



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

NOV 20 2000

Michael Ohleyer, Treasurer  
Friends of Barbara Boxer  
PO Box 641751  
Los Angeles, CA 90064

RE: MUR 5153  
Friends of Barbara Boxer and  
Michael Ohleyer, as treasurer

Dear Mr. Ohleyer:

On November 15, 2000, the Federal Election Commission ("the Commission") found that there is reason to believe Friends of Barbara Boxer and you, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("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. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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.

If you intend to be represented by counsel in this matter, 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 notifications and other communications from the Commission.

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.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Michael E. Scurry, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold  
Chairman

Enclosures:

Factual and Legal Analysis  
Procedures  
Designation of Counsel Form  
Conciliation Agreement

cc:

The Honorable Barbara Boxer  
112 Hart Senate Office Building  
Washington, DC 20510

21 "04" 405 "0951

## FEDERAL ELECTION COMMISSION

### FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Barbara Boxer  
Michael Ohleyer, as treasurer

MUR: 5153

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires the principal campaign committee of candidate to notify the Secretary of the Senate, the Commission, and the Secretary of State, as appropriate, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20<sup>th</sup> day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A). The committee must make this notification within 48 hours after the receipt of such contribution and must include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. *Id.*; *See also* 11 C.F.R. § 104.5(f). Friends of Barbara Boxer ("the Committee") is the principal campaign committee of a candidate. Michael Ohleyer is the treasurer of Friends of Barbara Boxer.

#### The Reports Analysis Division Referral

The Respondents failed to file 48-Hour Notifications ("48-Hour Notices") for contributions totaling \$72,222.77 received after the 20<sup>th</sup> day, but more than 48 hours before, the 1998 General Election. The 1998 General Election occurred on November 3, 1998. The Reports Analysis Division ("RAD") referred contributions totaling \$73,222.77. It was learned from the

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Committee's amended 30 Day Post-General Reports, however, that the Committee returned a contribution of \$1,000.<sup>1</sup> See Appendix A. Therefore, the \$1,000 contribution does not appear to involve a violation of 2 U.S.C. § 434(a)(6)(A) and has not been included in the calculation of the civil penalty.

The Committee received notice that these contributions required the filing of 48-Hour Notices. Prior Notice was sent to the Committee on September 30, 1998. The Notice contained a section entitled "48 Hour Notices on Contributions." This section reads: "Notices are required if the committee receives contributions (including in-kind gifts or advances of goods or services; loans from the candidate or other non-bank sources; and guarantees or endorsements of loans to the candidate or committee) of \$1,000 or more, during the period of October 15 through October 31. The notices must reach the appropriate federal and state filing offices within 48 hours of the committee's receipt of the contribution(s)."

The Committee's original and amended 1998 Post General Election Reports indicate that it failed to file 48-Hour Notices for contributions received during the 48-Hour Notice period. On January 19, 1999, a Request for Additional Information ("RFAI") was sent to the Committee since contributions appeared on the Post General Election Report, but were not reported in 48-Hour Notices. The RFAI noted that the Committee may have failed to file one or more of the required 48-Hour Notices for "last minute" contributions of \$1,000 or more. The RFAI stated that although the Commission may take legal steps, any response by the Committee would be taken into consideration.

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<sup>1</sup> The fundraising representative, Boxer/Davis Victory '98, refunded a \$1,000 contribution from Stuart Rice on December 12, 1998.

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On February 12, 1999, the RAD analyst telephoned Renita Smith, a Committee representative, to inform her that the Committee failed to file 48-Hour Notices for contributions from individuals and political action committees. Ms. Smith requested a list of contributors for which 48-Hour Notices were not filed so that she could determine the source of the problem, and the RAD analyst complied by faxing a copy of the list. On February 17, 1999, Ms. Smith telephoned the RAD analyst and stated that many of the contributions reported as being received during the 48-Hour Notice period were incorrectly dated on the Post-General Election Report. Ms. Smith claimed that a miscommunication between the bank depositors and the data entry personnel resulted in the reporting of the deposit date rather than the receipt date by the Committee. Ms. Smith stated that a response would be sent out immediately.

On March 1, 1999, the Committee submitted an amended 1998 30 Day Post-General Report to the Commission regarding the missing 48-Hour Notices making various changes to the original 1998 30 Day Post-General Report. On March 9, 1999, the Committee filed another amended 30 Day Post-General Report, which changed the receipt date for some contributions.<sup>2</sup> On March 15, 1999 and May 7, 1999, additional amendments were filed covering the 30 Day Post-General reporting period, but they did not clarify the Committee's failure to file the 48-Hour Notices. To date, the Committee has failed to file any 48-Hour Notices covering the \$72,222.77 in contributions received within the reporting period at issue.

