the earth on which we live.

Because progressives have held the Mayor's office and had substantial minorities on the Berkeley City Council and School Board since April 1979, we have been able to enunciate policies and enact programs which respond to this more sensitive conception of our responsibility as human beings.

We have taken the first bold steps--in housing, energy and economic development--to build on the local level a society based on the principle of community self-reliance. I believe that this concept, which brings economic democracy into practice in the marketplace as well as the public sector, is the answer to the empty vision of Reaganism and the Radical Right.

This unique opportunity, and all our work to conduct Berkeley's affairs in a humane and responsible fashion, are in grave danger from a new coalition of Reagan Republicans, corporate landlords and conservative Democrats, who are threatening to sweep the April 21st elections and seize control of the Berkeley City Council. This new local coalition, emboldened by Right Wing successes around the nation, is determined to undo much of the path-finding work which Berkeley Citizens Action (BCA) has undertaken these last two exciting years.

Because of the unfinished business here in Berkeley--and because of our responsibility to offer an alternative to Reaganism which can help reshape the progressive movement nationwide--Berkeley's April 21st elections are critical to progressives throughout the country.

Just imagine the glee of conservatives all across the nation if they succeed in defeating the progressive coalition in Berkeley, California!

On a personal note, let me say that I sometimes despair when I think about the mediocrity and indifference of so many of my colleagues in public life. And that's why it is so gratifying to me to be able to support such a competent, principled and resourceful group of candidates as Walter Edwards, Jackie Foster, Steve Lustig, Carole Selter Norris, Gus Schultz and Nancy Skinner.

The six candidates backed by Berkeley Citizens Action in the April 21st election represent a rich diversity of experience. While each has outstanding leadership qualities and a strong point of view, they are all firmly committed to the progressive platform developed by hundreds of BCA members during the organization's remarkable ten-year history.

BCA is an unusually strong and enduring coalition of low and moderate-income flatlands residents, Third World people, students, disabled persons, the elderly and gays. Our more than 2000 members include those who see themselves as progressives, liberals, socialists, feminists, trade unionists, environmentalists, neighborhood organizers, peace activists, and economic democrats.

The election of Edwards, Foster, Lustig, Norris, Schultz and Skinner will ensure the development of a comprehensive housing program for the city of Berkeley--the first truly progressive and thoroughgoing attempt to respond to the urban housing crisis on the municipal level. To build desperately-needed new housing for low and moderate-income families, students, the disabled and elderly...to rehabilitate deteriorating old structures...to promote conversion to limited equity cooperatives...and to continue protecting tenants through the city's voter-approved controls on rent and evictions.

With a BCA majority on the Berkeley City Council, the City will realize the full potential of Berkeley Energy Self-Reliance Year, a massive self-help effort which may serve as a national model in energy conservation and alternative energy development while saving Berkeleyans large sums of money.

If BCA prevails on April 21st, the city can continue to respond in an aggressive and creative manner to the threatened closing of the Colgate-Palmolive plant, providing desperately needed leadership on this critical issue--which also has national implications.

The election of BCA's candidates will ensure that crucial City budget decisions will remain in the hands of citizens through Berkeley's model Citizens Budget Review Committee...that the Measure E library tax override, BCA's response to Proposition 13 which was approved by nearly seven in ten Berkeley voters, is fully and fairly implemented....and that Berkeley's many vital and creative community-based service agencies will continue to receive financial support from our city government.

All that is at stake on April 21st. And that is why the opposition to Berkeley Citizens Action is so strident--and so well-heeled.

We expect the Right to spend upwards of \$200,000, much of which they've already raised. This is at least \$2 for each and every living human being in Berkeley--a staggering sum of money for a municipal election. And we fully expect that the ferocity of their attack on BCA, its policies and its candidates--already nearly unprecedented in its hysteria--will continue to mount as the election approaches.

To combat this mounting Right-wing assault on the progressive movement, we urgently need your help.

I believe this election is absolutely critical--not just for the city of Berkeley but for me personally and for progressives everywhere.

Your check for \$20, \$30, \$50, \$100, or even the \$250 per person limit allowed by Berkeley law will go a long way toward ensuring that the progressive voice will not be stilled in Berkeley. I am asking you for this very special level of help because most of our supporters in Berkeley are able to contribute no more than \$2, \$5 or \$10--or nothing at all--and there must be some whose larger donations will raise the average and enable us to meet our campaign budget.

Please take a moment now to write a check (payable to the BCA Campaign) and return it in the enclosed postage-paid return envelope.

Money is badly needed now because our volunteer staff must have campaign literature and other essential materials for the long, hard job of taking our case directly to the people of Berkeley. To do the job, they need your help.

If BCA wins on April 21st, we can continue to build a positive alternative to the savage indifference of Ronald Reagan and the Radical Right.

It is only by showing the world that there is another way--and that it works--that progressives can truly fight back against the Right.

Please help us. We are beginning to make a difference in Berkeley, and sooner or later people everywhere will feel the impact. Now we need your help to survive.

Sincerely,

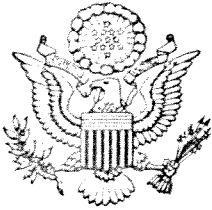


Ronald V. Dellums, Member of Congress
8th District, California

P.S. Federal law permits you to deduct 50% of your donation directly from your tax liability to the IRS, up to \$50 per person or \$100 for a couple. Thus a \$50 donation to the BCA Campaign actually will cost you only \$25. And your contribution will pay great dividends in our fight back against the Right. Thank you very much for your help.

