



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

July 7, 1999

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. David D. Powdrell, Treasurer  
Friends of Lois Capps  
P.O. Box 23940  
Santa Barbara, CA 93121

RE: MUR 4788  
Friends of Lois Capps and  
David D. Powdrell, as treasurer

Dear Mr. Powdrell:

On August 19, 1998, the Federal Election Commission notified Friends of Lois Capps ("Committee") and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by the Committee, the Commission, on June 22, 1999, rejected the Committee's request to dismiss the complaint. The Commission also found that there is reason to believe the Committee and David Powdrell, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Answer Questions must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

David Powdrell  
MUR 4788  
Page 2

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures  
Order and Subpoena  
Designation of Counsel Form  
Factual and Legal Analysis

cc: candidate

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
)  
)

MUR 4788

**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

TO: David Powdrell, Treasurer  
Friends of Lois Capps  
P.O. Box 23940  
Santa Barbara, California 93121

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his  
hand in Washington, D.C. on this *2nd* day of July, 1999.

For the Commission,



Scott E. Thomas  
Chairman

ATTEST:



Mary W. Dove  
Acting Secretary to the Commission

Attachments:

1. Instructions and Definitions
2. Questions and Document Requests

### INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and is to repeat verbatim the interrogatory or document request to which it is responding. Unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from October 29, 1997 to March 31, 1998.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondents in this action to whom these discovery requests are addressed, including the candidate, Lois Capps, any affiliated committees, and all officers, employees, whether paid or unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of the named respondent or an affiliated committee; co-workers; subordinates; staff or attorneys thereof.

"The CDP" shall mean the California Democratic Party, including the Democratic State Central Committee of California—Federal and the Democratic State Central Committee of California—Non-Federal, and any affiliated committees, and all officers, employees, whether paid or unpaid; supervisors; volunteers; agents or persons otherwise working on behalf of or at the request of the named respondent or an affiliated committee; co-workers; subordinates; staff or attorneys thereof.

"1998 Special Election" shall refer to the special election held on January 13, 1998, and on March 10, 1998, to fill the vacancy in the U.S. House of Representatives in the Twenty-Second Congressional District of California.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Communications" shall be deemed to include both singular and plural, and to include written, oral and electronic communications.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers, records and magnetic or electronic media of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained. If a document request calls for a document that is maintained on or in a magnetic, optical or electronic medium (for example, but not limited to computer tape, diskette, or CD-ROM), provide both "hard" (i.e., paper) and "soft" (i.e., in the magnetic or electronic medium) copies, including drafts, and identify the name (e.g., WordPerfect, Microsoft Word for Windows, Pro Write, etc.) and version numbers by which the document(s) will be most easily retrieved.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document, the author of the document, and all recipients of the document (including all persons, other than the primary recipient(s) of the document, who received copies, such as "cc" and "bcc" recipients).

"Identify" with respect to a natural person shall mean state the full name, the most recent business and residence addresses and the telephone numbers of the person, the present occupation or position of such person, the social security number of the person, and the nature of the connection or association that person has to any party in this proceeding.

If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

**QUESTIONS AND DOCUMENT REQUESTS**

1. Identify all individuals associated with you whose duties included communication with the CDP. In each instance, state the duties involved, e.g., advertising, direct mail, committee organization, financing, etc.
2. Identify all individuals associated with you who communicated with the CDP.
3. Identify all individuals associated with the CDP with whom you communicated.
4. List the type, date, the persons involved, and the substance of any communications, conferences, meetings, discussions etc. you had with the CDP which related, referred to or otherwise involved the 1998 special election. Identify and produce copies of all documents related to any such communications, conferences, meetings, or discussions.
5. Identify and produce all documents related to any expenditures made by the CDP for media advertising, phone banks, direct mail or other election-related activities pertaining to the 1998 special election campaign. Documents produced should include, but are not limited to, correspondence, telephone messages or logs, electronic mail messages, scripts, audio and video tape recordings, invoices, and checks or other forms of payment.
6. State whether Armando Gutierrez & Associates Inc. provided any services in connection with your 1998 special election campaign: If so, with respect to these services:
  - a. Identify who retained this firm and who paid for these services.
  - b. State the time frame the services were provided and the nature of the services;
  - c. Identify and produce all documents pertaining to the services provided. Documents produced should include, but not be limited to, notes, correspondence, faxes, telephone messages or logs, electronic mail messages, scripts, audio and video tape recordings, polls, surveys, memoranda, etc.
  - d. Identify all persons who participated in the provision of these services and/or with whom you communicated about these services. For each person so identified, state whether the person was associated with or was an employee of the Capps Committee, the CDP, or the particular vendor with whom you communicated about these services, the person's title, responsibilities, to whom each reported, current employment, and the last known address and telephone number.
  - e. List the type, date, the persons involved, and the substance of all communications, conferences, meetings, discussions etc. you had with the CDP and/or vendor regarding the services provided. Identify and produce copies of all documents related to any such communications, conferences, meetings, or discussions.



