



FEDERAL ELECTION COMMISSION
Washington, DC 20463

By First Class Mail

AUG 29 2002

Allison R. Hayward, Esquire
Bell, McAndrews, Hiltachk & Davidian
455 Capitol Mall, Suite 801
Sacramento, CA 95814

RE: MUR 4919
Charles Ball for Congress
and Justin Briggs, as treasurer

Dear Ms. Hayward:

On August 19, 2002, the Federal Election Commission accepted the signed conciliation agreement and first payment of \$7,000 toward the \$24,000 civil penalty submitted on behalf of your clients, Charles Ball for Congress and Justin Briggs, as treasurer, in settlement of a violation of 2 U.S.C. §§ 441h and 441d, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). Additionally, the Commission determined to close its file in this matter as it pertains to your clients.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. The agreement will become part of the public record after this matter has been closed with respect to all respondents involved. Pursuant to the agreement, there are five remaining consecutive monthly payments of \$3,400. The first payment is due on or before September 27, 2002, and the subsequent payments are due within 30 days of each previous payment.

The confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, as this matter is still open with respect to another respondent. The Commission will notify you when the entire file has been closed. If you have any questions, please contact Dominique Dillenseger at (202) 694-1650.

Sincerely,

Dominique Dillenseger

Dominique Dillenseger
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Charles Ball for Congress
Justin Briggs, as treasurer

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MUR 4919

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that Charles Ball for Congress ("Ball campaign") knowingly and willfully violated 2 U.S.C. §§ 441h and 441d(a). The Commission also found probable cause to believe that Justin Briggs, treasurer of the Ball campaign, violated 2 U.S.C. §§ 441h and 441d(a).

NOW, THEREFORE, the Commission and the Ball campaign and Briggs ("Respondents"), having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Charles Ball for Congress is a political committee within the meaning of 2 U.S.C. § 431(4), and the authorized committee of Charles Ball, who ran for Congress in California's 10th Congressional District in 1998.

2. Justin Briggs is the treasurer of Charles Ball for Congress.

3. The Federal Election Campaign Act of 1971, as amended ("FECA"), provides that no person who is a candidate for federal office or employee or agent of such candidate shall fraudulently misrepresent any 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. 2 U.S.C. § 441h(1).

4. The FECA states that whenever any person makes an expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate through direct mail or any type of general public political advertising, such communication must state specific information concerning who authorized and paid for the communication. 2 U.S.C. § 441d(a).

5. The FECA explicitly provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendant's elaborate scheme for disguising" their actions and that they "deliberately conveyed information they knew to be false to the Federal Election Commission." *Id.* at 214-215. "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (citing *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

6. During 1998, Charles Ball challenged Representative Ellen Tauscher in the general election for California's 10th Congressional District. Charles Ball hired Michael Mihalke of Brabender Cox as its general consultant. At Mihalke's recommendation, Charles Ball hired Adrian Plesha as campaign manager. Plesha hired Christian Marchant as deputy campaign manager and Heather Patterson as finance director. Plesha hired Stevens Printing as the campaign's major printing firm. Stevens Printing retained Ireland Direct Mail ("Ireland Direct") as its mail-house for most Ball campaign services. Plesha retained Jeff Butzke and his firm, Direct Impact Marketing Services ("Direct Impact"), for phone banks.

7. On October 31, 1998, just three days before the election, the Ball campaign's vendor distributed approximately 40,000 letters to Democratic households in California's 10th Congressional District. The one-page letters were typewritten on the personalized letterhead stationary of the "East Bay Democratic Committee." The letters attempted to portray the "East Bay Democratic Committee" as a local committee of the Democratic Party. The letters contained a false address, and carried the name George Miller as the signatory. (Congressman George Miller represents a neighboring congressional district and is a strong supporter of Tauscher.) The letters urged Democrats not to vote for Tauscher, yet contained no disclaimer identifying who paid for them or whether they were authorized by any candidate or committee. The text of the letters is reproduced below.

EAST BAY DEMOCRATIC COMMITTEE
"Representing all Democrats in the East Bay"
1960 John F. Kennedy Dr.
Antioch, CA 94509

IMPORTANT MESSAGE!

November 1st, 1998

Dear fellow Democrat,

Election day is drawing near and it is crucial that we support the Democratic team. The Republican party and big business will stop at nothing to derail our positive agenda for working families.

Each year we provide you with the slate of our Democratic team we are supporting. This year we have done the same for all major candidates in the East Bay who have been supportive of our President, Bill Clinton, and the goal of our party including 100,000 new teachers, a Patients Bill of Rights and protection of Social Security.

However, as loyal Democrats, we find it very troubling that Rep. Ellen Tauscher abandoned President Clinton and the Party when she voted with the Republicans to launch an Impeachment Inquiry in the personal life of a truly great President who has accomplished so much for the Democratic Party and working families.

