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City Attorney

City of Oakland  
Public Ethics Commission  
April 4, 2005

In the Matter of )  
 ) Complaint No. 04-05  
 )

Steven Edrington and Mari Lee filed Complaint No. 04-05 on August 6, 2004. The complainants supplemented their complaint with additional comments and documentation on October 25, 2004, and again on December 17, 2004.

**I. SUMMARY OF COMPLAINT AND ALLEGATIONS**

Mr. Edrington and Ms. Lee filed Complaint No. 04-05 alleging that a local ballot measure committee, Just Cause Oakland ("Just Cause Committee"); a local non-profit corporation, People United For A Better Oakland ("PUEBLO"); and several individuals violated the Oakland Campaign Reform Act ("OCRA"), the California Political Reform Act and other provisions of law by failing to file required campaign statements, failing to report significant expenditures in connection with a local ballot measure campaign, and using City funds for political activities. **Attachment 1.**

**II. BACKGROUND**

In November, 2002, Oakland voters adopted Measure EE by a vote margin of 50.9 to 49.1 percent. Measure EE, the so-called "just cause eviction" measure, generally restricts the grounds on which tenants may be evicted from residential property. The measure was brought before Oakland voters via public initiative. The adoption of Measure EE was supported by the Just Cause Committee, which received contributions and made expenditures supporting the measure. A similar measure failed to qualify for the March, 2000, ballot due to the inability to obtain a sufficient number of qualified signatures.

**III. ANALYSIS**

**A. Obligation To File Timely And Complete Campaign Statements**

The complainants allege that the Just Cause Committee failed to timely file required campaign statements and significantly under-reported or failed to report expenditures made in support of Measure EE. Specifically, the complainants allege that the Just Cause Committee's campaign statements demonstrate that the Just Cause Committee spent only \$5,500 to gather enough signatures to place the measure on the

November, 2002, ballot, and only \$5,100 for campaign literature supporting its passage. Complainants allege these amounts are too little for the type and amount of campaign activity they observed during the election.

Under state law, every registered ballot measure committee is required to file periodic campaign statements that disclose contributions received, expenditures made and its current cash balance. All committee treasurers must sign the statements under penalty of perjury that he or she used "all reasonable diligence" in preparing and reviewing the statement and that the information contained in the statement is true and complete.

The Just Cause Committee was initially established in 2000 under the name of "Committee For Just Cause Eviction." The Just Cause Committee received contributions and made expenditures to support an unsuccessful effort to place an ordinance on the November, 2000, ballot. Campaign statements filed for the period January 1, 2000, through June 30, 2000, indicate the Committee received approximately \$18,841 in contributions and made approximately \$17,092 in expenditures in attempting to place the measure on the ballot. The single largest expenditure totaled \$9,595 for "petition circulating."

After their unsuccessful attempt to qualify the measure for the ballot in 2000, supporters renewed their effort to collect signatures to place the measure before Oakland voters in the November, 2002, election. The Just Cause Committee again received contributions and made expenditures in support of the petition drive and election campaign. For the period January 1, 2002, and December 31, 2002, a period comprising the cycle of political activity on Measure EE, the Committee initially reported contributions totaling \$71,865 and expenditures totaling \$25,296. Of these expenditures, \$5,500 is identified for petition circulating, \$5,106 for campaign literature, and \$300 for postage.

After Complaint No. 04-05 was filed, the Just Cause Committee amended its campaign statements for 2002. (According to records maintained by the City Clerk, the Committee completely failed to file a statement for the period between October, 2002, and December, 2002. It submitted a campaign statement for this period for the first time on or about August 23, 2004, and amended it on September 26, 2004.)