7. State whether Crounse & Malchow provided any services in connection with your 1998 special election campaign. If so, with respect to these services:

- a. Identify who retained this firm and who paid for their services;
- b. State the time frame the services were provided and the nature of the services;
- c. Identify and produce all documents pertaining to the services provided.

Documents produced should include, but not be limited to, notes, correspondence, faxes, telephone messages or logs, electronic mail messages, scripts, audio and video tape recordings, polls, surveys, memoranda, etc.

d. Identify all persons who participated in the provision of these services and/or with whom you communicated about these services. For each person so identified, state whether the person was associated with or was an employee of the Capps Committee, the CDP, or the particular vendor with whom you communicated about these services, the person's title, responsibilities, to whom each reported, current employment, and the last known address and telephone number.

e. List the type, date, the persons involved, and the substance of all communications, conferences, meetings, discussions etc. you had with the CDP and/or vendor regarding the services provided. Identify and produce copies of all documents related to any such communications, conferences, meetings, or discussions.

# FEDERAL ELECTION COMMISSION

## FACTUAL & LEGAL ANALYSIS

RESPONDENTS: Friends of Lois Capps  
and David Powdrell, as treasurer

MUR: 4788

This matter was generated by a Complaint filed with the Federal Election Commission by the California Republican Party, by and through its Chairman Michael Schroeder.

### A. Law

Under the Federal Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations, contributions<sup>1</sup> made and accepted for the purpose of influencing a Federal election are subject to certain limitations and prohibitions.<sup>2</sup> 2 U.S.C. §§ 431(8), 441a, 441b, 441c, 441e, 441f, and 441g; 11 CFR Parts 100, 110, 114, and 115. Similarly, disbursements by committees that constitute expenditures<sup>3</sup> for the purpose of influencing a Federal election must be made only with funds that are subject to the limitations and prohibitions of the Act. 2 U.S.C. § 431(9)(A); and 114.2(b).

Communications that call for the election or defeat of a clearly identified candidate constitute express advocacy. Commission regulations define “express advocacy” to include such phrases as “vote for the President” “Smith for Congress” “support the Democratic nominee” or

---

<sup>1</sup> The Act defines “contribution” as including “any gift, subscription, loan, advance, . . . or anything of value made by any person for the purpose of influencing any election for Federal office . . . .” 2 U.S.C. § 431(8)(A)(i) and 11 C.F.R. § 100.7(a)(1).

<sup>2</sup> The prohibitions on contributions by national banks, by corporations organized by authority of Federal statute, and by foreign nationals also apply to State and local elections.

<sup>3</sup> The Act defines “expenditure” as “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office . . . .” 2 U.S.C. § 431(9)(A)(i) and 11 C.F.R. § 100.8(a)(1).

“cast your ballot for the Republican challenger for U.S. Senate in Georgia” or other words which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate. 11 C.F.R. § 100.22(a).

2 U.S.C. § 431(8) defines “clearly identified” as meaning “(A) the name of the candidate involved appears; (B) a photograph or drawing of the candidate appears; or (C) the identity of the candidate is apparent by unambiguous reference.” 11 C.F.R. § 100.17 amplifies the statute by defining “clearly identified” as meaning:

the candidate’s name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ‘the President,’ ‘your Congressman,’ or ‘the incumbent,’ or through an unambiguous reference to his or her status as a candidate such as ‘the Democratic presidential nominee’ or ‘the Republican candidate for the Senate in the State of Georgia.’