It is with regret that we will not be supporting the re-election of Rep. Ellen Tauscher because of her votes against the President and against our Party. Her voting with the Republicans on issues such as the impeachment inquiry, stealing from Social Security for tax cuts for the rich and minimum wage make her unacceptable to us.

We know that many Democrats have chosen to send her a message by not voting for her or against her on November 3rd because of her abandonment of the party. They have chosen simply not to vote for either candidate in the race for Congress.

And while we have chosen not to forget how Ellen Tauscher turned her back on our party we ask that you remember to support our Democratic team for the other offices on the ballot on Election Day. Unfortunately, we have been left with no choice but to send Ellen Tauscher a message. Because she abandoned us, we are abandoning her.

We could not support her opponent. And Ellen Tauscher will win re-election. But it is critical that she receive the message loud and clear. She must support our President to enjoy our support. Not voting for her is the best way for her to receive this message.

Thanks for remembering to support our other loyal Democrat candidates on the ballot on Tuesday.

Sincerely,

George Miller
East Bay Democratic Chairman

8. On the same day the mailing was received, the Ball campaign's consultant placed thousands of calls to registered Democrats in California's 10th Congressional District claiming to be from the "East Bay Democrat Committee." The calls contained a message similar to the mailings and urged voters not to vote for Ellen Tauscher. The script for the phone bank stated:

Hi, I'm calling for the East Bay Democrat Committee, representing all Democrats in the East Bay, to remind you to vote for our Democrat Team on Tuesday. But we are not endorsing Ellen Tauscher for Congress. Ellen voted with Newt Gingrich and the Republican Congress to continue the impeachment process of President Bill Clinton.

We could never support her opponent, but since she did not support our President - we are not supporting her. Thank you. Goodbye.

9. A Ball campaign computer was used to compose the mailing set out in Paragraph 7. The hard drive of the Ball campaign computer formerly assigned to Plesha contained a draft of the "East Bay Democratic Committee" mailing with a creation date of October 23, 1998. That is several days before the date on the mailer, November 1, 1998, and the date when the mailer was distributed. The hard drive of the Ball campaign's computer also contains a copy of the script for the phone script set out in Paragraph 8. The hard drive of the Ball campaign's computer shows a creation date for the phone script of October 31, 1998, which is prior to when the calls were made.

10. The Ball campaign, acting through its agent Adrian Plesha, hired Stevens Printing to provide the mailing and Butzke and his company Direct Impact to arrange the phone bank.

11. Plesha sent a copy of the "East Bay Democrat Committee" phone script to Butzke via electronic mail message on October 30, 1998, at 11:21 PM eastern time. Plesha's email refers to an attached telephone script. Butzke/Direct Impact and its subcontractor provided the

Commission with a copy of a script that is identical to the one found on the Ball campaign's computer.

12. A Ball campaign computer also contains two emails sent by former Ball campaign Deputy Campaign Manager Marchant to Plesha on October 30, 1998. In the emails, Marchant forwarded to Plesha copies of Democratic voter lists for Alameda and Contra Costa counties, the counties that make up California's 10th Congressional District. Marchant states that Plesha directed him to retrieve these lists from a database maintained in the Ball campaign's Pleasanton campaign office and to forward them to Plesha at the campaign's headquarters in Walnut Creek. The modification date on these attachments is October 30, 1998, and the time listed on these attachments is several hours prior to that of the "East Bay Democrat Committee" telephone script. These voter lists match the lists that the Commission obtained from the subcontractor hired by Direct Impact. The voter lists contain the names, addresses and phone numbers of persons who had filed complaints with state authorities about the "East Bay Democratic Committee" calls and/or mailings.

13. The Ball campaign, acting through its agent Adrian Plesha, covertly arranged and financed the "East Bay Democratic Committee" mailing. While the Ball campaign routinely used its postal permit for bulk mailings, to disguise its involvement in the "East Bay Democratic Committee" mailing, it used only first class stamps. Ball campaign records indicate that the campaign stockpiled over 40,000 stamps during the month preceding the "East Bay Democratic Committee" mailing. The campaign also stockpiled standard envelopes. During the month of October 1998, Ireland Direct, the mail-house hired by Stevens Printing in connection with the Ball campaign's direct mail, issued six invoices related to an absentee ballot mailer to Stevens Printing. The total number of invoiced pieces

was 58,110. However, Stevens Printing's invoices to the Ball campaign reflect an order of 105,000 envelopes.

14. Greg Hollman, the owner of Ireland Direct, offered compelling evidence that the Ball campaign was responsible for the East Bay mailing, and that the Ball campaign went to great efforts to conceal that involvement. Hollman states that just before election day in November 1998, the owners of Stevens Printing, Jeff and Steve Clark, asked his company to handle a 40,000-piece mailing. The Clarks told Hollman "you don't want to know anything about [the mailing itself]." Stevens Printing indicated that they did not want any record of the job. Hollman states that the Clarks instructed him not to issue an invoice and to accept payment in cash. They further instructed Hollman to return any spoils (mis-printed or damaged mailers) to Stevens Printing.