The amended statements for the 2002 Measure EE campaign demonstrate that the Committee received contributions totaling approximately \$95,675 - a difference of \$23,810 from its initial filings, and expenditures totaling approximately \$101,435 -- a difference of \$76,139 from its initial filings. The following chart summarizes these reporting differences:

AMOUNTS REPORTED <i><b>BEFORE</b></i> COMPLAINT FILED (*)			AMOUNTS REPORTED <i><b>AFTER</b></i> COMPLAINT FILED (*)		
Reporting Period	Contributions	Expenses	Reporting Period	Contributions	Expenses
1/1-6/30/02	17,851	295	1/1-6/30/02	18,232	23,943
7/1-9/30/02	22,979	16,870	7/1-10/19/02	62,551	32,220
10/1-10/19/02	31,035	8,131	---	---	---
10/20-12/31/02	No filing	No filing	10/20-12/31/02	14,892	45,272
<b>TOTAL FOR 2002</b>	<b>71,865</b>	<b>25,296</b>	<b>TOTAL FOR 2002</b>	<b>95,675</b>	<b>101,435</b>

(\*) Copies of the extensive campaign files are available from the Office of the City Clerk or Public Ethics Commission.

Of the amended amounts for expenditures, the Committee now reports a total of \$26,845 for petition circulating, \$15,838 for campaign literature, and \$9,367 for postage.

In an August 23, 2004, letter to the City Clerk's Office, Attica Georges, assistant Treasurer to the Committee, states that she had been "distracted from [her] PAC duties by personal life events, and therefore neglected to file on time."

***Attachment 2.***

It is clear from the Just Cause Committee's own filings that it omitted a significant portion of its financial information from required disclosure before and after the election. The Just Cause Committee did not provide this additional information until after Complaint No. 04-05 was filed. Ms. Georges has not returned Commission staff's telephone calls to explain how her "personal life events" resulted in an almost two-year reporting delay.

**B. Allegations Of Unreported Campaign Activity**

Complainants allege that even after the amended campaign statements were filed, there still exists information that not all required campaign contributions and expenditures have been reported.

**1) Campaign Mailers**

Complainants allege that the revised expenditures pertaining to campaign mailings still do not accurately reflect the true cost of producing and mailing them. Complainants contend that the amended campaign statements showing \$15,838 for campaign literature and \$9,367 for postage are insufficient to pay for the approximately five mailings that the Just Cause Committee acknowledges were sent during the course of the election.

Adam Gold, the campaign coordinator for the Just Cause Committee, told Commission staff that the Just Cause Committee was able to get "cut-rate prices on graphic design and printing that helped keep our costs down." He also

stated that the five mailings were targeted to specific groups and did not go City-wide. He states that the largest mailing "was to about 12,000" and that some "were to as few as 5-6,000 voters."

It is impossible to determine in the absence of a detailed examination of campaign records whether the revised expenditure figures are consistent with Mr. Gold's description of campaign mailers. Since OCRA does not directly regulate ballot measure campaigns, such a detailed examination is beyond the scope of this preliminary report. However Commission staff notes that the restated mailing costs might be within the ballpark of anticipated costs if the mailings were narrowly targeted and the campaign utilized discounted bulk mailing rates.

## 2) Telephone Use

Complainants make two allegations regarding telephone use. They first allege that the Just Cause Committee reports only one payment (in the amount of \$142.66) for telephone service. Mr. Gold told Commission staff that he arranged to have three telephone lines hooked into the Just Cause Committee headquarters on Telegraph Avenue in late August, 2002. Commission staff can find no entry in any campaign statement of a payment made to any recognized telephone provider after June 30, 2002.

Complainants next allege that the Just Cause Committee failed to account for "in kind" use of telephone services from other organizations. They point out that the Just Cause Committee used the telephone number of 464-1011 on its early campaign statements. At the time, this telephone number was assigned to the "Just Cause Oakland" project, a tenants' rights organization sponsored and operated out of PUEBLO offices on Park Street, Oakland. [See discussion at Section III.B.5., below.] Of more significant note are copies of emails and webpages submitted by the complainants indicating a significant amount of "phone banking" activity at PUEBLO headquarters during the time petitions were circulating and during the course of the campaign. **Attachment 3.** The emails also suggest that phone banking was conducted at the Association Of Community Organizations For Reform Now ("ACORN"), and at the Oakland law offices of Siegel & Yee.