Expenditures that are coordinated<sup>4</sup> with the candidate are treated as contributions under the Act. 2 U.S.C. § 441a(a)(7)(B)(i) The Act limits to \$5,000 per election the amount which any

---

<sup>4</sup> Definitions of “coordination” are found only indirectly in the Act and in the Commission’s regulations. 2 U.S.C. § 441a(a)(7)(B)(i) states that “expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate . . . .” See *Buckley v. Valeo*, 424 U.S. 1, 46 (1976). The applicable statute and regulations at 2 U.S.C. § 431(17) and 11 C.F.R. § 109.1(a) and (b)(4) each address what constitutes coordination in the context of defining an expenditure as not independent when it is “made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate.” Section 109.1(b)(4) then further defines the concept of non-independent, and therefore coordinated, expenditures related to communications as follows:

“Made with the cooperation or with the consent of . . . .

(I) Means any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is -

(A) Based on information about the candidate’s plans, projects, or needs provided to the expending person by the candidate, or by the candidate’s agents, with a view toward having an expenditure made; or

multicandidate committee, including a state party committee, may contribute to a candidate and his or her political committee. 2 U.S.C. § 441a(a)(2)(A). 2 U.S.C. § 441a(f) prohibits political committees from knowingly accepting contributions or making expenditures in violation of the statutory limitations.

Party committees are entitled to make both direct and in-kind contributions to candidates up to \$5,000 and also to make coordinated expenditures<sup>5</sup> in connection with the campaigns of the same candidates up to their Section 441a(d) limitations. A state party committee may assign its expenditure limitation to a national committee of the party, thereby designating that committee as its agent for purposes of making coordinated party expenditures. *See FEC v. Democratic Senatorial Campaign Committee*, 484 U.S. 27 (1981). When such coordinated expenditures by a party committee, alone or in combination with direct contributions to a candidate made pursuant to Section 441a(a)(2)(A), exceed the combined limitations of Sections 441a(a)(2)(A) and 441a(d), violations of 2 U.S.C. § 441a(a)(2)(A) and of 2 U.S.C. § 441a(f) by these committees respectively result.

Coordinated party expenditures are reported by the party committee only, while contributions are reported by both the party committee and the recipient candidate committee.

---

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent."

<sup>5</sup> Pursuant to 2 U.S.C. § 441a(d)(3)(B) and 11 C.F.R. § 110.7(b)(2)(ii), the national committee and state committee of a political party may each make expenditures in connection with the general election campaigns of candidates for the United States House of Representatives in that State. The limit set out at 2 U.S.C. § 441a(d)(3)(B) is adjusted at the beginning of each calendar year based upon changes in the Consumer Price Index. The limit for each 1998 general election in California for a U.S. House seat was \$32,550. 2 U.S.C. § 441a(c); 11 C.F.R. § 110.9(c).

Specifically, under 11 C.F.R. § 109.1(c), an expenditure which does not qualify as an independent expenditure is considered an in-kind contribution to the candidate and results in several reporting obligations on behalf of both the donor, when it is a reporting entity, and the recipient committee. The donor must disclose the expenditure as a contribution, the date and amount of such contribution and, in the case of a contribution to an authorized committee, the candidate's name and office sought. 2 U.S.C. § 434(b)(4)(H)(i); 11 C.F.R. § 104.3(b)(3)(v). The recipient committee must disclose the expenditure as an in-kind contribution, the identity of the donor and the year-to-date aggregate total for such donor. 2 U.S.C. § 434(b)(2)(D); 11 C.F.R. § 104.3(a)(4).

11 C.F.R. § 106.5(a)(2) sets out costs to be allocated for committees that make disbursements in connection with Federal and non-Federal elections. The categories of activity to which allocation applies include, *inter alia*, administrative expenses and expenses for generic voter drive activities. "Administrative expenses" are defined as "including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate." 11 C.F.R. § 106.5(a)(2)(i). "Generic voter drives" are described as "including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. § 106.5(a)(2)(iv).

Based on the foregoing, activity which is candidate-specific such as that pertaining to a clearly identified or specific candidate is not generic voter activity and is therefore not allocable under Section 106.5. Such candidate-specific disbursements, if made in support of a Federal candidate, would be considered "contributions" to or "expenditures" on behalf of that candidate and would be subject to the limitations and prohibitions under the Act.

## B. Facts

Following the death of Representative Walter Capps,<sup>6</sup> who represented the 22<sup>nd</sup> Congressional District of California, a special election to fill the vacancy in the House seat for the rest of Mr. Capps' term was held on January 13, 1998, and on March 10, 1998.<sup>7</sup> The special runoff election on March 10, 1998, involved only the race to fill the U.S. House vacancy, and there was only one candidate nominated by the Democratic Party, Lois Capps.