There are four fundraising representatives, who reported receiving contributions on behalf of the Committee, involved in this matter: California Victory 1998, Victory Fund '98 Joint Fundraising Committee, Boxer/Davis Victory '98, and Women's Victory Fund. The transfers

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<sup>2</sup> The only contribution at issue in this amendment was the Stuart Rice contribution of \$1,000, which was returned

from the first fundraising representative, California Victory 1998, consist of 26 contributions, totaling \$27,000.00, with receipt dates reported within the 48-Hour Notice reporting period.

There are also two remaining contributions, totaling \$2,000, from Joan Klein and Political Action Council of Educators, which were reported by this fundraising representative as received on November 12, 1998, but reported by the Committee as received on October 30, 1998.

Additionally, there are 11 contributions in which the Committee reported receipt dates prior to the dates of receipt reported by this fundraising representative.

The second fundraising representative, Victory Fund '98 Joint Fundraising Committee, reported 13 contributions totaling \$13,000 transferred to the Committee. Of the 13 contributions, 11 have receipt dates reported by this fundraising representative within the 48-Hour reporting period totaling \$11,000. Two contributions totaling \$2,000, from Friends of Dick Durbin and Lieberman 2000 Committee, were reported as received prior to the 48-Hour Notice period, but the Committee reported these contributions as received within the reporting period.

The third fundraising representative, Boxer/Davis Victory '98, reported four contributions totaling \$4,000 that were transferred to the Committee. The fundraising representative and the Committee both reported identical receipt dates, which were within the 48-Hour reporting period.

The final fundraising representative, Women's Victory Fund, reported a contribution of \$1,000 that was transferred to the Committee. Again, both the fundraising representative and the Committee reported identical receipt dates, which were within the 48-Hour reporting period.

#### Analysis

The principal campaign committee of candidate must notify the Secretary of the Senate, the Commission, and the Secretary of State, as appropriate, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20<sup>th</sup> day, but more than 48

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hours before, any election. 2 U.S.C. § 434(a)(6)(A). The committee must make this notification within 48 hours after the receipt of such contribution and must include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. *Id.*; *See also* 11 C.F.R. § 104.5(f). In this case the violation of 2 U.S.C. § 434(a)(6)(A) consists of 65 contributions totaling \$72,222.77. *See* Appendix A. Included among the 65 contributions are 19 contributions from individuals and committees totaling \$25,222.77, which were forwarded directly to the Committee. The remaining 46 contributions, totaling \$47,000.00, came from joint fundraising activities and were forwarded to the Committee by four fundraising representatives.

All 65 contributions have receipt dates reported by either the Committee or the fundraising representatives as between October 15, 1998 and October 31, 1998, which is the period requiring the filing of 48-Hour Notices. The 19 contributions from individuals and committees not received through joint fundraising activities have only one receipt date, all of which fall within the 48-Hour Notice period. An examination of contributions received through joint fundraising activities reveals that 20 have identical receipt dates reported by both the Committee and the fundraising representatives. Each of the dates reported for these 20 contributions also fall within the 48-Hour Notice period. Accordingly, the Committee reported 39 contributions received during the 48-Hour Notice period, 19 that were received directly by the Committee and 20 that were transferred from fundraising representatives. Therefore, since the Committee failed to file 48-Hour Notices for these 39 contributions, it clearly violated the 48-Hour Notice reporting requirement. *See* 2 U.S.C. § 434(a)(6)(A).

The remaining 26 contributions, which were received through joint fundraising activities, have discrepancies between the receipt date reported by the fundraising representatives and the

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Committee. Specifically, California Victory 1998 and Victory Fund '98 Joint Fundraising Committee reported 13 such contributions. *See* Appendix A. Of the 26 contributions received by both fundraising representatives, 19 contributions were reported by the Committee as received outside the 48-Hour Notice period, while the fundraising representatives reported them as received within the 48-Hour Notice period. The receipt date reported by the fundraising representative serves as the receipt date reported by the participating committees in joint fundraising activities. 11 C.F.R. § 102.17(c)(3)(iii). In this case the Committee was a participating political committee and received transfers from the fundraising representatives and, therefore, was bound to report the date the fundraising representatives received the contributions from the contributors. *See id.* Accordingly, the Committee's failure to file 48-Hour Notices for the 19 contributions violated 2 U.S.C. § 434(a)(6)(A).

In four other instances, taken from the 26 contributions with inconsistent receipt dates, the Committee reported receipt dates within the 48-Hour Notice period, but the fundraising representatives, California Victory 1998 and Victory Fund '98 Joint Fundraising Committee, reported receipt dates outside the 48-Hour Notice period. *See* Appendix A. In these instances the dates reported by the Committee should be relied upon since it had the funds under its control prior to the receipt date reported by the two fundraising representatives. Thus, the Committee reported receipt of the contributions transferred from the fundraising representatives at a time when the fundraising representatives had not yet reported receiving the contributions. Therefore, since the Committee reported, in its 30 Day Post-General Report, four contributions as received within the 48-Hour Notice period, it violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-Hour Notices.



