

CALIFORNIA DEMOCRATIC PARTY

SENATOR ART TORRES (Ret.), Chairman

October 17, 1997

Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
OFFICE

Dear Commissioners:

The California Democratic Party files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), 2 U.S.C. §§431 et seq., and related regulations of the Federal Election Commission ("FEC"), 11 C.R.F. §§101.1 et seq., by Robert K. Dornan (former Congressman, 46th C.D., California) and various radio broadcast stations around the country (referred to collectively hereafter as "Respondents").

Respondents have violated the Act by making and accepting illegal corporate contributions in violation of 2 U.S.C. § 441b. The FEC must act immediately to investigate this complaint. There is every reason to believe that this violation is a continuing one and that without prompt action by the Commission, the damage from this illegal activity will be done and no truly effective remedy will be available.

The Facts

Since his defeat in November of 1996, ex-Congressman Bob Dornan has been flouting Federal Election Laws by accepting illegal corporate contributions. Specifically, Dornan has repeatedly used his position as a guest host on several national radio talk shows to raise funds and to attack Congresswoman Loretta Sanchez.

Although Dornan filed his official statement of candidacy for the 1998 California GOP primary on October 8, 1997, Dornan has been a declared candidate for California's 46th congressional district since late 1996. Press reports quoting Mr. Dornan have made it clear he is running and that he views his opponent in that race as the current Congresswoman from the district, Loretta Sanchez.

- February 13 *Orange County Register* headline: "Dornan to Run for House Again." "I started making calls this morning to set up the new campaign team and the new structure... I'm going back to Congress. I feel it in my bones."
- Time Magazine: Letter to the editor signed "Robert K. Dornan, The Once and Future Congressman."

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- February 17 Roll Call headline: "Dornan Vows Rematch With Sanchez Next Year."
- In an appearance on a talk show on March 10, he referred to Congresswoman Sanchez as "my opponent."
- March 18, 1997 *Orange County Register* headline: "Dornan's Growing Fund Eyed by Feds." "Dornan said he is stockpiling money for a special election."
- Dornan said he filed as a candidate for 1998 because the FEC warned him in September 1997 that he would have to start returning campaign contributions if he didn't file a statement of candidacy for the 1998 election (*Los Angeles Times*, October 15, 1997).

In addition Dornan raised \$632,445 between January 1, 1997 and June 30, 1997, lending strong evidence to Dornan's candidacy for 1998. It is important to note that Dornan had no outstanding debts to pay from his 1996 campaign and that Dornan has repeatedly asserted that he is raising funds for a rematch with Congresswoman Sanchez.

During 1997, Dornan used appearances as a guest host on several national radio shows including the Oliver North radio show, the Michael Reagan radio show and the Alan Keyes radio show to raise money for his candidacy and to attack Congresswoman Sanchez. His appearance on these shows is quite simply an opportunity for a 3-hour unedited campaign appearance for Mr. Dornan paid for by the radio stations running the programs. In fact, as Dornan filed his official declaration of candidacy with the FEC, he was guest hosting the Alan Keyes show (October 15, 1997) and attacking Congresswoman Sanchez.

The Law

The Act and commission regulations define the terms "contribution" and "expenditure" to include any gift of money or anything of value made by any person for the purpose of influencing any election to federal office. 2 U.S.C. §§ 431(8)(A)(I), 431(9)(A)(i); 11 C.F.R. §§ 100.7(a)(1). The same definition applies to contribution(i) by corporations. 2 U.S.C. § 441b(b)(2); 11 C.F.R. § 114.1(a)(1). The term "person" includes a corporation. 2 U.S.C. § 431(11). The Act and the regulations prohibit any contributions by a corporation in connection with any federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b).

The Act specifically exempts from the definition of expenditure "any new story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee or candidate." 2 U.S.C. 431 (9)(B)(I). FEC regulations track the statute and provide for an exemption for "cost{s} incurred in covering or carrying a news story, commentary or editorial by any broadcasting stations..." 11 C.F.R. §§ 100.7(b)(2) and 100.8(b)(2).

Discussions

This exemption of press activity from the definitions of contribution and expenditure was designed to protect the press's First Amendment rights to report or to editorialize on news events involving candidates or committees involved in federal elections. It was intended to allow the press to provide information to the public to help educate them on issues of concern in the electoral process.

It is clear from the facts described above, that Mr. Dornan's appearances on the shows in question does not meet these criteria and does not, therefore, constitute an appearance subject to the news story exemption. This is not simply an appearance of a candidate on an interview program, during which the news entity has an opportunity to ask questions and control the dialogue. Nor does it qualify as an "editorial" by the station. Rather, in this case, the station has simply turned three hours of free air time each day over to Mr. Dornan, as a "guest host" to discuss his candidacy. There apparently has been no effort to provide him with a format or a subject to cover or with guests to question, as might be expected of other guest hosts or on the regular programming.

The value of such time is enormous. The purchase of airtime is one of the major expenses in any campaign. Here, Mr. Dornan gets unrestricted air time to discuss his candidacy and to attack his opponent. This appears to be a completely partisan effort, with no attempt on the part of the stations to make a balanced presentation of the issues by providing a similar opportunity for Congresswoman Sanchez.

Mr. Dornan may attempt to argue that his appearance on these shows is related to his election contest against Congresswoman Sanchez and that it is not, therefore, a contribution to his 1998 election campaign. This argument is unavailing. First, corporate contributions may not in any event be accepted in connection with an election contest. More importantly, the content of the programs make clear that this is not his purpose. Mr. Dornan repeatedly described his appearance a "national radio press conference" about his race against Congresswoman Sanchez. The purpose of his appearance was to attack Congresswoman Sanchez on campaign contributions and other activities related to the 1996 campaign, contest and to promote his own candidacy for 1998.

