



FAIR POLITICAL PRACTICES COMMISSION

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May 1, 1998

Fred Huebscher
President
California Democratic Alliance
2912 Old Bennett Ridge Road
Santa Rosa, California 95404

**Re: Your Request for Advice
Our File No. A-98-100**

Dear Mr. Huebscher:

This letter is in response to your request for advice regarding the slate mailer provisions of the Political Reform Act (the "Act").¹

QUESTION

Do the provisions of section 84305.5(a)(5) apply to a slate mailer that will be sent by the slate mailer organization, California Democratic Alliance?

CONCLUSION

Yes. By choosing the name "California Democratic Alliance," the slate mailer organization will be sending a mailer that *by indicia* appears to represent the Democratic party. As such, the mailer must include the party designation of the each of the Republican candidates endorsed in the mailer.

FACTS

California Democratic Alliance is a slate mailer organization (ID #59011). California Democratic Alliance intends to produce a slate mailer for the upcoming June 2, 1998, primary election. California Democratic Alliance intends to endorse Republican candidates for partisan

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

offices. The mailer will not include a reference to the Democratic party. The only place "Democratic" will be printed on the mailer for the June 1998 primary is in the disclaimer mandated by section 84305.5 because the name of the slate mailer organization is California Democratic Alliance.

ANALYSIS

Sender Identification Requirements

The Act requires candidates and committees that send over 200 substantially similar pieces of mail to include the name and address of the sender on each mailing. (Sections 82041.5, 84305.) Section 84305.5 imposes additional requirements on slate mailer organizations that send slate mailers. A "slate mailer" means over 200 substantially similar pieces of mail that support or oppose four or more candidates or ballot measures. (Sections 82041.5, 82048.3.) A "slate mailer organization" is an organization that receives \$500 or more per calendar year to produce slate mailers. (Section 82048.4.)

Section 84305.5(a)(5)

Among other things, a slate mailer must include the name and address of the slate mailer organization that produced the slate mailer. (Section 84305.5(a)(1).) In addition, section 84305.5 provides, in pertinent part, that:

"(a) No slate mailer organization or committee primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless:

* * *

(5) The name of any candidate appearing in the slate mailer who is a member of a political party differing from the political party which the mailer appears *by representation or indicia* to represent is accompanied, immediately below the name, by the party designation of the candidate, in no less than 9-point roman type which shall be in a color or print that contrasts with the background so as to be easily legible. The designation shall not be required in the case of candidates for nonpartisan office." (Section 84305.5(a)(5), emphasis added.)

* * * *

According to the legislative history of this provision, section 84305.5(a)(5) is designed to prevent slate mailer organizations from mixing parties on party-designed slates that feature candidates who are members of the opposite party. (Senate Committee on Elections and Reapportionment, Analysis of Senate Bill 313, March 6, 1991.)

The California Democratic Alliance is a slate mailer organization that plans to endorse Republican candidates for partisan offices. The mailer will not include a reference to the Democratic party. However, the name of the slate mailer organization, which includes the word "Democratic," will be printed on the mailer. You would like to know whether the mailer must include the party designation of each of the Republican candidates endorsed in the mailer.

Section 84305.5(a)(5) applies to mailers that appear to expressly represent a political party (i.e., "Your Democratic Ballot," "Republican Voter Guide," or the inclusion of a symbol representing a political party). Section 84305.5(a)(5) also applies to mailers that appear *by indicia* to represent a political party. The word "indicia" refers to "postal markings often imprinted on mail." (Meriam-Webster's Collegiate Dict. (10th ed. 1996) p. 592.) Under section 84305.5, a slate mailer organization must place the name of the organization on its slate mailers. (Section 84305.5(a)(1).) As such, the name of the organization on the slate mailer becomes a postal marking. Thus, the language of section 84305.5(a)(5) contemplates that a slate mailer can appear to represent a political party by the name of the slate mailer organization printed on the mailer.

Accordingly, by choosing the name "California Democratic Alliance," the slate mailer organization will be sending a mailer that *by indicia* appears to represent the Democratic party. Under section 84305.5(a)(5), the mailer must include the party designation of each of the Republican candidates endorsed in the mailer.

Section 84305.5(a)(6)

Section 84305.5 was recently amended by Proposition 208. The enforcement of Proposition 208 has been enjoined by a federal district court. (*California ProLife Council Political Action Committee v. Scully* (E.D. Cal. 1998) ---- F. Supp. ----, No. CIVS-96-1965 LKK/DAD, 1998 WL 7173.) Prior to the passage of Proposition 208, the Legislature amended section 84305.5 to provide:

"Any candidate endorsement appearing in the slate mailer that differs from the official endorsement of the political party which the mailer appears *by representation or indicia* to represent is accompanied, immediately below the name, by the party designation of the candidate, in no less than 9-point roman type which shall be in a color or print that contrasts with the background so as to be easily legible, the following notice: THIS IS NOT THE POSITION OF THE (political party which the mailer by representation or indicia to represent) PARTY." (Section 84305.5(a)(6), emphasis added; *see* Chapter 893, Stats. 1996.)

During the period the preliminary injunction is in effect, slate mailers distributed by the California Democratic Alliance must also comply with section 84305.5(a)(6).

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Julia Butcher".

By: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:tls