



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

Friends of Joe Baca
and Joe Baca, as Treasurer

)
)
) MUR 5078
)

**STATEMENT OF REASONS
COMMISSIONER DARRYL R. WOLD**

On August 24, 2000 the Commission found there was reason to believe that Friends of Joe Baca and Joe Baca as Treasurer violated 2 U.S.C. §434(a)(6)(A), 434(b)(4), 434(b)(8), 441a(f) and 441b(a). The violations included the Committee's receipt of excessive contributions and the failure to timely file Schedule D reports of debts and obligations owed by the Committee.

On September 25, 2001, by a vote of 5-1 the Commission voted to approve a conciliation agreement and civil penalty to be paid by the Respondents and close the file. I voted against approval because I disagreed with some of the language included in the conciliation agreement at the request of the Respondents, in which the Respondents purported to minimize the seriousness of the violations.

The Commission has a long history of accepting language revisions by respondents to its conciliation agreements. These language changes, usually couched as "contends" language, provide respondents the opportunity to clarify their position on the facts of the case and the violations. The Commission usually accepts this "contends" language as long as it is factually accurate and does not contradict the respondent's admission of the violations.

As a general rule, I support a respondent's request to include "contends" language in a conciliation agreement. However, the language in this agreement was beyond the pale of acceptable contends language.

Among other things, the Respondents contend that the Committee "used its best efforts to refund the excessive contributions promptly" even though the excessive contributions received by the Committee were not refunded for over three months. In my opinion, taking over three months to return excessive contributions is not prompt.

21 OCT 405 3229

21 04 405 3230

Of greater concern to me is the Respondents' language in paragraph IV, 13 of the conciliation agreement that describes the Committee's complete failure to file its Schedule D reports as part of the Pre-Primary Report (1/1/00-2/16/00) and the April Quarterly Report (2/17/00-3/31/00) as "technical and not substantial." One of the major missions of the Agency is to provide information to the public on the financial activity of federal candidates to help better inform the public about the candidates before Election Day. We cannot complete that mission if the candidates do not file their reports with us timely. In this particular case, the Committee did not file its Schedule D's for these two reports until almost seven months following the election.

I cannot accept, even couched in contention language, that "the omissions were technical and not substantive." The August 26th amendment regarding the pre-primary report showed the Committee with \$161,937 of debts outstanding at the beginning of the period, \$21,457 of payments during the period, and an outstanding balance of \$144,620 at the end of the period. As for the amendment filed on September 11, 2000 regarding the April Quarterly report, the numbers reflected a beginning balance of \$124,096, \$27,605 in payments, and a \$106,990 outstanding debt balance. Further, the amendments disclosed that substantial portions of the debts reported were owed to corporate vendors who were in effect carrying the campaign by not collecting amounts due them. Failing to provide this information to the public until seven months following the election is not "technical and not substantive."

The contends language continued in paragraph IV, 13 to state that "the amendments which included complete and accurate information promptly cured any defects." I disagree. The Committee filed several additional amendments regarding the Pre-primary and April Quarterly reports before the end of the year. These additional amendments reflected significantly higher debts outstanding than had been reported for both reports. A subsequent amendment for the Pre-Primary report filed October 28, 2000 showed the debts outstanding were actually \$231,718 as compared to the August filing that showed only \$144,620. The August amendment understated the Committee's debts outstanding by \$87,098. The subsequent amendment filed on October 28, 2000 regarding the April Quarterly increased the amount of debts outstanding to \$186,661 from the September filing of \$106,990. The September filing was understated by \$79,671. Therefore, I could not accept a conciliation agreement that allowed the Respondents to profess that their amendments "included complete and accurate information [and] promptly cured any defects." They obviously did not.

October 24, 2001
Date

Darryl R. Wold
Darryl R. Wold, Commissioner