The Committee for Congressman RONALD V. DELLUMS

F R P O
SEP 23 9 26 AM '81



September 22, 1981

Federal Election Commission
1325 K St.
Washington, DC 20463

Dear Commissioners:

As indicated, I am submitting the following supplemental material regarding my September 18, 1981 request for an Advisory Opinion.

I have enclosed opinions written by Counsel for the State of California Fair Political Practices Commission and the Berkeley City Attorney. Please note that each concludes that a binding agreement to exchange names is not a contribution. They conclude that it is a reportable transaction; it is their belief that it is an expenditure and is reportable as such. This must be predicated upon the conclusion that where there is an exchange of equivalent value, no contribution results because full consideration has been paid. (Pertinent parts are underlined.)

It has been the Committee's belief that this is the proper interpretation to be placed upon such a transaction. It continues to be our belief that when the parties reach a standard commercial agreement this is conclusive evidence that full consideration has been paid and no contribution has resulted.

In part, our position has been based upon the Commission's A.O. 97-36, which offers a close analogy. There the Commission determined that when a direct mail firm extends commercial credit to a Federal campaign consistent with its normal business practice, no contribution results. We believe that the normal business practice idea should be explicitly adopted as the standard for list exchanges as well.

On the matter presented by Question 3, it is our position that whether the transaction involves cash payment for the list or an exchange of names, there is no contribution made by the entity which pays for the production of the list. Where a cash payment is involved, the purchase price is presumed to cover the costs of production (much like the payment to printer is presumed to cover the cost of the paper upon which the literature is printed). Where there is an exchange it should also be presumed that it is understood that the "purchase price" includes the payment of production costs. E.g., when Committee A provides labels from its list to Committee B in exchange for a future use of Committee B's names it will pay for the labels and presumes that Committee B will pay for the production of labels at the time the exchange is completed.

Luke Abrams
Hugh Bassette
Robert Benson
Betty Berry
Stafana Broadhead
Roberta Brooks-Halterman
Charles Brown
Keith Carson
Louise Clark
Joe Close
Dona Cutting
Margot Dashiell
Michael Dieden
Mamie Dillard
Lodi Dupree
Leandro Duran
Walter J. Edwards
Rick Ellis
Nate Everett
Carmen Flores
Susie P. Gaines
Vivian Gates
John George
Mike Gleason
Lenny Goldberg
Gigi Guerrero
H. Lee Halterman
Larry Hansen
Donald R. Hopkins
Robert Johnson
William Lightbourne
Carlos Lopez
Pat McClintock
John McElheney
Beth Meador
Gus Newport
Steve Paskowitz
Tim Reagan
Gwendolyn E. Reed
Wilson Riles, Jr., Chairperson
Gil Romero
Kaye K. Rosso
Robert A. D. Schwartz
Maudelle Shirek
William Short
Ariene Slaughter
Rick Smith
Nancy Snow
Andrew Sun
Sandre Swanson
Elijah Turner
Kunio Uehara
Mal Warwick
Bobbie Williams
Micheale Williams
Patricia Wright
Frank Yoon



3126 Shattuck Avenue
Berkeley, CA 94705

Federal Election Commission
September 22, 1981
Page 2

It is the Committee's position that it should report upon its filings the costs of doing business which are reflected in its relationship with PARKER/DODD and Associates. It would be redundant to report a payment to PARKER/DODD which represents cost of list acquisition and then also report as an expenditure the payment which was ultimately made to the holder of the list. Similarly, when an exchange is undertaken it is through the broker, in our instance PARKER/DODD, and is accounted for (even though it does not involve a cash transaction) within the totality of the Committee's relationship to PARKER/DODD. To insist that the Committee separate out these particular expenses from others it incurs with PARKER/DODD would add an unnecessary burden on PARKER/DODD's accounting system.

If the Committee were to be its own list broker, a different result might obtain. But, under the circumstances, it would appear that the appropriate expenditure to be listed is the one with PARKER/DODD.

I thank you for your consideration of this material and look forward to the Commission's view of our position in these matters.

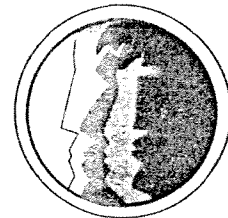
Sincerely,



H. Lee Halterman
Attorney at Law

cc: Fair Political Practices Commission, State of California
Fair Campaign Practices Commission, City of Berkeley, Stuart K.
Gardiner, Esq., Chair
Mr. Jonathan Redding, City Clerk's Office, City of Berkeley
Natalie West, Esq., City Attorney, City of Berkeley
Lawrence L. Duga, Esq.
Parker/Dodd & Associates

City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

April 29, 1981

H. Lee Halterman
The Committee for Congressman Ronald V. Dellums
3126 Shattuck Avenue
Berkeley, California 94705

Dear Mr. Halterman:

Please be advised that I have received your letter of April 23, 1981 and have requested an additional opinion from the Fair Political Practices Commission regarding the necessity of Congressman Ron Dellums and his committee to file campaign statements pursuant to the Political Reform Act.

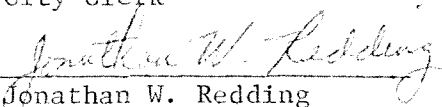
In addition, consider this letter your notification that in staff's opinion you have violated State law by failing to report to the City Clerk's office the late contribution of \$1,000 to Berkeley Citizens Action within 48 hours of making the contribution.

Enclosed for your information are copies of correspondence recently submitted to the attorney for BCA, Lawrence Duga, and the Fair Political Practice Commission.