The California Democratic Party ("the CDP") paid for several direct mail pieces that referenced the March 10, 1998, special runoff election. The Complaint included three of these direct mail pieces. Complaint, pp. 7, 9-12. All three mailings contain statements urging the public to "Continue the Walter Capps Tradition," and to "Vote Democratic" in the "Special Election, Tuesday, March 10<sup>th</sup>." The CDP treated these expenses as generic party disbursements under 11 C.F.R. § 106.5(a)(2)(iv) and allocated the costs for these mailings between its Federal and non-Federal accounts. Disclosure reports reflect that between late February and early March 1998, the CDP spent a total of \$99,079.06 in generic voter contact and production costs for voter contact. *See* Schedule H4, 1998 April Quarterly Report. Of this amount, \$77,281.67 reflected the non-Federal share for these expenses. Disclosure reports also reflect that the CDP made a \$5,000 contribution to the Capps Committee on February 19, 1998. The reports do not reflect

---

<sup>6</sup> Representative Walter Capps died on October 28, 1997.

<sup>7</sup> An open primary for the special election was held on January 13, 1998. Because no candidate received more than 50 percent of the vote, the top vote-getter in each party participated in the runoff election. Lois Capps, Walter Capps' widow, won the special election (runoff) garnering 53.46% of the vote. Representative Capps later ran unopposed in the June 2, 1998, Democratic Primary for the 22<sup>nd</sup> Congressional District and was reelected in the 1998 General Election.

that the CDP made any coordinated expenditures or independent expenditures in support of the Capps campaign during the period of the special election.<sup>8</sup>

### C. Complaint and Response

The Complaint, citing the Act, regulations, case law, and Advisory Opinion 1998-9,<sup>9</sup> alleges that the CDP mailings were not generic voter activity but “constitute[d] express advocacy of a clearly identified candidate” and should have been paid solely from the Federal account. Complaint, p. 2. The Complaint further alleges that the funds spent by the CDP on these ads were excessive and prohibited contributions from the CDP to the Capps Committee. *Id.* at 3-4. The Complaint also argues that the funds spent on the ads were not independent expenditures because the disclaimers on the ads were “not consistent with independent expenditures and [the] CDP did not report them as such (as would have been required).” *Id.* at 3. Finally, the Complaint requests that the Commission investigate to determine the extent of coordination between the parties, actual costs of mailings, “and whether any further ‘generic voter contacts’ were unlawfully made.” *Id.* at 4.

---

<sup>8</sup> It appears, however, that the CDP may have assigned its entire coordinated party limit to the national party. See footnote 13, *infra*.

<sup>9</sup> In Advisory Opinion 1998-9, which involved the same set of facts as this matter, the Commission addressed whether certain proposed generic party disbursements for communications such as telephone calls or mailings that ask the public to “Vote Republican,” or “Vote Republican on” a specific election date or “On Election Day,” became expenditures for “clearly identified candidates” when combined with the date of the special election. The Commission found that while such communications would fall within the category of generic voter activity where the election in question is held on a date when there are a number of offices on the ballot, Federal and non-Federal, with candidates from the same party listed for two or more of these offices, this would not be the case if the election at issue involves only one race and only one Republican on the ballot. In such a case, the communication could mean no other candidate but the Republican nominee in that special election. The Commission concluded that the proposed communications would not be generic voter activity but communications urging the public to vote for a clearly identified candidate i.e., express advocacy, and therefore within the category of either independent expenditures or coordinated expenditures.

In its September 24, 1998, response, the Capps Committee requests that the Commission dismiss the Complaint and take no further action. The Capps Committee argues that there is no evidence in the Complaint that it “was responsible for or in control of the advertisements,” that it will “defer” to the CDP to explain the expenditures at issue, and that the Complaint “appears to rely for legal authority on an advisory opinion issued after the expenditures in question were made.”<sup>10</sup> *Id.* The response does not address whether there was coordination.

