

# YES! ON PROP 2 STOP Animal Cruelty

P.O. Box 418202  
Sacramento, CA 95841  
(323) 896-1126  
YESonProp2.com

2008 SEP 11 AM 11:17

September 11, 2008

Fair Political Practices Commission  
428 J Street, Suite 620  
Sacramento, CA 95814

Re: Complaint Against The United Egg Producers, Inc., Californians for S.A.F.E. Food, a Coalition of Family Farmers, Veterinarians, and Consumers, No on Proposition 2, and the U.S. Poultry & Egg Association, filed September 3, 2008; and

New Complaint Against Numerous Major Donors To No on 2 Committee

The purpose of this letter is to follow up on the above-referenced Complaint, filed September 3d by Yes on Prop. 2 – Californians for Humane Farms, Sponsored by the Humane Society of the US, Farm Sanctuary & Other Animal Protection Groups, Family Farmers, Veterinarians, & Public Health Professionals—the official committee primarily-formed to support Proposition 2, the Prevention of Farm Animal Cruelty Act, which is set to be voted on at the November 4, 2008, general election—and Jennifer Fearing, the campaign manager of the Yes on 2 campaign.

Also filed herewith is a further Complaint, alleging the failure of one or more major contributors to the No on Proposition 2 Committee, to comply with the Major Donor reporting requirements.

As discussed in that Complaint, there was considerable evidence that the Respondents named in our original Complaint were engaged in an elaborate money-laundering scheme to channel out-of-state contributions from private donors, through UEP's corporate treasury, to the No on 2 cause, thereby depriving voters of complete disclosure in connection with Proposition 2. *Those allegations now appear to be conclusively proven, and the illegal money-laundering scheme exposed.* The scope of the money-laundering operation is breathtaking, exceeding Complainants' worst suspicions. *In fact, it may well be the largest money-laundering scheme ever uncovered, since the enactment of the Political Reform Act in 1974.*

On September 5, 2008—two days after our initial Complaint was filed—the No on 2 committee filed a 76-page LCR, disclosing **127 contributions** totaling approximately **\$4.5 million**. See <http://cal-access.ss.ca.gov/PDFGen/pdfgen.prg?filingid=1358647&amendid=0>. UEP was listed as the “intermediary” for each and every one of these contributions. The report

in question states, incredibly, that *every one* of these 127 contributions was received on September 5—a remarkable coincidence in light of the Complaint—or, *more likely, a fraudulent stratagem designed to further mislead the voters and try (unsuccessfully) to give Respondents' cover any pending action by the Commission.*

As discussed in the initial Complaint, the evidence—and particularly UEP's solicitation letter—indicates that UEP is engaged in its fund-raising activities as part of a cooperative fund-raising effort with the Pacific Egg & Poultry Association, and as an “agent” of the No on 2 committee. It is well-established that a committee “receives” a contribution when its agent/intermediary receives the contribution from the original donor—NOT when the committee itself later receives a check from the agent/intermediary. *Harker Advice Letter*, No. A-90-691, 1990 Cal. Fair-Pract. LEXIS 54 (FPPC Dec. 4, 1990). It is for this reason that a committee's agent/intermediary is required to inform the committee of the contribution “promptly”—*i.e.*, soon enough that it may be *timely* reported by the recipient committee. GOV'T CODE § 84306.

It should be *patently* clear that UEP did *not* receive these contributions on September 5, 2008, and that they should therefore have been reported by the No on 2 committee on election cycle LCR's *weeks (and even months) ago*. GOV'T CODE § 85309(b) & (d). They were not so reported.

UEP's July 15, 2008 solicitation letter (which was attached to our original Complaint) contained “a list of egg farmers, allied companies and associates that ha[d] *thus far* made contributions to United Egg Producers for the Public Awareness Project.” (Italics added; underline in original.) The letter went on to say, “Some companies have made commitments but the check is not yet in the bank and therefore not on the current list.” The contributions by those entities listed in UEP's letter as having already been made by July 15, 2008, were not previously reported by the No on Prop 2 campaign, and, tellingly, those entities now appear as contributors in the September 5 LCR.<sup>1</sup> In other words, all the evidence suggests *No on 2 has misreported the dates these contributions were received in furtherance of an apparent conspiracy with its agent UEP to collect millions of dollars, while failing to timely disclose those contributions as required by the Act.*

Respondents may try to object that UEP was not acting as an “agent” of the No on 2 committee in raising these funds. Such a claim would seriously lack credibility in light of UEP's solicitation letter, but *even if* such an agency relationship did not exist the law was nevertheless broken. In those circumstances, given the weeks- and even months-long delay in transmitting the funds, UEP would really be acting as a primarily-formed committee to oppose Proposition 2—not an intermediary. As such, it should have registered as a committee and filed its own election cycle LCRs as the contributions were made, which it did not do. GOV'T CODE

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<sup>1</sup> Astonishingly, the U.S. Poultry & Egg Association contribution, discussed in *World Poultry Magazine* and in the initial Complaint, is *still* not reported in the September 5 LCR.