Should you need additional information, don't hesitate to call me at 644-6480.

Sincerely,

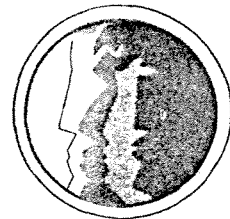
EDYTHE CAMPBELL
City Clerk

By: 
Jonathan W. Redding

EC: JWR: dh
Enclosure

cc: Natalie West
Lynn Montgomery
FPPC - Legal Division

City of Berkeley
F P P C
APR 27 11 37 AM '81



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

81 002

April 24, 1981

Lawrence L. Duga
Attorney at Law
1440 Broadway
Suite 1000
Oakland, California 94612

Dear Mr. Duga:

At its meeting of April 15, 1981 the Commission discussed the matter of the in-kind contribution of mailing labels and lists from the Dellums and McGovern Committees which staff has requested Berkeley Citizens Action to disclose pursuant to his duties as filing officer under the Political Reform Act of 1974 and as staff to the Berkeley Fair Campaign Practices Commission.

The discussion did not constitute a hearing, nor did staff feel one was necessary, as Berkeley Citizens Action agreed at this meeting to voluntarily disclose the fair market value of these mailing lists. As Berkeley Citizens Action did not disclose the fair market value of these labels and lists, but only the exchange value, staff has forwarded all correspondence on this matter to the Fair Political Practices Commission with an official Opinion request. I'm certain that Fair Political Practices Commission staff in Sacramento will give you ample opportunity to present your case. A copy of my letter of transmittal to the Fair Political Practices Commission is enclosed.

Your letter of April 21, 1981 will be forwarded to the Berkeley Fair Campaign Practices Commission at its meeting of April 30, 1981, however, it will be staff's recommendation that no hearing be held by the Berkeley Fair Campaign Practices Commission at this time.

Very truly yours,

Edythe Campbell
City Clerk

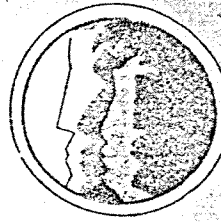
By Jonathan W. Redding
Jonathan W. Redding

cc: Legal Division,
Fair Political Practices Commission

✓ Natalie West

Berkeley Citizens Action

City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

April 20, 1981

Ted Bloom
And
Mal Warwick
Berkeley Citizens Action Campaign Headquarters
3126 Shattuck Avenue
Berkeley, CA 94705

Dear Sirs:

I am in receipt of an amended statement which establishes for the public record the provision of mailing labels and lists by Congressman Ronald V. Dellums and Senator George McGovern. Your valuation of the lists, however, does not meet with my understanding of the reporting requirements of the Political Reform Act.

The Political Reform Act, Government Code Section 81011 (enclosed), requires that goods, services and facilities shall be valued at the fair market value at the time received or expended.

The valuation of the label and mailing lists which were provided by Congressman Dellums and Senator McGovern should be, in my opinion, disclosed as non-monetary contributions at the commercial rental rates of \$527.60 and \$112.50 per mailing, respectively, not the production costs associated with some future exchange.

As you do not accept my interpretation of the law, I am transmitting your letters regarding this matter as well as my own to the Fair Political Practices Commission in Sacramento with an official request for an opinion. This particular action is not an enforcement proceeding.

In closing, I would like to state that your compliance with my most recent, request for disclosure, despite our disagreement over the valuation of the lists, is appreciated. However, please note that you have been given ample time to consult attorneys and prepare a protest of my findings relative to the non-monetary contribution, in as much as my first correspondence to you on the matter was sent on March 24, 1981. In the future I hope a more cooperative relationship can be established.

Sincerely,

Edythe Campbell
City Clerk

By Jonathan W. Redding
(Jonathan W. Redding)

enacted, enacts, amends, or repeals an ordinance or other provision of law affecting campaign contributions and expenditures shall file a copy of any such action with the commission.

History: Added by Stats. 1979, Ch. 531, effective January 1, 1980.

81010. Duties of the Filing Officer. With respect to reports and statements filed with him pursuant to this title, the filing officer shall:

- (a) Supply the necessary forms and manuals prescribed by the Commission;
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title;
- (c) Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title;
- (d) Report apparent violations of this title to the appropriate agencies; and
- (e) Compile and maintain a current list of all reports and statements filed with this office.

81011. Valuation of Goods, Services and Facilities; Fair Market Value. Whenever in this title the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services, or facilities shall be appended to the report or statement.

81011.5. Information on Statewide Petitions. Any provision of law to the contrary notwithstanding, the election precinct of a person signing a statewide petition shall not be required to appear on the petition when it is filed with the county clerk, nor any additional information regarding a signer other than the information required to be written by the signer.

History: Added by Stats. 1977, Ch. 1095, effective January 1, 1978 (Identical to former Section 85203, repealed by Stats. 1977, Ch. 1095).

81012. Amendment or Repeal of Title. This title may be amended or repealed by the procedures set forth in this section. If any portion of subsection (a) is declared invalid, then subsection (b) shall be the exclusive means of amending or repealing this title.

(a) This title may be amended to further its purposes by statute, passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 20 days prior to passage in each house the bill in its final form has been delivered to the commission for distribution to the news media and to every person who has requested the commission to send copies of such bills to him.

(b) This title may be amended or repealed by a statute that becomes effective only when approved by the electors.

History: Amended by Stats. 1976, Ch. 883, effective September 13, 1976.