#### **D. Analysis**

Communications that urge the public to vote for a clearly identified candidate constitute express advocacy and are not generic voter drive activity. Although the language in the mailings at issue did not include the name or the photo of the candidate “Lois Capps,” her identity was apparent through unambiguous reference. The mailings urged the public to “Continue the Walter Capps Tradition,” and to “Vote Democratic” in the “Special Election, Tuesday, March 10<sup>th</sup>.” This message on its face is exclusively directed at one specific election—the special election on March 10<sup>th</sup>.<sup>11</sup> Since there was only one office at stake in the March 10<sup>th</sup> special election and only one Democrat on the ballot, the communication can mean no other candidate but the Democratic nominee in the March 10<sup>th</sup> special election for the House seat for the 22<sup>nd</sup> District of California. Based on the foregoing, it appears that the mailings at issue expressly advocated the election of a clearly identified or specific candidate, Lois Capps, and thus, the disbursements for the mailings

---

<sup>10</sup> Advisory Opinion 1998-9, although issued after the events in this matter, was not a new interpretation of the law. Rather, it reflects the Commission’s consistent view of the Act and regulations as applied to a set of facts similar to those at issue here.

<sup>11</sup> The message also mentions by name Walter Capps, the previous officeholder, deceased incumbent of the Congressional District, and spouse of the Democratic nominee, Lois Capps. One of the ads also includes photographs of Mr. Capps.



were not generic voter drive costs. Therefore, it appears that the disbursements for the mailings should have been made exclusively from Federal funds.

The Complaint alleged that the CDP made excessive and prohibited contributions to the Capps Committee and that there was coordination. The Capps Committee's response cited a lack of evidence that it "was responsible for or in control of the advertisements," but did not address whether there was coordination. If the mailings resulted from coordination between the CDP and the Capps Committee, the disbursements for them would be expenditures subject to the combined limits for direct and in-kind contributions (2 U.S.C. § 441a(a)(2)(A)) and coordinated expenditures (2 U.S.C. § 441a(d)) and would have had to be funded entirely from contributions subject to the limitations and prohibitions of the Act, i.e., paid for from the Federal account only. Any expenditures exceeding the coordinated party limits would have to be reported as both contributions made by the CDP and received by the Capps Committee.

**E. Violations**

**1. Excessive/In-Kind Contributions**

Pursuant to 2 U.S.C. § 441a(d), the CDP was allowed to expend \$32,550 on behalf of Lois Capps' 1998 special election campaign. In addition, pursuant to 2 U.S.C. § 441a(a)(2)(A), the CDP was allowed to contribute \$5,000 per election to the Capps Committee. Thus, the CDP could have made \$37,550 in combined contributions/coordinated party expenditures to the Capps Committee and remained within prescribed limits. The CDP, however, spent at least \$104,079.06 in support of the Capps campaign (a \$5,000 direct contribution to Capps' special runoff election and the \$99,079.06 in combined Federal/non-Federal funds for the mailings at issue). Given the clear identification of the candidate Lois Capps and the message conveyed in the mailings, coordination between the CDP and the Capps Committee would mean that the

amount spent on the mailings were expenditures made pursuant to 2 U.S.C. § 441a(d). The amount spent on the mailings which exceeded \$37,550 would not qualify as Section 441a(d) expenditures, but would be considered an excessive in-kind contribution, pursuant to 2 U.S.C. § 441a(a)(2)(A).<sup>12</sup> Therefore, it appears that the CDP exceeded the Section 441a(a)(2)(a) limitations. The excessive in-kind contribution accepted by the Capps Committee, would be in apparent violation of 2 U.S.C. § 441a(f). Therefore, there is reason to believe that the Friends of Lois Capps and David Powdrell, as treasurer, violated 2 U.S.C. § 441a(f).

## 2. Reporting Violations

If the expenditures were in-kind contributions to the Capps Committee, they were required to be reported as contributions made and received. The Capps Committee would have been required to disclose the expenditures as in-kind contributions from the CDP. 2 U.S.C. § 434(b)(2)(D); 11 C.F.R. § 104.3(a)(4). Based on the above, there is reason to believe that the Friends of Lois Capps and David Powdrell, as treasurer, violated 2 U.S.C. § 434(b).

---

<sup>12</sup> As noted earlier, the coordinated party expenditure limit for the 1998 general election in California for a U.S. House seat was \$32,550. The national party committee and state party committee each has its own separate spending limit for the party's nominee in that state. The CDP did not report making coordinated expenditures in support of Lois Capps during the period of the special election. Disclosure reports, however, reflect that the Democratic Congressional Campaign Committee spent nearly \$64,000 in coordinated party expenditures in support of Capps during the period of the 1998 special election. The fact that the national party's coordinated expenditures in support of Capps exceeded its own limits by nearly \$32,000 indicates that the CDP assigned its entire coordinated party limit to the national party.