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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 4919

2000 AUG -4 P 4: 59

Charles Ball for Congress
and Justin Briggs, as treasurer
Adrian Plesha
Heather Patterson

SENSITIVE

GENERAL COUNSEL'S REPORT #5

I. ACTIONS RECOMMENDED: Approve findings of reason to believe and authorize subpoenas for documents and depositions and orders for written answers.

II. BACKGROUND

On August 17, 1999, the Commission found reason to believe that persons unknown knowingly and willfully violated 2 U.S.C. § 441d(a) in connection with a mailer and follow-up phone calls undertaken by a group called the "East Bay Democratic Committee." The communications expressly advocated the defeat of Congresswoman Ellen Tauscher, who was opposed by Charles Ball in California's 10th Congressional district in 1998.

During the investigation, this Office discovered information indicating that the vendors which may have been responsible for printing and distributing the mailing were Stevens Printing and its owners Jeff and Steve Clark ("Stevens Printing") and Ireland Direct Mail Advertising and its owners Michelle and Greg Hollman ("Ireland"). On March 2, 2000, the Commission approved Subpoenas and Orders to those vendors. As the response from Stevens Printing strongly suggests that it printed the mailing for Charles Ball for Congress ("Ball campaign"), and Justin Briggs, as treasurer ("Ball campaign"), this Office intends to notify that campaign of the Commission's Section 441d(a) finding. This Office also recommends that the Commission make

an additional reason to believe finding regarding the Ball campaign and authorize discovery to the respondents and witnesses.

III. DISCUSSION OF SUBPOENA RESPONSES

The sworn response from Stevens Printing states that “[we] believe that we printed this piece, however, we cannot be sure as we printed well over 100 jobs for the Charles Ball for Congress Campaign and we do not have a record of this job in our files.” Attachment 1 at page 1. Stevens Printing’s response states that it can not “conclusively” state that it did the mailing because of the large volume of work performed for the Ball campaign and the possibility that it was one of the other printers that did work for the Ball campaign. Attachment 1 at page 1. The response also states if Stevens Printing had done the printing: (i) Ireland would have mailed the piece; and (ii) Adrian Plesha or Heather Patterson would have ordered it for the Ball campaign. *Id.* Stevens Printing provided the Commission with copies of what it asserts are all invoices for the Ball campaign for 1998. Stevens Printing states that it cannot find anything in its records specifically related to the East Bay Democratic Committee mailing and its invoices do not make any explicit reference to the mailing. Stevens Printing also states that it has no knowledge about the telephone calls that were made on or about November 2, 1998. *Id.*

The response to an interrogatory asking Ireland if it was involved in the mailing states: “[w]e do not recall based on memory [that the mailing in question was] something that was process [sic] by Ireland Direct Mail.” Attachment 2. Ireland also states that its “records do not indicate that the mailing in question was processed through our firm.” *Id.* Ireland avers that it does not provide telemarketing services and that it has no information on the calls at issue. *Id.* at pages 1 at 2.

IV. ANALYSIS

The response from Stevens Printing indicates that it believes that it printed the "East Bay Democratic Committee" mailing. Moreover, Stevens Printing's response indicates that the mailing was undertaken for the Ball campaign. If the Ball campaign was responsible for the mailing, it would appear that it was also responsible for the follow-up phone banks from persons claiming to be from the East Bay Democratic Committee which contained virtually the same anti-Tauscher message. First General Counsel's Report in this matter, dated July 23, 1999 ("FGCR").

As discussed in the FGCR, the communications at issue, which expressly advocated that recipients not vote for Ellen Tauscher, did not contain any disclaimers stating who paid for them and whether they were authorized by any candidate or candidate committee. 2 U.S.C. § 441d(a). As there is information suggesting that the Ball campaign was responsible for these communications, this Office intends to notify it that the Commission found reason to believe that it knowingly and willfully violated Section 441d(a). This Office further recommends the Commission find reason to believe that Justin Briggs, as treasurer, violated 2 U.S.C. § 441d(a).¹

In the FGCR, this Office informed the Commission that if the investigation revealed that a candidate/campaign committee was responsible for the East Bay Democratic Committee mailing, it would recommend that the Commission pursue such candidate/campaign committee for a violation of Section 441h. Section 441h provides that no person who is a candidate for federal office or employee or agent of such candidate shall fraudulently misrepresent any

¹ Mr. Briggs was not the treasurer at the time of the violation. Therefore, this Office does not recommend that the Commission include the knowing and willful finding with respect to Mr. Briggs.

committee or organization under his control as speaking or writing for or on behalf of any other candidate or political party on a matter which is damaging to such other candidate or political party.

The creators of this mailing knowingly made a false representation by pretending to be an official Democratic organization called the "East Bay Democratic Committee" which they claimed was "Representing All Democrats in the East Bay." To bolster this deception, the creators of the mailing used the name George Miller as the signatory of the letter. George Miller is the Democratic Congressman in the neighboring district-which is also within the area known as the East Bay² The misrepresentation was material because the mailing was targeted to Democrats and made it appear as if a local Democratic committee and a local Democratic leader were advocating abandonment of a Democratic Member of Congress in the recipients' district. If the Ball campaign was responsible and had the recipients known the true identity of the group that sponsored the mailing, the message would have been considerably weakened.