Conclusion

The provision of free air time to Mr. Dornan is a prohibited corporate contribution by each station that airs his "guest host" appearances. These appearances are not covered by the news story exemption under the FECA and the Commission's regulations. Each appearance is merely a subsidy to Mr. Dornan's 1998 election campaign.

Since it is clear that Mr. Dornan and the stations involved intended to continue providing him with free air time to discuss his campaign, we ask that the Commission act quickly to put a stop to this ongoing violation.

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Sincerely,



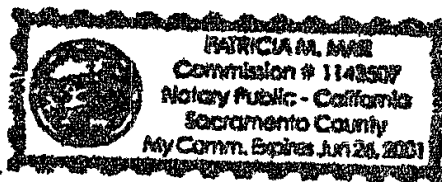
SENATOR ART TORRES (Ret.)
Chairman
California Democratic Party

State of California }
County of Sacramento } ss.

Subscribed to and sworn to (or affirmed) before me this 30th day of October, 1997 by Arthur Alvarado Torres who resides at 513 Scott Street, San Francisco, CA 94117.



Patricia M. Mar



P/B/FEC DORNAN

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Democrats: Dorman's radio hosting improper

POLITICS: He's a declared candidate using air time to discuss his situation. Federal law is apparently murky on the matter.

By DENA BURNS
The Orange County Register

WASHINGTON — Robert K. Dorman guest-hosted the Alan Keyes nationally syndicated radio talk show Wednesday, one of many such gigs he's had since losing re-election to Congress last year.

But now that Dorman is a declared candidate for the 46th District primary election next year, Democrats say his talk-show hosting constitutes an illegal corporate campaign contribution from the radio stations' owners, that he should cut it out and that they're going to complain to the Federal Elections Commission about his activities.

"It's one thing to be interviewed on a show," said Robert Mullholland, adviser to the California Democratic Party. "It's another thing for a corporation to give one, two, three hours of air time to a candidate."

Dorman, who also has been a guest host this year on Michael Reagan's and Oliver North's shows, among others, dismissed the Democrats' complaint as ridiculous and said nothing bars him from continuing his radio appearances.

FEC officials said Wednesday that this is an uncertain area of election law.

"Corporations are prohibited from contributing," FEC spokesman Ron Harris said. "Media corporations are another matter. If someone is subbing for a talk-show host, it gets murkier."

But in a 1992 FEC advisory opinion, the commission condoned such guest-hosting by a candidate running for Congress in upstate New York, citing the candidate's explanation that he would not use the show to promote his candidacy or raise money and that he would refrain from attacking his opponents.

Regular listeners to Dorman's guest-hosting stints on the talk-radio circuit know that the former congressman has frequently criticized Rep. Loretta Sanchez.

FULL STORY

► **SANCHEZ:** Campaign chief says rights-group offer refused. Page 1

D-Garden Grove, who beat him in last year's election, which Dorman is challenging. He has devoted much of his air time to his efforts to get a special election declared in that district and reclaim his seat.

Sanchez defeated Dorman by 988 votes and Dorman says voter fraud cost him that election. A congressional committee has been investigating that charge for the past 10 months.

"The statement of candidacy is a legal document," said Kent Cooper, executive director of the Center for Responsive Politics. "It triggers disclosure, limitations on contributions."

Cooper, a former longtime FEC official, said that if handed a complaint, the commission would look at such issues as whether Dorman's show is heard by people in his district, whether he is talking like a candidate and whether he is attacking others who are expected to be in the race.

Steve Jost, Sanchez's chief of staff, said Dorman's filing "casts doubts on his true motives in his election contest. Everything he's done since the November election has been about advancing his own cause rather than getting at the truth."

Dorman's decision to file for the 1998 primary was not met with joy among Republican leaders.

"It certainly confuses the potential lineup for a special election if there is one and for '98 on the Republican side," said Michael Schroeder, chairman of the California GOP and Dorman's lawyer. "It probably also substantially weakens his ability to

clear the field in the special because the only way he can do that is if he goes back to his bullet-proof pledge that he is going to run in the special but not in the general."

Two other GOP hopefuls for the 46th District seat said Dorman's Oct. 3 filing has not changed their plans.

"Bob Dorman has talked to me and has told me that he wasn't going to run in '98," said Lisa Hughes, the Orange lawyer who was the first to announce plans to challenge Sanchez. Hughes wouldn't say whether she would enter a special election, should one be called.

Anaheim City Councilman Robert Zemel said Wednesday that he still plans to run in the '98 primary and would not be a candidate in any special election.

"I stand firm that if Bob Dorman wants a special election, he deserves it and I will not stand in the way," Zemel said.

Dorman said Wednesday that he filed as a candidate for '98 in part because the FEC had written a letter to him in September, saying that if he didn't file as a candidate for a specified election that he would have to start returning campaign contributions he was soliciting to help him regain his seat.

And, Dorman said, the fact that many of his Republican former colleagues voted for last month's resolution banning him from the House floor so angered him that he decided to run.

"My leadership turned against me," Dorman said. "They're going to have to give me the special, or I'll come back with an attitude in 1999."

Dorman also said that if he runs in a special election and wins, he would be inclined not to run for re-election in '98.



CALIFORNIA DEMOCRATIC PARTY

SENATOR ART TORRES (Ret.)
Chairman

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| 5 Third St., #1010, S.F., CA 94103-3202 | 415.979.0444 / F 979.0445 |
| 9200 Sunset Bl., #415, L.A., CA 90069-3605 | 310.724.5800 / F 724.5828 |
| 911-20th St., Sec., CA 95814-3115 | 916.442.5707 / F 442.5715 |
| E-mail: liz@ca-dem.org | URL: http://www.ca-dem.org |