81013. Imposition of Additional Requirements. Nothing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent

For City Council:
WALTER EDWARDS
CAROLE SELTER NORRIS
NANCY SKINNER
GUS SCHULTZ

Berkeley Citizens Action CAMPAIGN '81

For School Board:
JACKIE FOSTER
STEVE LUSTIG

April 17, 1981

Fair Campaign Practices Commission
2180 Milvia Street
Berkeley, CA 94704

Dear Commissioners:

Enclosed please find our amended campaign report reflecting the alleged "in kind contributions" from the Dellums and McGovern committees.

We are providing these amendments under protest, as we in fact do not believe that the mailing lists constitute an "in kind contribution" as they were provided under the practices normally followed in the mailing industry. We cannot provide a more detailed protest at this time because the one day response demanded by the commission staff does not provide our attorneys sufficient time to draft their reply. Consequently, this will have to be provided at a later date.

Sincerely,



Ted Bloom,
Treasurer

Honorary Co-Chairs:

RONALD V. DELLUMS
Congressperson
TOM BATES
Assemblyperson
GUS NEWPORT
Mayor
JOHN DENTON
City Councilmember
VERONIKA FUKSON
City Councilmember
FLORENCE McDONALD
City Councilmember
ANNA RABKIN
City Auditor
ANNA DE LEON
School Boardmember
HELEN BURKE
E.B.M.U.D. Director
ROY NAKADEGAWA
A.C. Transit Board President
MARC LITCHMAN
A.S.U.C. President

Campaign Chair:
YING LEE KELLEY

Campaign Treasurer:
TED BLOOM

Campaign Director:
MAL WARWICK

RECEIVED
APR 20 1981
OFFICE OF CITY CLERK



MAL WARWICK
& ASSOCIATES

P.O. Box 1282

Berkeley CA 94701

Phone 415/843-8011

RECEIVED

APR 17 1981

OFFICE OF CITY CLERK

April 16, 1981

Mr. Ted Bloom, Treasurer
BCA CAMPAIGN 1981
3126 Shattuck Avenue
Berkeley, CA 94705

Dear Ted,

In compliance with the judgment of the City of Berkeley Fair Campaign Practices Commission, I am setting down in writing the information I related to the Commission last evening about the exchange of lists between BCA and the McGovern and Dellums committees, so that you may properly amend BCA Campaign financial statements.

I am providing this information only because it has been specifically requested by the Commission, but I firmly hold to the opinion that the lists in question in no fashion constituted a contribution, in-kind or otherwise, of the McGovern and Dellums committees to the BCA Campaign, to BCA, to me, or to any other entity. List exchanges are a normal business practice in the direct mail field, and to determine the "fair market value", as the Commission has requested, misses the point that no money has changed hands and none will, and that equivalent value will be rendered to the McGovern and Dellums committees by BCA.

For your information, then, I received from the Committee for Congressman Ronald V. Dellums a total of 10,552 mailing labels to be used on behalf of the BCA Campaign. Valuing these labels at the cost to the Dellums Committee of \$11.90 per thousand labels, the total worth is \$125.57. Valuing them at \$50 per thousand labels, which is the rate at which they are available commercially (but not the rate at which they are made available to most users of the list, who ordinarily choose the exchange arrangement instead), the total worth is \$527.60. The Committee for Congressman Ronald V. Dellums is located at 3126 Shattuck Avenue, Berkeley CA 94705, and its Treasurer is William Thomas.

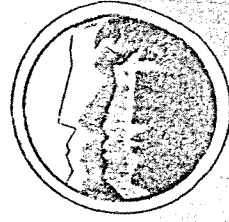
The McGovern labels were furnished (I believe) by a committee called McGovern '80 through their list broker, Parker/Dodd & Associates, 680 Beach Street #474, San Francisco CA 94109. I received from them a total of 2500 labels on exchange. At \$11.90 per thousand, this is equivalent to \$29.75. At \$45 per thousand, which (I believe) is the commercial rental rate, this is equivalent to \$112.50.

Sincerely,


Mal Warwick

cc: H. Lee Halterman, Larry Duga

City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

April 16, 1981

HAND-DELIVERED

Mal Warwick, Treasurer
Committee to Retire the Debt
And
Ted Bloom, Treasurer
Berkeley Citizens Action

Dear Sirs:

At its meeting of April 15, 1981, the Commission moved unanimously to request Berkeley Citizens Action to amend its campaign statement which was due on March 12, 1981 as follows:

In light of the information provided orally to the Commission by Mr. Warwick, particularly with regard to the fair market value (which Mr. Warwick referred to as the "commercial" rates) for the use of the Dellums committee and McGovern mailing lists, the Commission requests that B. C. A. amend its campaign statement which was due on March 12, 1981, by April 25, 1981 to indicate the fair market value of the use of these mailing lists as contributions received by B. C. A., and that the Commission will appreciate B. C. A.'s cooperation in this matter.

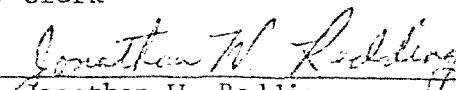
In addition, please note that staff has requested this information on numerous occasions as indicated in letter to you, dated April 13, 1981. Staff indicated in this letter that a variety of amendments and clarifications were required to be submitted on Wednesday, April 15th so as to allow for adequate public disclosure. Staff feels obligated to refer these matters to the Fair Political Practices Commission if they are not corrected and submitted directly to this office, by Friday, April 17, 1981.

Finally, please note that amendments filed by B. C. A. with regard to the 1981 Election must be verified by each candidate which controls B. C. A.