15. Charles Ball for Congress, acting through its agent Adrian Plesha, is responsible for the fraudulent mailing and phone bank put out under the guise of the "East Bay Democratic Committee" and designed to suppress votes for Ellen Tauscher in the 1998 general election.

16. The approximately 40,000 letters and 10,000 phone calls violated 2 U.S.C. § 441h. The creators of the communications, a candidate's campaign committee, knowingly made a false representation by pretending to be an official Democratic Party organization called the "East Bay Democratic [or Democrat] Committee." The letters stated that the committee was "Representing All Democrats in the East Bay." To bolster this deception, the mailing used the name George Miller as the signatory of the letter. Miller is a well-known Democratic Congressman in a neighboring district, which is also within the area known as the East Bay. The text of the letter shows a substantial effort to make the "East Bay Democratic

Committee" appear to be a legitimate local branch of the Democratic Party. The communications were targeted to Democrats and made it appear as if a local committee of the Democratic Party and a local Democratic leader were advocating abandonment of a Democratic member of Congress in the recipients' district. The communications were damaging to the Democratic Party, to Representatives Tauscher and Miller because they conveyed to registered Democrats that a local committee and congressman of that party believed that the nominee had abandoned the party, and urged recipients not to vote for the Democratic candidate in an election that was just days away.

17. The approximately 40,000 letters disseminated by a commercial vendor urged registered Democrats not to vote for Tauscher. The communications constitute "general public advertising," but lacked disclaimers required of express advocacy communications, in violation of 2 U.S.C. § 441d.

18. The violations in this matter were knowing and willful. To avoid being identified as the true sponsor, the Ball campaign, acting through its agent Adrian Plesha, purposely omitted the required statements indicating who paid for and sponsored these communications. To hide the source of the mailing, the Ball campaign used stamps rather than its postal meter. It also used a phony return address. The Ball campaign's vendors, acting pursuant to Plesha's instructions, hid any link between these communications and the Ball campaign. All the "spoils" were returned to Stevens Printing to leave no traces of the job. Phony invoices also were created to leave no easily identifiable evidence of the job. The Ball campaign, through Plesha, created a phony description of the phone bank, i.e. "GOTV/GOP Men," that was written on the campaign's check and check register.

19. When confronted with the Commission's findings, Plesha submitted a sworn statement absolutely denying any involvement in or knowledge of the communications. Specifically, in an October 16, 2000 sworn response, Plesha states that he first saw the "East Bay Democratic Committee" letter when a reporter contacted the campaign about it. Moreover, Plesha swore that he "did not create, edit, review, approve, authorize, finance or disseminate this [East Bay Democratic Committee] document." He also swore that he "did not approve, authorize, or finance a phone bank or calls like those you have described." There is overwhelming evidence that these sworn statements are false. Thus, the knowing and willful nature of these violations can be inferred from the efforts to impede and obstruct the Commission's investigation by submitting false statements under oath.

V. 1. Charles Ball for Congress knowingly and willfully violated 2 U.S.C. § 441h by disseminating direct mail and phone bank communications fraudulently misrepresenting itself as the local committee of the Democratic Party and candidate on a matter damaging to that Party and candidate, i.e., urging recipients not to vote for the Party's nominee.

2. Charles Ball for Congress knowingly and willfully violated 2 U.S.C. § 441d(a) by failing to place disclaimers on direct mail pieces urging the defeat of Ellen Tauscher.

3. Justin Briggs, treasurer of the Ball campaign, violated 2 U.S.C. §§ 441d(a) and 441h.

VI. The Commission has determined that the appropriate civil penalty for Respondents' violations is Twenty-Four Thousand Dollars (\$24,000) pursuant to 2 U.S.C. § 437g(a)(5). Charles Ball will pay the civil penalty to the Federal Election Commission for Respondents' violations of 2 U.S.C. §§ 441h and 441d(a). Such penalty shall be paid in 6 installments as follows:

1. One initial payment of Seven Thousand Dollars (\$7,000) due upon the signing of this agreement;
2. Thereafter, no more than 30 days from the date this agreement becomes effective, five consecutive monthly installment payments of Three Thousand Four Hundred Dollars (\$3,400) each;
3. Each such installment shall be paid within 30 days of the previous installment;
4. In the event that any installment payment is not received by the Commission by the fifth day of the month in which it becomes due, the Commission may, at its discretion, accelerate the remaining payments and cause the entire amount to become due upon ten days written notice to the Respondents. Failure by the Commission to accelerate the payments with regard to any overdue installment shall not be construed as a waiver of its right to do so with regard to future overdue installments.
5. Respondents agree to cease and desist from committing or causing any violation of 2 U.S.C. §§ 441d(a) and 441h.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY:

Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

Date

8/28/02

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Aug 6 9 53 AM '02

FOR THE RESPONDENTS:

Allison R. Hayward
Allison R. Hayward
Attorney, Charles Ball for Congress
And Justin Briggs, as treasurer

Date

7/26/02

Charles J. Ball
Charles Ball

Date

8/1/02