

**SMITH KAUFMAN LLP**  
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January 4, 2001

*Via Federal Express*

Direct (213) 452-6550

Michael E. Scurry  
Federal Election Commission  
999 E Street, NW  
Washington, D.C. 20463

Re: MUR 5153  
Friends of Barbara Boxer and Michael Ohleyer, as Treasurer

Dear Mr. Scurry:

This shall respond to your letter of December 20, 2000, and supplement our response on behalf of Friends of Barbara Boxer and Michael Ohleyer, as Treasurer, to the FEC's November 20, 2000 letter, proposed Conciliation Agreement and Factual and Legal Analysis.

First, enclosed with this letter is a Declaration of Andrew Wender and supporting exhibits providing additional information regarding the political action committee contributions received by the Committee on October 14, 1998.

Second, for clarification purposes, the Committee originally received notice of an in-kind contribution from Handgun Control PAC in a letter dated November 30, 1998. The date November 30, 2000, appeared in our December 15, 2000 letter as a result of a typographical error.

Third, the November 30, 1998 letter from Handgun Control PAC was the first notice of this in-kind contribution received by the Committee. The enclosed Declaration of Rosemarie Kapolczynski and supporting exhibit provides additional facts to substantiate that the Committee did not become aware of this in-kind contribution until after the expiration of the 48-hour notice period.

Further, with respect to advice previously given by the Commission, representatives of the Committee sought informal advice over the telephone from the Commission's staff during the 1998 primary and general election campaigns. The Committee, among other things, attempted to determine the proper procedures for filing 48-hour reports for contributions received through joint fundraising committees.

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
JAN 5 2 39 PM '01

21-01-405-0987

Michael E. Scurry  
January 4, 2001  
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21-04-405-0988

The Committee was unable to obtain definitive advice during the campaign as to the Committee's obligation to file 48-hour notices. This is true of both the issue of which committees (the joint fundraising committee or the participating committees) had a filing obligation and, if so, what that filing obligation was. In this context, the Committee attempted in good faith to comply with the law and provide full disclosure of the Committee's joint fundraising activities, even at the risk of over-reporting. We recently became aware that during this last election cycle the FEC rendered advice indicating that participating committees' filing obligations are based on the date that the participating committees receive a transfer of funds from the joint fundraising committee, rather than the date that the individual contribution is received by the joint fundraising representative.

Finally, you asked about the processing of contributions received through Boxer/Davis Victory '98 and Women's Victory Fund, two joint fundraising committees in which the Committee was one of numerous participants. After receiving contributions, the joint fundraising representative made a preliminary allocation of each contribution among the participating committees. The joint fundraising representative then asked the participating committees to confirm whether or not they could accept the proposed allocated shares of each contribution. During the latter stages of the general election campaign, Friends of Barbara Boxer was often unable to receive its full allocated share of each contribution because the contributors had already made direct contributions to the Committee. Thus, joint fundraising contributions frequently had to be reallocated among the participants after the joint fundraising representative received responses from all of the participants. Only then would a transfer of funds be made to the participating committees along with a spreadsheet indicating each committee's allocated share of the individual contributions received by the joint fundraising representative. This process often took days or weeks to complete.

Again, we urge the Commission to consider these facts and circumstances in determining whether or not to pursue this claim. We await your further response and look forward to speaking with you further to resolve this matter.

Very truly yours,



Stephen J. Kaufman

SJK/lo

Enclosures

cc: Michael Ohleyer (Via U.S. Mail With Enclosures)

21-04-405-0989

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## DECLARATION OF ANDREW WENDER

I, Andrew Wender, declare as follows:

1. I am a consultant to Friends of Barbara Boxer ("FOBB") and served in that capacity throughout 1998. As such, I have personal knowledge of the facts declared herein and, if called upon as a witness, I could and would testify competently thereto.

2. In my capacity as a consultant to FOBB, I was directly involved in reviewing and/or preparing all of the 48-hour notices that were filed by FOBB during the 1998 general election campaign. I also am readily familiar with the processes and procedures employed by FOBB for depositing and tracking contributions during the 1998 general election campaign. FOBB's general practice was to identify contributions to the Committee of \$1,000 or more received by the campaign during the 48-hour notice period and segregate them for processing and depositing into FOBB's bank account.

3. Although it has been over two (2) years since the events which are the subject of this FEC action, I recently reviewed documents maintained by the Committee with respect to the contributions received by FOBB from American Veterinary Medical PAC, MEBA PAF, Paul Magliocchetti Associates PAC and PASS PAC in order to reconstruct the facts and circumstances leading up to their inclusion on the Committee's original post-general report. The batch cover sheet for these contributions indicates that they were *received* on October 14, 1998 and *deposited* on October 15, 1998. Because October 14, 1998, the receipt date, was prior to the 48-hour notice period, I did not file 48-hour notices for them. Unfortunately, these contributions were incorrectly entered into FOBB's database on the date of deposit, leading them to be omitted from FOBB's pre-election report covering the period October 1, 1998 through October 14, 1998. This same batch included other contributions which were similarly misreported originally, but which FOBB corrected by amendment in response to letters received from the FEC in early 1999.