Very truly yours,

Edythe Campbell
City Clerk

By


Jonathan W. Redding

BCA
orig

MAL WARWICK
& ASSOCIATES

P.O. Box 1282

Berkeley CA 94701

Phone 415/843-8011

April 9, 1981

Mr. Jonathan W. Redding
City Clerk Department
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Redding:

I'm writing in response to your letter dated April 7, 1981.

Please note that it is customary in the direct mail profession to provide access to mailing lists under either one of two procedures--rental or exchange. Under the former arrangement, lists are "rented" for one-time use upon payment of money. Under the latter, a set of mailing labels is furnished upon a promise of future use of an equivalent number of mailing labels.

Both in the case of George McGovern's organization, and in that of the Committee for Congressman Ronald V. Dellums, mailing lists were provided to the BCA Campaign on an exchange basis, since both organizations are planning direct mail programs and wish to have use of BCA's list. No money has changed hands, and none will, nor did this arrangement constitute a contribution of any sort.

Yours truly,


Mal Warwick

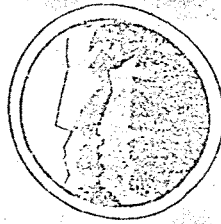
cc: Ted Bloom

RECEIVED

APR 10 1981

OFFICE OF CITY CLERK

City of Berkeley



CITY CLERK DEPARTMENT
2130 MIAMI STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

April 13, 1981

Mal Warwick, Treasurer
Committee to Retire the Debt
And

Ted Bloom, Treasurer
Berkeley Citizens Action
3126 Shattuck Avenue
Berkeley, CA 94705

HAND - DELIVERED

Dear Sirs:

The City Clerk's Office received by hand delivery, statements which did not adequately disclose the transactions and loans made between the Committee to Retire the Debt and Berkeley Citizens Action and perhaps other committees as requested by the Berkeley Fair Campaign Practices Commission. The Committee to Retire the Debt failed to properly identify the parties as required law, on whose behalf the loans were repaid and to identify them as contributions. A cross check between C. T. R. T. D.'s statement and the one submitted by Berkeley Citizens Action still indicates discrepancies.

For example, on whose behalf were the debts to Walter Milliken/Sarah Jang (\$84) and Joan Blethen (\$84) repaid. Neither of these loans are shown as being repaid on Berkeley Citizens Action's campaign statement for the same period.

In addition, not all of the campaign statements you submitted contained the amendment form 405 on which you are to explain the reasons why you are amending your statements. Why has the Committee to Retire the Debt, for example, failed to report receipts and expenditures of more than \$4,000 each during 1980? Please explain the reasons for each of the amended statements submitted on April 10, 1981.

Finally, with regard to the exchange of lists from Congressman Ron Dellums and Senator George McGovern, it is staff's opinion that they do indeed constitute a non-monetary contribution reportable on schedule C and subject to the contribution limitations of Section 600 of the Berkeley Election Reform Act. You must list the Fair market value of these lists and report them as contributions in the appropriate places.

Please amend your statements to correct each of the above noted deficiencies no later than 12 o'clock, Wednesday, April 15, 1981. Failure to provide these amendments by this date, to allow disclosure to the public prior to the upcoming municipal election may result in staff recommending that a hearing be held by the Berkeley Fair Campaign Practices Commission to determine whether or not you have violated Ordinance 4700, N.S., or staff may forward its records to the Fair Political Practices Commission in Sacramento with a request for an administrative hearing.

For the record, I would like to emphasize the number of times staff has contacted your office regarding these deficiencies:

- March 19, 1981 -- Official Notice to File sent to C. T. R. T. D.
- March 24, 1981 -- Amendment request to B. C. A. regarding non-monetary contribution of mailing lists.
- March 26, 1981 -- Matter of mailing lists brought to Commission for action. Bloom told by Commission to submit evidence in writing.
- March 30, 1981 -- B. C. A. notified in writing of failure to properly disclose debts and other transfers.
- March 31, 1981 -- Telephone conversation with Mal Warwick followed by written request for amendment regarding loans and contributions.
- April 2, 1981 -- Commission again states that the provision of the mailing lists must be clarified in writing. Also Commission adopts motion requiring B. C. A. and C. T. R. T. D. to amend their campaign statements to provide full and complete disclosure. Ted Bloom in audience agrees to both.
- April 6, 1981 -- Letter delivered to staff by B. C. A. which does not adequately resolve whether lists were paid for or constitute a "contribution".
- April 7, 1981 -- Letter sent to B. C. A. and C. T. R. T. D. to inform them in writing, of Commission's request for amendments, made at meeting of April 2, 1981.

-- Letter sent to Mal Warwick requesting specific information regarding the mailing lists.
- April 10, 1981 -- Amendments and responses to inquiries were hand-delivered 4:55 P. M. by Ted Bloom.
- April 13, 1981 -- Amendments deemed to be inadequate. Additional correspondence prepared by staff.

Please call me at 644-6480, if I can be of assistance.

Very truly yours,

Edythe Campbell
City Clerk

By Jonathan W. Redding
Jonathan W. Redding

MAL WARWICK
& ASSOCIATES

P.O. Box 1282

Berkeley CA 94701

Phone 415/843-8011

April 9, 1981

Mr. Jonathan W. Redding
City Clerk Department
2180 Milvia Street
Berkeley, CA 94704

Dear Mr. Redding:

I'm writing in response to your letter dated April 7, 1981.

