

FEDERAL ELECTION COMMISSION **MAR 24 2 54 PM '99**  
999 E Street, N.W.  
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR: 4809  
DATE OF COMPLAINT FILED: 9/14/98  
DATE OF NOTIFICATION: 9/18/98  
DATE ACTIVATED: 1/26/99

STAFF MEMBER: L. Klein / S. Finkle

COMPLAINANT: Art Torres, Chair, California Democratic Party

RESPONDENTS: Charles Ball  
Charles Ball for Congress Committee  
Cynthia A. Wilkinson, Treasurer<sup>1</sup>

RELEVANT STATUTES: 2 U.S.C. § 432(e)  
2 U.S.C. § 433(a)  
2 U.S.C. § 434(a)(2)  
11 C.F.R. § 104.5(a)  
11 C.F.R. § 100.7(b)(1)  
11 C.F.R. § 100.8(b)(1)

INTERNAL REPORTS CHECKED: Public Record

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

On September 14, 1998, Art Torres, Chairman of the California Democratic Party, by and through its Executive Director, Kathleen K. Bowler ("the Complainant") filed a complaint alleging that Charles Ball and the Charles Ball for Congress Committee ("the Respondents") violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the

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<sup>1</sup> The Ball for Congress Committee filed an amended Statement of Organization on January 11, 1999, replacing Thomas Schweickert as treasurer.

Act"). In particular, the complaint alleges that Charles Ball, a candidate in the 1998 election for the 10<sup>th</sup> District Congressional seat in California,<sup>2</sup> failed to file timely his Statement of Candidacy, the Statement of Organization for his principal campaign committee, Charles Ball for Congress (the "Committee"), and failed to report receipts and disbursements properly on the July Quarterly Report. A response to the complaint was received on September 28, 1998, from the Committee.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Filing of Statement of Candidacy and Statement of Organization

A "candidate" is defined under the Act as an individual who seeks the nomination for election, or election to, federal office. 2 U.S.C. § 431(2). An individual becomes a candidate for federal office, and triggers the registration and reporting requirements under the Act, when such individual or another authorized person has received contributions or made expenditures aggregating in excess of \$5,000. 2 U.S.C. § 431(2). An individual who meets this threshold for candidacy must, within 15 days, file a statement of candidacy which designates a principal campaign committee. 2 U.S.C. § 432(e)(1). The designated committee shall file a Statement of Organization within ten days after being designated as the principal campaign committee. 2 U.S.C. § 433(a).

There is an exception to the \$5,000 threshold triggering candidacy under the Act known as "testing the waters." Commission regulations permit an individual to receive funds and make payments if done solely for the purposes of determining whether an individual should become a candidate, without such funds being aggregated for the purpose of the \$5,000 threshold for

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<sup>2</sup> Charles Ball lost the 1998 General Election with 44% of the vote.

candidate status. 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1). Only funds permissible under the Act may be used for testing the waters, and once the individual becomes a candidate, all contributions and expenditures made during the testing the waters period must be reported with the first report filed by the principal campaign committee, regardless of the date the funds were received or payments made. 11 C.F.R. §§ 100.7(b)(1) and 100.8(b)(1).

The testing the waters exemption does not apply to funds received or expenditures made for "activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign." 11 C.F.R. §§ 100.7(b)(1)(ii) and 100.8(b)(1)(ii). Examples of what would constitute activities of this nature are set forth in the regulations and include public political advertising, authorized written or oral statements that refer to the individual as a candidate for particular office, or fund-raising in excess of what could reasonably be expected to be used for exploratory activities. *Id.* See also Advisory Opinion-1985-40.

In the instant matter, the complaint alleges that because Charles Ball raised \$13,250 between November 3, 1997 and the end of the year, his fund-raising activities went beyond the scope of testing the waters indicating that he had decided to become a candidate. It does not cite to any particular activity undertaken by Charles Ball that would suggest that he had decided to run for office and it does not explain why the figure raised should be considered excessive for exploratory activities.

Ball filed his Statement of Candidacy on January 20, 1998. Ball had received a total of \$17,635 in contributions by this time. The 1998 April Quarterly Report filed by the Ball for Congress Committee, disclosed a total of \$7,430.19 in expenditures, all made after Ball filed his

statement of candidacy. This money went to pay \$5,816.74 in consulting fees, \$1,336.00 in county filing fees, \$257.45 for software, and \$20.00 in event fees. Thus, not only did Ball file his statement of candidacy before making these expenditures, the initial expenditures with the exception of the county filing fees, are consistent with activities undertaken to determine whether or not one should become a candidate.

Therefore, given the amount raised as well as the level, nature and timing of expenditures, based on the information provided in the complaint, the response thereto and in the Committee's reports, this Office recommends that the Commission find no reason to believe that Charles Ball violated 2 U.S.C. § 432(e).

Although Ball appears to have filed his Statement of Candidacy in a timely manner, no Statement of Organization was filed for the designated campaign committee, until April 4, 1998, 64 days after Ball filed as a candidate, and 54 days beyond the prescribed statutory time frame. Accordingly, we recommend that the Commission find reason to believe that Charles Ball for Congress Committee and Cynthia A. Wilkinson, as Treasurer, violated 2 U.S.C. § 433(a).

#### B. Filing of Reports of Receipts and Disbursements

Each treasurer of a principal campaign committee supporting a candidate for the House of Representatives shall file reports on the dates specified at 2 U.S.C. § 434(a). Committees electing to file on a quarterly schedule must file three quarterly reports during an election year, due respectively on the 15<sup>th</sup> of April, July and October. A quarterly report covers activity that occurred after the closing date of the previous report through the end of the calendar quarter.

2 U.S.C. § 434(a)(2). For the 1998 July Quarterly report, this period would cover activity between May 14 and June 30, 1998.<sup>3</sup> The Ball Committee's July Quarterly report included contributions and loans made after the June 30th deadline in the amount of \$142,898. The inclusion of these additional receipts frames the basis for the complaint's allegation that the Committee filed erroneous reports. Respondents concede that the original July Quarterly report included receipts recorded outside of the formal reporting schedule. An amended July Quarterly report was filed by the Committee on September 9, 1998, which excluded the contributions and loans made after June 30<sup>th</sup> deadline. Because the statutory reporting provisions specify the exact periods to be covered in each report and the information included here went beyond the prescribed period, we recommend that the Commission find reason to believe that Charles Ball for Congress and Cynthia A. Wilkinson, as Treasurer, violated 2 U.S.C. § 434(a)(2).

Given the nature of the violations at hand and the need to conserve agency resources, this Office recommends that the Commission make the appropriate reason to believe findings, take no further action, close the file and admonish Respondents.

### III. RECOMMENDATIONS

1. Find no reason to believe that Charles Ball violated 2 U.S.C. § 432(e).
2. Find reason to believe that Charles Ball for Congress, and Cynthia A. Wilkinson, as Treasurer, violated 2 U.S.C. §§ 433(a) and 434(a)(2).

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<sup>3</sup> The closing date for the previous report, the pre-primary report, was 5/14/98. That report included activity from 4/1/98 until 5/14/98.