4. In addition, the \$5,000 contribution from EMILYS List also appears to have been received by the Committee on October 14, 1998. My review of the Committee's records as well as a Federal Express receipt recently obtained from EMILYS List leads me to

1 conclude that the check from EMILYS List, dated October 13, 1998, was among checks  
2 included in a Federal Express package which was sent by EMILYS List on October 13, 1998,  
3 and received by FOBB on October 14, 1998. A true and correct copy of the Federal Express  
4 receipt is attached hereto as Exhibit "A." In addition, the transmittal letter accompanying the  
5 check is dated October 13, 1998. A true and correct copy of the transmittal letter is attached  
6 hereto as Exhibit "B." Again, because October 14, 1998 was prior to the 48-hour notice  
7 period, I did not file a 48-hour notice for this contribution. Similar to the contributions  
8 described above, this contribution was inadvertently reported on the date it was deposited,  
9 October 15, 1998.

10 I declare under penalty of perjury under the laws of the State of California and the  
11 United States of America that the foregoing is true and correct.

12 Executed this 4<sup>th</sup> day of January, 2001, at Los Angeles, California.

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15 ANDREW WENDER  
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Dropped off: Oct 13, 1998

Payor: Shipper

Reference: 928

• Distance Based Pricing, Region 8

Airbill 808868032638 ✓  
Service Type FedEx Priority Overnight  
Postage Type FedEx Pak  
Region 8  
Pieces 1  
Weight 1.0 lbs  
Delivered Oct 14, 1998 10:08  
Service A1  
Area Code A1  
Signed by A.NIME

Sender  
CALLIE CARBAUGH  
EMILY'S LIST  
805 15TH ST NW STE 400  
WASHINGTON DC 20005-2264 US

Recipient  
FRIENDS OF BARBARA BOXER  
11090 SANTA MONICA BLVD STE 20  
LOS ANGELES CA 90025 US

PLUS

Transportation Charges

20.55

Total Transportation Charges

USD \$

20.55

FedEx Internal Use: 828827086/03878/ /

EXHIBIT

A

EMILY'S LIST

POLITICAL NETWORK  
FOR PRO-CHOICE  
DEMOCRATIC WOMEN

October 13, 1998

Senator Barbara Boxer  
Friends of Barbara Boxer  
11050 Santa Monica Blvd.  
Suite 200  
Los Angeles, CA 90025

Dear Senator Boxer:

Enclosed is a contribution for your general election campaign in the amount of \$5,000. It is with great pleasure that EMILY's List makes this contribution.

EMILY's List is a multi-candidate political action committee, registered with the Federal Election Commission (ID#C00193433).

Please contact Ann Marie Habershaw at 202-326-1451 if you need any additional information.

Best Regards,

  
Mary Beth Cahill  
Executive Director

Enclosure

Ellen R. Malcolm, President

Mary Beth Cahill, Executive Director

Honorary Advisors:

Senator Barbara Boxer  
Representative Corrine Brown  
Representative Julia Carson  
Representative Eva Clayton  
Representative Diana DeGette  
Representative Rosa DeLauro  
Representative Anna Eshoo  
Senator Dianne Feinstein  
Representative Elizabeth Furse  
Representative Jane Harman  
Representative Darlene Hooley  
Representative Eddie Bernice Johnson  
Representative Barbara Kennelly  
Representative Carolyn Kilpatrick  
Representative Sheila Jackson Lee  
Senator Mary Landrieu  
Representative Zoe Lofgren  
Representative Nita Lowey  
Representative Carolyn Maloney  
Representative Carolyn McCarthy  
Representative Karen McCarthy  
Representative Juanita Millender-McDonald  
Representative Cynthia McKinney  
Representative Carrie Meek  
Senator Barbara Mikulski  
Representative Patsy Mink  
Senator Carol Moseley-Braun  
Senator Patty Murray  
Representative Eleanor Holmes Norton  
Representative Nancy Pelosi  
Representative Lynn Rivers  
Representative Lucille Roybal-Allard  
Representative Loretta Sanchez  
Governor Jeanne Shaheen  
Representative Louise Slaughter  
Representative Debbie Stabenow  
Representative Ellen Tauscher  
Representative Nydia Velázquez  
Representative Maxine Waters  
Representative Lynn Woolsey  
Honorable Leslie Byrne  
Honorable Maria Cantwell  
Honorable Barbara-Rose Collins  
Honorable Cardiss Collins  
Honorable Karen English  
Honorable Blanche Lambert Lincoln  
Honorable Marjorie Margulies - Mezvinsky  
Honorable Ann Richards  
Honorable Barbara Roberts  
Honorable Lynn Schenk  
Honorable Pat Schroeder  
Honorable Karen Shepherd  
Honorable Jolene Unsoeld

EMILY's List  
805 15th Street, NW, Suite 400  
Washington, DC 20005  
Telephone: 202-326-1400  
Fax: 202-326-1415  
www.emilyslist.org

Paid for by EMILY's List  
and not authorized by any candidate.  
Printed on recycled paper  
using soy based ink.