Please note that it is customary in the direct mail profession to provide access to mailing lists under either one of two procedures--rental or exchange. Under the former arrangement, lists are "rented" for one-time use upon payment of money. Under the latter, a set of mailing labels is furnished upon a promise of future use of an equivalent number of mailing labels.

Both in the case of George McGovern's organization, and in that of the Committee for Congressman Ronald V. Dellums, mailing lists were provided to the BCA Campaign on an exchange basis, since both organizations are planning direct mail programs and wish to have use of BCA's list. No money has changed hands, and none will, nor did this arrangement constitute a contribution of any sort.

Yours truly,


Mal Warwick

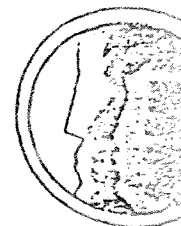
cc: Ted Bloom

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APR 10 1981

OFFICE OF CITY CLERK

City of Berkeley



CITY CLERK DEPARTMENT
2150 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-64

April 7, 1981

Mal Warwick and Associates
P.O. Box 1282
Berkeley, CA 94701

Dear Mr. Warwick:

According to Berkeley Citizens Action's campaign statement covering the period of 1/1/81 to 3/7/81 your firm charged \$5,687.87 as a fee for a direct mail fundraising effort on behalf of the Berkeley Citizens Action slate. According to a newspaper article (enclosed) you used computerized mailing lists of contributors to Congressman Ron Dellums and Senator George McGovern to solicit contributions. Please note that the Political Reform Act, Gov't Code Section 84303, requires the itemization of each expenditure made by an agent or independent contractor on behalf of or for the benefit of a committee.

Since the Campaign statements referred to does not list any itemized expenditure which is clearly attributable to the use of these mailing lists, please provide the following information in writing by 4/13/81:

- A) The name and address of the source of these lists;
- B) The amount paid, if any, for the use of these lists in the direct mail fundraising on behalf of Berkeley Citizens Action. If the amount paid for the use of these lists was part of a total amount paid for this and other goods or services to an agent or contractor, please itemize the amount within the total which was paid for the use of these lists.
- C) Whether or not the amount paid, if any, for the use of this list is the amount customarily charged to users of this list.

Finally, as campaign coordinator for Berkeley Citizens Action, would you please provide this information to the treasurer of Berkeley Citizens Action, Ted Bloom, who holds legal responsibility for accurately disclosing such contributions and expenditures, so that he may amend Berkeley Citizens Action's statement, if appropriate.

Sincerely,

Edythe Campbell
City Clerk

By

Jonathan W. Redding
Jonathan W. Redding

BCA fund raising moves nationwide

By HENRY SCHULMAN
STAFF WRITER

In an unprecedented fundraising "experiment," the left-progressive Berkeley Citizens Action (BCA) coalition is targeting liberals across the country for campaign contributions to support its City Council and school board candidates running in April's municipal elections.

Campaign coordinator Mal

Warwick said he used computerized lists of contributors to the campaigns of U.S. Representative Ron Dellums (D-Oakland) and former U.S. Senator George McGovern (D-South Dakota) to find prospective contributors for the local elections.

Warwick said the coalition sent 16,000 letters to people on the lists. Of these, about 15 percent were mailed outside of California to those on the McGovern list.

SEE PAGE 4

THIS IS AN IN-KIND CONTRIBUTION OF UNDETERMINED AMT. NOT REPORTED ON BCA'S Statement

TUESDAY, MARCH 3, 1981

BCA fund raising

FROM FRONT PAGE

Although soliciting out-of-state contributions for congressional candidates and ballot measures has become common, this is the first time a Berkeley council campaign has solicited nationwide contributions.

"We are only testing the possibility of sending letters out of state," said Warwick. "We took a list of names of those who contributed to the McGovern campaign because this seemed to work for Dellums last year."

Warwick, who has helped BCA run election campaigns for 10 years, said this is the first City Council election in which the coalition has used extensive direct mail solicitation.

He said, "We are facing a \$200,000 campaign (by the moderate All-Berkeley Coalition) to defeat us. There is no way we can

get enough money from fund-raising alone."

But Harry Weininger, campaign coordinator for the moderate coalition, said he seriously doubts ABC will receive more than one-quarter of that amount, and he added that the ABC will not use as much mail solicitation as its liberal opponents.

"I think person-to-person campaigning, where the candidate is there, is much more effective," said Weininger.

Direct mail fund-raising has become popular in the past decade, with the aid of computers to provide contribution lists. Howard Jarvis used computer mailings to solicit most of the money used in the successful campaign for Proposition 13.

The BCA letter includes a three-page message by Dellums, written on "simulated official"

congressional stationery, calling for nationwide support for the Berkeley candidates.

The letter says: "The massive defeat of liberalism, which the election of Ronald Reagan represents, is now threatening to undermine the work of progressives everywhere in the United States — even in Berkeley."

Carol Sibley, chair of the moderate coalition, charged Dellums with playing "dirty pool" in writing the letter, which was mailed in a BCA envelope along with descriptions of its four council candidates and two school board candidates.

Dellums "should keep his nose out of local affairs," Sibley said.

But Warwick said that Dellums, who served on the Berkeley City Council before his election to Congress, was not dragged into the local campaign.

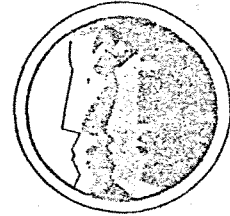
"Dellums enthusiastically supports the BCA slate. It was just a matter of taking advantage of his offer to help us in the campaign," Warwick said.

Berkeley Citizens Action presently has a working majority on the council. Independent Carole Davis often votes with the four BCA members to pass measures.