There is no disclosure on any of the Just Cause Committee's campaign statements for "in-kind" phone banking contributions to the Measure EE campaign from PUEBLO, ACORN or Siegel & Yee. Under state law, campaigns are required to disclose the fair market value of all non-monetary (i.e., "in-kind") contributions received. Contributions of \$100 or more from a single donor must be separately itemized. Adam Gold told Commission staff that a number of organizations did their own, independent telephone banking during the campaign. Mr. Gold said that the Just Cause Campaign would occasionally provide such groups with materials and "message points" for use during their telephone outreach. The emails, however, appear to indicate that people affiliated with the campaign at least knew about, if not helped to coordinate, the telephone banking activities. It also appears that the telephone calls were made to the public at large and not just to members of certain organizations.

### **3) Campaign Fundraiser Of October 17, 2002**

Complainants submit a copy of an email and flier indicating that the Just Cause Committee held a fundraising event at their campaign headquarters on October 17, 2002. **Attachment 4.** The event was reportedly "sponsored" by two non-profit organizations, East Bay Housing Organizations ("EBHO") and Building Opportunities for Self-Sufficiency ("BOSS"), as well as a private architectural firm, Pyatok Architects. The email stated the fundraiser would feature "drinks, live music, a silent auction and speakers..." The email solicited items for use during the silent auction.

Commission staff reviewed the campaign statements and noted a number of contributions made to the Just Cause Committee on or about October 17, 2002. Absent from the reporting are any related fundraising expenses or in-kind contributions for the fundraiser. State law generally requires campaigns to disclose items donated for garage sales, raffles or auctions conducted to raise campaign funds. It also requires disclosure of any food and entertainment provided for a fundraiser. Again, there are no such disclosures itemized on the Just Cause Committee's campaign statements.

### **4) Donation Of Office Furniture**

Complainants submit a copy of a Wednesday, September 25, 2002, email in which campaign coordinator Adam Gold apparently solicited in-kind donations to furnish the Just Cause Committee's campaign headquarters. **Attachment 5.** Mr. Gold told Commission staff that only a few items were donated as a result of the solicitation. The items that were donated were used, low quality and discarded after the campaign was over. Nevertheless, state law requires all in-kind contributions to be reported and in-kind contributions of \$100 or more to be itemized. No such entries exist.

### **5) Allegations Of Use Of Paid Staff**

The complainants allege that at least two people, Adam Gold and Meika Johnson, were receiving compensation from PUEBLO but were actually directing their work towards the adoption of Measure EE. Complainants contend that the financial value for the time these employees spent working in support of Measure EE should have been disclosed by the campaign committee. Under state law, campaign committees are required to disclose salary payments made by an employer to an employee who spends 10 percent of his or her compensated time in a calendar month working on behalf of a committee.

The allegations involving Adam Gold do not appear to have merit. Mr. Gold told Commission staff that he was hired as campaign coordinator for the Just Cause Committee near the end of August, 2002. This was after the measure had qualified for the November, 2002, ballot. He told Commission staff that he received all his compensation from the campaign committee and had no other income or

employment during the campaign. (Amended campaign records show that Mr. Gold was paid \$10,231.00 for his campaign consulting services for the Measure EE campaign. He told Commission staff that was an accurate figure for his total compensation for his work.) Mr. Gold told Commission staff that he did not become an employee of PUEBLO until after the Measure EE campaign ended, in approximately January, 2003.

Meika Johnson was reportedly hired by PUEBLO in March, 2002, as a tenant organizer for the Just Cause Oakland Project. The Just Cause Oakland Project was a project operated and sponsored by PUEBLO since approximately 2000. The Just Cause Oakland Project was established to perform tenant support services, such as surveys, outreach and organizing within Oakland's rental residential community.

According to Dawn Phillips, executive director of PUEBLO from February, 2000, to approximately March, 2004, the Just Cause Oakland Project was administered by Ms. Johnson out of the PUEBLO offices on Park Avenue in Oakland. He said that Ms. Johnson was a paid employee of PUEBLO whose position was funded through private grants and contributions. Mr. Phillips said that Ms. Johnson's job as a tenant organizer did not require or anticipate that she would perform any work on the Measure EE campaign, nor did he believe that she performed any significant campaign work as part of her compensated duties. He stated that he and other PUEBLO members and workers volunteered personal time on behalf of the Measure EE campaign. Campaign coordinator Adam Gold said that his contact with Ms. Johnson was limited. He said that she would occasionally call to pass along the names of people who might be interested in volunteering their time to the campaign.