The mailing was damaging to the Democratic Party and to Representative Tauscher because it conveyed to registered Democrats that a local Democratic committee, acting through a neighboring Democratic Congressman, believed that the nominee had abandoned the party. Moreover, the mailing was damaging because it told recipients, who were registered Democrats, not to vote for the Democratic candidate in an election that was just days away. It is evident that

² Although George Miller is a fairly common name, in this instance it is the name of the Congressman in the neighboring district. Additionally, this "George Miller" is speaking out as a Democrat party leader and as a representative of the "East Bay Democratic Committee," a group claimed to represent all Democrats in the East Bay. Thus, there is little doubt that the creators of this mailing were attempting to create the impression that Congressman George Miller was speaking out against Ellen Tauscher. The suggestion that it was Congressman Miller worked—at least one of the recipients called his office complaining about his involvement in this letter.

the persons responsible for this mailing intended to damage the Democratic party and Ellen Tauscher by suppressing votes the candidate might have otherwise received. If, as it appears, the Ball campaign or its agents or employees were responsible for this mailing, then Section 441h would be implicated. Additionally, within a day or two of when the mailing was received, registered Democrats within the 10th Congressional district reported receiving phone calls from persons claiming to be from the "East Bay Democratic Committee" which they concluded were connected with the mailings. The calls contained a message similar to the mailings and urged voters not to vote for Ellen Tauscher. The callers refused to answer any questions posed by the recipients of these phone calls. It appears that the Ball campaign may be responsible for these phone calls as well.

It appears that the Section 441h violation by the Ball campaign, like the violation of Section 441d(a), was knowing and willful. Those responsible for the mailing attempted to disguise themselves as a Democratic committee in an attempt to convince the targeted Democratic audience that they should not vote for Ellen Tauscher. Because of the fraudulent nature of the communications, an inference can be made that the violation was knowing and willful. See *United States v. Hopkins*, 916 F.2d 207, 214-215 (5th Cir. 1990)(An inference of a knowing and willful violation may be drawn "from the defendants' elaborate scheme for disguising" their actions.). In light of the above, this Office recommends that the Commission

find reason to believe that Charles Ball for Congress knowingly and willfully violated 2 U.S.C. § 441h.³ In addition this Office recommends that the Commission find reason to believe that Justin Briggs, as treasurer for the Ball campaign, violated 2 U.S.C. § 441h.⁴

Section 441h imposes liability on employees or agents of the candidate. According to Ball campaign reports, Adrian Plesha and Heather Patterson were employees of the Charles Ball's campaign. Stevens Printing indicates that Plesha or Patterson would have ordered the mailing. Accordingly, this Office recommends that the Commission find reason to believe that Adrian Plesha and Heather Patterson knowingly and willfully violated 2 U.S.C. § 441h. At this point it is unclear whether Charles Ball was personally involved in approving the mailing or phone calls. Information about Mr. Ball's involvement will be sought through discovery. This Office does not make any reason-to-believe recommendations as to Mr. Ball at this time.

V. DISCUSSION OF DISCOVERY

³ On August 17, 1999, the Commission approved the "appropriate" factual and legal Analysis for the Section 441d(a) finding for persons unknown. As this Office is now recommending that the Commission find reason to believe that the Ball campaign and its treasurer violated Section 441h, this Office is incorporating that finding in the factual and legal analyses which are attached for the Commission's approval. See Attachment 4.

⁴ As discussed in footnote 1, because Mr. Briggs was not the treasurer at the time of the violation, this Office recommends the Commission find reason to believe that only the Ball campaign and not the current treasurer, knowingly and willfully violated Section 441h.


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VI. RECOMMENDATIONS

1. Find reason to believe that Charles Ball for Congress, Adrian Plesha and Heather Patterson, knowingly and willfully violated 2 U.S.C. § 441h.
2. Find reason to believe that Justin Briggs, treasurer of Charles Ball for Congress, violated 2 U.S.C. §§ 441h and 441d.
3. Approve the attached Factual and Legal Analyses (3).
4. Approve the attached Subpoenas and Orders to Charles Ball for Congress and Justin Briggs, as treasurer, Bank of America, Ireland Direct Mail Advertising, Michelle Hollman, Gregory Hollman, Stevens Printing, Jeff Clark, Steve Clark, Direct Impact Marketing, Campaign Telephone, Ltd., Steven Goldberg, Lissa Goldberg, Mark Goldberg, Brabender Cox, Adrian Plesha, Heather Patterson and Charles Ball.
5. Approve the attached Subpoenas for depositions to Adrian Plesha, Heather Patterson, Charles Ball, Michelle Hollman, Gregory Hollman, Stevens Printing, Jeff Clark and Steve Clark.
6. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

8/4/00
Date

BY: 
Lois G. Lerner
Associate General Counsel

Staff Assigned: Xavier K. McDonnell

Attachments:

1. Stevens' Response
2. Ireland's Response
3. Subpoenas and Orders
4. Factual and Legal Analyses