The four contested seats in this election include Davis's and those held by three members of the Berkeley Democratic Club (BDC). Many BDC members now belong to the All-Berkeley Coalition, including Councilmember Gilde Feller, the only incumbent seeking reelection.

The progressive BCA coalition needs to win only one seat to secure a real majority on the council.

CITY OF BERKELEY



FAIR CAMPAIGN PRACTICES COMMISSION
2134 GROVE STREET BERKELEY, CALIFORNIA

(415) 644-6480
94704

April 7, 1981


Berkeley Citizens Action Campaign
Ted Bloom, Treasurer
3126 Shattuck Avenue
Berkeley, California 94705

Dear Mr. Bloom:

At its meeting of April 2, 1981, the Fair Campaign Practices Commission considered the discrepancies in the statements filed by Berkeley Citizens Action and the Committee to Retire the Debt during the first pre-election period relating to the payment of debts and other transactions between these two committees and possibly other Berkeley Citizens Action affiliated organizations. The Commission by unanimous vote directed staff to notify you of the requirement to amend your campaign statement so as to provide complete and accurate disclosure of your political activities by April 10, 1981.

If I can be of assistance, feel free to contact me at 644-6480.

Sincerely,


JONATHAN REDDING, Staff
Fair Campaign Practices Commission

For City Council:
WALTER EDWARDS
CAROLE SELTER NORRIS
NANCY SKINNER
GUS SCHULTZ

Berkeley Citizens Action CAMPAIGN '81

For School Board:
JACKIE FOSTER
STEVE LUSTIG

Jonathon Redding, Staff
Fair Campaign Practices Commission
2180 Milvia St
Berkeley, Ca. 94704

Dear Mr. Redding,

Please be advised that the Berkeley Citizens Action Campaign Committee has not been given any lists from the Dellums or McGovern organizations. Our mail fundraising was contracted out to Mal Warwick and Associates, and it was their responsibility to secure any lists and do the mailing. We paid the expenses of the mailing and a fee, which are reflected on our Schedule E.

If you have any further questions about the lists, please contact Mal Warwick and Associates, P.O. Box 1282, Berkeley, 94701.

Sincerely,


Treasurer

Honorary Co-Chairs:

RONALD V. DELLUMS
Congressperson
TOM BATES
Assemblyperson
GUS NEWPORT
Mayor
JOHN DENTON
City Councilmember
VERONIKA FUKSON
City Councilmember
FLORENCE McDONALD
City Councilmember
ANNA RABKIN
City Auditor
ANNA DE LEON
School Boardmember
HELEN BURKE
E.B.M.U.D. Director
ROY NAKADEGAWA
A.C. Transit Board President
MARC LITCHMAN
A.S.U.C. President

Campaign Chair:

YING LEE KELLEY

Campaign Treasurer:

TED BLOOM

Campaign Director:

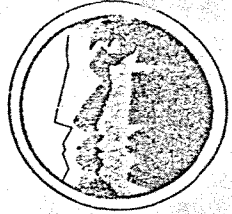
MAL WARWICK

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APR 6 1981

OFFICE OF CITY CLERK

City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

March 30, 1981

Ted Bloom, Treasurer
Berkeley Citizens Action
3126 Shattuck Avenue
Berkeley, CA 94705

Dear Mr. Bloom:

The Committee to Retire the Debt recently filed a report in this office, which indicates that debts associated with Berkeley Citizens Action's 1979 campaign have been paid by the Committee to Retire the Debt, during the period covered by your 1st pre-election statement. Failure to report these transactions on Schedule B is a serious matter. Please amend your statement immediately.

In addition, please fill out the enclosed City of Berkeley Statement of Organization and indicate clearly your relationship to the candidates you have endorsed. It is my understanding that the City Council candidates "control" your committee. If this is the case, your campaign statement must be verified, on the front page, by each candidate who controls the Berkeley Citizens Action. Please amend this statement as appropriate.

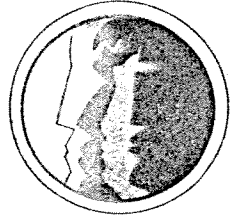
Finally, I am transmitting a complaint by Ove Wittstock regarding the Berkeley Citizens Action fundraiser sponsored by the Citizens for Berkeley and the Campaign for Economic Democracy. This complaint will be reviewed by the Fair Campaign Practices Commission at its meeting of April 12, 1981.

Sincerely,

By Jonathan W. Redding
Jonathan W. Redding

cc: Fair Political Practices Commission

City of Berkeley



CITY CLERK DEPARTMENT
2180 MILVIA STREET
BERKELEY, CALIFORNIA 94704

(415) 644-6480

April 29, 1981

H. Lee Halterman
The Committee for Congressman Ronald V. Dellums
3126 Shattuck Avenue
Berkeley, California 94705

Dear Mr. Halterman:

Please be advised that I have received your letter of April 23, 1981 and have requested an additional opinion from the Fair Political Practices Commission regarding the necessity of Congressman Ron Dellums and his committee to file campaign statements pursuant to the Political Reform Act.

In addition, consider this letter your notification that in staff's opinion you have violated State law by failing to report to the City Clerk's office the late contribution of \$1,000 to Berkeley Citizens Action within 48 hours of making the contribution.

Enclosed for your information are copies of correspondence recently submitted to the attorney for BCA, Lawrence Duga, and the Fair Political Practice Commission.

Should you need additional information, don't hesitate to call me at 644-6480.