EXHIBIT B

21-04-405-0993

SMITH KAUFMAN LLP  
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1                                    **DECLARATION OF ROSEMARIE KAPOLCZYNSKI**

2            I, Rosemarie Kapolczynski, declare as follows:

3            1.        I currently serve as State Director for U.S. Senator Barbara Boxer. Throughout  
4 1998, and at all times relevant hereto, I was the Campaign Manager for Senator Boxer's re-  
5 election campaign for the 1998 primary and general elections. As such, I have personal  
6 knowledge of the facts declared herein and, if called upon as a witness, I could and would  
7 testify competently thereto.

8            2.        Friends of Barbara Boxer ("FOBB") was the committee formed to support  
9 Senator Boxer's 1998 re-election campaign. At my direction, FOBB filed a post-general  
10 election report for the period October 15, 1998 through November 23, 1998, following the  
11 November 3, 1998 general election. On Schedule A, Line 11(c) of that report, FOBB listed  
12 an in-kind contribution of \$3,222.77 from Handgun Control PAC, for travel and lodging  
13 expenses incurred in connection with Sarah Brady's trip to California on October 26, 1998,  
14 to attend press and fundraising events on behalf of Senator Boxer.

15           3.        As campaign manager, I regularly met with the campaign's scheduling and  
16 fundraising staff to discuss upcoming events and the expenses associated with those events.  
17 It was the campaign's general practice to pay the expenses of officials, surrogates and guests  
18 who traveled to appear at events on behalf of the campaign, rather than report these expenses  
19 as in-kind contributions.

20           4.        I met with our staff prior to October 26, 1998, to discuss Sarah Brady's trip to  
21 California on behalf of the campaign. In accordance with the campaign's general practice, it  
22 was understood at that point that FOBB would pay for the travel and lodging expenses  
23 incurred by Handgun Control PAC. Those expenses were calculated into the campaign's  
24 budget for the events. It was agreed that Handgun Control PAC would bill FOBB for those  
25 travel and lodging expenses.

26           5.        I subsequently became aware that FOBB received a letter dated November 30,  
27 1998 from Handgun Control PAC, indicating that the committee intended to make an in-kind  
28 contribution of the \$3,222.77 in travel and lodging expenses to FOBB. A true and correct

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1 copy of the November 30, 1998 letter is attached hereto as Exhibit "A." Prior to receiving  
2 that letter, neither I nor anyone else associated with the campaign to my knowledge had any  
3 conversation with Handgun Control PAC about the in-kind contribution. To the contrary, the  
4 campaign intended to report the travel and lodging costs as a campaign expenditure on  
5 Schedule B. As a result of the letter from Handgun Control PAC, the campaign ultimately  
6 reported the expenses as an in-kind contribution as of the date the expenses were incurred,  
7 even though the campaign was unaware of the in-kind contribution as of that date. To my  
8 knowledge, the campaign did not receive any notice of this in-kind contribution during the  
9 48-hour notice period.

10 I declare under penalty of perjury under the laws of the State of California and the  
11 United States of America that the foregoing is true and correct.

12 Executed this 3<sup>rd</sup> day of January, 2001, at Los Angeles, California.

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14 Rosemarie Kapolczynski  
15 ROSEMARIE KAPOLCZYNSKI  
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# HANDGUN CONTROL

ONE MILLION STRONG . . . working to  
keep handguns out of the wrong hands.

November 30, 1998

Friends of Barbara Boxer  
11050 Santa Monica Blvd., #500  
Los Angeles, CA 90025

Dear Treasurer:

On Monday, October 26, 1998, Sarah Brady traveled to California to attend a press event and fundraising event endorsing Senator Boxer's re-election to the United States Senate.

We have received credit card bills for that trip. The air fare for the trip was \$2,901.00 and her hotel expenses were \$321.77. Please accept the total amount of \$3,222.77 as an in-kind contribution to the campaign, attributable to the 1998 General Election.

If you have any questions, please do not hesitate to call me.

Sincerely,



Marie C. Carbone  
Director  
Handgun Control Voter Education Fund

EXHIBIT A

5660" 504" 40" 12