Finally, in three instances, out of the 26 contributions described above, the Committee and the fundraising representatives reported different receipt dates that fell within the 48-Hour Notice period. Since the Committee was required to report the receipt dates of the fundraising representatives, the three contributions must be considered as falling within the 48-Hour Notice period.<sup>3</sup> See 11 C.F.R. § 102.17(c)(3)(iii). Therefore, the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-Hour Notices for these three contributions.

#### Conclusion

Therefore, there is reason to believe that Friends of Barbara Boxer and Michael Ohleyer, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-Hour Notifications for contributions received prior to the 1998 General Election.

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<sup>3</sup> Even if the Committee's receipt dates are used they still fall within the 48-Hour Notice period and, therefore, indicate violations of 2 U.S.C. § 434(a)(6)(A), for failing to file 48-Hour Notices.

## APPENDIX A

### Contributions directly to the Committee

#### Individual contributions received by the Committee

Reddick, Frank	\$1,000
Kiesel, Paul	\$1,000
Simmons, Timothy	\$1,000
Coleman, Marc	\$1,000
Brown, Melissa	\$1,000
Hunkapiller, Mary	\$1,000
Kim, Jong	\$1,000
Boone, Roger	\$1,000
Caplan, Sandra	\$1,000
Roth, Joan	\$1,000
Oristaglio, Jeryl	\$1,000
<i>Total of 11</i>	<i>Total of \$11,000</i>

#### Political action committee contributions received by the Committee

American Veterinary Medical PAC	\$1,000
EMILYS List	\$5,000
MEBA PAF	\$1,000
PASS PAC	\$1,000
Paul Magliocchetti Associates PAC	\$1,000
Handgun Control PAC	\$3,222.77
Brotherhood of Maintenance of Way PAC	\$1,000
Syntex USA Employee PAC	\$1,000
<i>Total of 8</i>	<i>Total of \$14,222.77</i>

### Contributions from fundraising representatives

[**bold**: discrepancy in receipt dates by the Committee and fundraising representative

\*: receipt date by the Committee within 48-Hour period, but fundraising representative receipt date outside the 48-Hour Notice period]

#### Transfers received from California Victory 1998

<b>Bhaumik, Mani</b>	\$1,000
<b>Eliel, Carol</b>	\$1,000
<b>Fifield, Tara</b>	\$1,000
<b>Harrington, Richard</b>	\$1,000
<b>Hirsch, Joel</b>	\$1,000
<b>Klein, Carole</b>	\$1,000
<b>Kotkov, Caroline</b>	\$1,000
<b>Latanich, Terry</b>	\$1,000
<b>Mack, Marilyn</b>	\$1,000
<b>Nemirov, Grant</b>	\$1,000
<b>Dell, George</b>	\$1,000
Deutch, Irwin	\$1,000
Miyashita, Mary	\$1,000

Shtofman, Robert	\$1,000
Schoenke, Raymond	\$1,000
Stone, Oliver	\$1,000
Ancier, Garth	\$1,000
Hughes, Suzan	\$1,000
Mirkin, David	\$1,000
Rothman, Wendi	\$1,000
Pynoos, Morris	\$1,000
<b>Klein, Joan*</b>	<b>\$1,000*</b>
Devgan, Baldev	\$1,000
Nichols, Mary	\$1,000
Oscher, Bernard	\$1,000
Rhames, VS	\$1,000
Amer. Society of Anesth. PAC	\$2,000
<b>Political Action Council of Educators*</b>	<b>\$1,000*</b>
<i>Total of 28</i>	<i>Total of \$29,000</i>

Transfers received from Victory Fund '98 Joint Fundraising Committee

<b>Alafi, Christopher</b>	\$1,000
<b>Costa, Harry</b>	\$1,000
<b>Currens, Douglas</b>	\$1,000
<b>Enos, Laura</b>	\$1,000
<b>O'Brien, Catherine</b>	\$1,000
<b>Rosenstein, Barry</b>	\$1,000
<b>Young, James</b>	\$1,000
<b>Mattes, Martin</b>	\$1,000
<b>Tabibian, Ina</b>	\$1,000
<b>Hooper, Palma</b>	\$1,000
<b>Nellis, Penelope</b>	\$1,000
<b>Friends of Dick Durbin*</b>	<b>\$1,000*</b>
<b>Lieberman 2000 Committee*</b>	<b>\$1,000*</b>
<i>Total of 13</i>	<i>Total of \$13,000</i>

Transfers received from Boxer/Davis Victory '98

Marcus, Michael	\$1,000	
Shaugnessy, Charles	\$1,000	
Byrne, Katherine	\$1,000	
Rice, Stuart	<u>Returned by the Committee</u>	<u>\$1,000</u> <u>Not counted toward civil penalty</u>
Rice, Laurie	\$1,000	
<i>Total of 5</i>	<i>Total of \$4,000</i>	

Transfer received from Women's Victory Fund

Murray, Maureen	\$1,000
<i>Total of 1</i>	<i>Total of \$1,000</i>