Sincerely,

EDYTHE CAMPBELL
City Clerk

By: Jonathan W. Redding
Jonathan W. Redding

EC:JWR:dh
Enclosure

cc: Natalie West
Lynn Montgomery
FPPC - Legal Division

Loans: (Schedule B)

Ilona Hancock 2225 Ward St Berk 94705	Conference organizer	Self-em	\$1000
Teresa Bergman 3139 King St Berk	City council aide	City of Berk	\$1000
Sean Gordon 1901 6th St Berk	City council aide	City of Berk	\$700
Mark Goldowitz 6508 Dana Oakland	Attorney	City of Berk	\$1000
Veronika Fukson 1219 Peralta Berk			\$50
Hal Gelb 431 Hanover Oakland	Writer	Self-employed	\$500

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APR 23 1981

OFFICE OF CITY CLERK

Berkeley Citizens Action

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APR 20 1981

OFFICE OF CITY CLERK

Gordon Wozniak 2528 Piedmont Berk	Chemist	Lawrence Lab	\$250
Judith Shattuck 2819 Forest Av Berk	Previously reproted		\$200
Daniel Goldstine 1749 Grove Berk	Therapist	Berkeley Therapy Institute	\$160
T.J. Kent 74 Tamalpais Berk	Professor	UCB	\$100
Committee for Congressman Ronald Dellums 3126 Shattuck Berk		#004332	\$1000
Ann Moghaddas 1631 Berkeley Wy Berk	Student		\$500
Argyle Stoute 372 Central Park W. NY NY			\$100
Richard Illgen 1500 California Berk	Previously Reported		\$100
Ying Lee Kelley 862 Euclid Berk	Previously Reported		\$100
Thomas Brougham POB 443 Berk 94701	Clerk	City of Berkeley	\$100
Robert Houghterling 5819 Lawton Oakland			\$100
Elizabeth Fishel 5819 Lawton Oakland			\$200
David Mundstock 2593 Peidmont Berk	Previously reported		\$100

Berkeley Citizens Action

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APR 23 1991

\$250

OFFICE OF CITY CLERK

Gordon Wozniak 2528 Piedmont Berk	Chemist	Lawrence Lab	\$250
Judith Shattuck 2819 Forest Av Berk	Previously reproted		\$200
Daniel Goldstine 1749 Grove Berk	Therapist	Berkeley Therapy Institute	\$160
T.J. Kent 74 Tamalpais Berk	Professor	UCB	\$100
Committee for Congressman Ronald Dellums 3126 Shattuck Berk		#004332	\$1000
Ann Moghaddas 1631 Berkeley Wy Berk	Student		\$500
Argyle Stoute 372 Central Park W. NY NY			\$100
Richard Illgen 1500 California Berk	Previously Reported		\$100
Ying Lee Kelley 862 Euclid Berk	Previously Reported		\$100
Thomas Brougham POB 443 Berk 94701	Clerk	City of Berkeley	\$100
Robert Houghterling 5819 Lawton Oakland			\$100
Elizabeth Fishel 5819 Lawton Oakland			\$200
David Mundstock 2593 Peidmont Berk	Previously reported		\$100

The Committee for Congressman
RONALD V. DELLUMS



Luke Abrams
Hugh Bassetto
Robert Benson
Betty Berry
Stafana Broadhead
Roberta Brooks-Halterman
Charles Brown
Keith Carson
Louise Clark
Joe Close
Dona Cutting
Margot Dashiell
Michael Dieder
Mamie Dillard
Lodi Dupree
Leandro Duran
Walter J. Edwards
Rick Ellis
Nata Everett
Carmen Flores
Susie P. Gaines
Vivian Gales
John George
Mike Gleason
Lenny Goldberg
Gigi Guerrero
H. Lee Halterman
Larry Hansen
Donald R. Hopkins
Robert Johnson
William Lightbourne
Carlos Lopez
Pat McClintock
John McElhenny
Beth Meador
Gus Newport
Steve Paskowitz
Tim Reagan
Gwendolyn E. Reed
Wilson Pillas, Jr., Chairperson
Gil Romero
Kaye K. Rosso
Robert A. D. Schwartz
Maudelle Shirek
William Short
Arlene Slaughter
Rick Smith
Nancy Snow
Andrew Sun
Sandra Swanson
Elijan Turner
Kunio Uehara
Mal Warwick
Bobbie Williams
Micheala Williams
Patricia Wright
Frank Yoon

April 23, 1981

Mr. Steve Mayer, Chair
Berkeley Fair Campaign Practices Commission
2180 Milvia St., City Hall
Berkeley, CA 94704


Dear Mr. Mayer:

We have received a copy of Mr. Duga's April 21, 1981 letter to you regarding the required reporting of the "in kind contributions from the Dellums' Committee and the McGovern Committee" required by the Commission. As you are aware, I was present when the Commission issued this order.

While the Commission has no jurisdiction with respect to Committees controlled under Federal law, we would appreciate the opportunity to make a special appearance in order to argue against this determination. Because it is our desire to promote the effective operations of all of the election reform laws and because of conflicts which might appear between your determination and that of the FEC, we believe that it is important for us to appear. Your cooperation in advising us of the Hearing and scheduling us for the presentation of testimony would be appreciated.

For your information, I will be on vacation the week of 4 May 1981, but am otherwise available for a Hearing at the Commission's pleasure.

Sincerely,


H. Lee Halterman
District Counsel

cc: Lawrence L. Duga, Esq.

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APR 27 1981

OFFICE OF CITY CLERK

3126 Shattuck Avenue
Berkeley, CA 94705