Complainants contend that it is "preposterous" to believe that Ms. Johnson would not have been doing campaign work in support of Measure EE. The attachments they provide indicate that people associated with the Just Cause Oakland Project were at least involved in soliciting signatures to place Measure EE on the ballot and soliciting contributions to the Measure EE campaign. **Attachment 6.** They also provided Commission staff with a printed Account Summary that demonstrates a significant increase in telephone activity on the Just Cause Oakland Project's dedicated telephone line in the three months surrounding the election. **Attachment 7.** Unfortunately, Commission staff was unable to locate and contact Ms. Johnson for this report. The documents alone, however, raise campaign reporting issues about the use of Ms. Johnson's compensated time and/or in-kind contributions to the Measure EE campaign.

### **C. Use Of City Funds For Campaign Purposes**

Complainants allege that money disbursed by the Oakland Fund for Children and Youth ("OFCY") to PUEBLO may have been spent in support of Measure EE.

The OFCY is a City Charter-created fund into which is dedicated 2.5 percent of Oakland's unrestricted general fund revenues annually for programs

benefiting children and youth. Between December, 2000, and July, 2002, OFCY provided two grants in the combined amount of \$367,752.65 for a particular project administered by PUEBLO -- "Youth 2 Youth for Social Justice" ("Y2YFSJ").

According to OFCY records, Y2YFSJ was established by PUEBLO in 1998 for the purpose of funding and supporting "youth-initiated social justice projects throughout Oakland." The OFCY grant money was allocated to specific youth projects by a youth-led board under the primary direction of PUEBLO employee Lakisha Ealey.

According to Dawn Phillips, all OFCY grant money was deposited into PUEBLO's general operating account. He said there was no requirement that OFCY grant money be segregated from any other grants or sources of income which PUEBLO received. He said PUEBLO used this operating account to pay most of its operational and administrative expenses, including the salaries for PUEBLO employees Ms. Ealey, Ms. Johnson and Mr. Phillips. He also said that OFCY required extensive reporting on the use of its funds. Thus while OFCY grant money was not segregated from other sources of funds, he said PUEBLO did ensure and document that it allocated an amount equal to the OFCY grants to fund legitimate Y2YFSJ projects and to pay related administrative costs, such as Ms. Ealey's salary.

Because the OFCY grant money was commingled with other sources of income, it may be very difficult to establish whether OFCY grant money was used in support of Measure EE. Commission staff is advised that the Office of the City Auditor is currently conducting a review of PUEBLO activities in connection with OFCY funds and may ultimately provide findings in regard to this allegation. Commission staff cannot reach any conclusions regarding this allegation at this time.

#### **D. Political Activities By A Non-Profit Corporation**

Complainants verbally raised the issue whether PUEBLO was engaged in political activities in conflict with its tax status as a 501(c)(3) corporation and with its own by-laws. Commission staff will address this issue in its preliminary report on Complaint No. 04-06.

#### **IV. STAFF RECOMMENDATION**

Unlike campaigns for local elective office, OCRA does not regulate ballot measure committees. Thus the Commission cannot take any direct administrative action on the above allegations. However, pursuant to Section III.B.(1)(e) of the Commission's General Complaint Procedures, Commission staff may recommend dismissal of a complaint on grounds that the allegations should be referred "to another governmental or law enforcement agency better suited to address the issues."

Based on the above discussion and Commission procedures, Commission staff recommends that the Commission refer the issues pertaining to the Just Cause Committee's late and possibly still missing financial information to the Fair Political

Practices Commission for review. Commission staff recommends that the Commission await the completion of the City Auditor's report pertaining to OCFY funds to determine whether a referral to another governmental agency is appropriate or necessary.

Respectfully submitted,

Daniel D. Purnell  
Executive Director

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*\*\* City Attorney approval as to form and legality relates specifically to the legal issues raised in the staff report. The City Attorney's approval is not an endorsement of any policy issues expressed or of the conclusions reached by staff on the merits of the underlying complaint.*