§§ 82013(a) & 84101. By all reasonable appearances, reporting as an intermediary is a mere fig leaf, belatedly settled—after the Complaint was filed—as a means to obscure a pattern of serious violations of the Act over the course of several months.

A person may not evade the registration and reporting requirements by collecting a slush fund of earmarked dollars, refuse to register after 10 days, sit on the earmarked funds for months, and then save itself from a complaint by identifying itself as a mere intermediary. “To conclude otherwise . . . would compromise the Act’s purpose of achieving full and accurate disclosure. (Section 81002(a).) The Commission is under an obligation to implement the intent, and not simply the literal language, of the Act. (See *Diane Watson, et al. v. FPPC* (1990) 217 Cal.App.3d 1059.)” *Mulholland Advice Letter*, No. A-90-552, 1990 Cal. Fair-Pract. LEXIS 218, \*5-\*6 (FPPC Sept. 4, 1990).<sup>2</sup> These funds were intended for—and plainly earmarked for—use by the No on 2 campaign from the date that they were given to UEP by the contributors. They became “political” dollars at that time, and should have been reported as such.

As stated in our previous Complaint, the practical effect of Respondents’ scheme is to deprive the voters of valuable information the Political Reform Act demands they have. It allows opponents of Proposition 2 to raise tremendous funds (**\$4.5 million**) and hide them for months, rather than report them in accordance with the election cycle reporting requirements. This is a fraud upon the electorate, and should not be tolerated. These facts unquestionably support and justify the Commission conduct the investigation requested by our initial Complaint.

The foregoing also supports a broadened investigation to inquire whether the many contributors listed by UEP in its July 15, 2008 solicitation letter, and in the September 5 LCR have complied with the major donor reporting requirements. The solicitation letter indicated that its fundraising had been very successful by July 15. This was a mere two weeks after the cut-off for contributions that had to be reported on the semi-annual major donor reports, due July 31, 2008.

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<sup>2</sup> *Cf. Hensley Advice Letter*, No. No. A-07-045, 2007 Cal. Fair-Pract. LEXIS 61 \*13-\*14 n.2 (FPPC Apr. 24, 2007) (“The Commission’s ability to interpret the Act consistent with its purposes has been upheld in many cases. ‘[L]ooking at the purposes that the Political Reform Act was intended to serve, petitioner’s limitation on the scope of the term “source of income” would frustrate these purposes and lead to absurd results. Construing the term “source of income” to apply only to a “direct payor” would permit corrupt public officials to defeat the disclosure and disqualification provisions of the Act by the simple expedient of routing otherwise disclosable and disqualifying income to themselves *through intermediaries and third parties. It would be absurd to accept an interpretation of the Act that would render it so easy to evade.*’ (*Peninsula Health Care District v. FPPC*, Superior Court of California, County of Sacramento, No. 02CS01765, Superior Court Ruling on Petition for Writ of Mandate.)”).

For example, the September 5 LCR indicates that Cal-Maine Foods has donated nearly \$600,000 in three different installments. The solicitation letter indicates that at least one of those installments had already been contributed as of July 15. No major donor report for Cal-Maine Foods appears on the Secretary of State's website, and given the various questions raised by the initial Complaint and the September 5, 2008 LCR, the Commission should investigate whether a Major Donor Report should have been filed by Cal-Maine Foods on July 31, 2008.

Other large contributors (over \$50,000, who therefore would have been required to report electronically) that had apparently donated by July 15, but which did not file a Major Donor Report as of July 31 include: Creighton Brothers, Crystal Farms, Dixie Egg Company, Fort Recovery Equity, Herbruck's Poultry Ranch, Hickman's Egg Ranch, Michael Foods, Midwest Poultry Services, Morning Fresh Farms, National Foods Corp., Rose Acre Farms, R. W. Sauder, Tampa Farm Service, Wabash Valley Produce, Weaver Brothers, and Williamette Egg Farms. Given the timing of UEP's solicitation letter, it is highly likely that at least some of these contributors contributed their funds before June 30, 2008, and were therefore required to file Major Donor Reports, which they did not.

A formal complaint against these contributing entities is filed herewith, seeking an investigation of whether the major donor reporting requirements were violated.

This is one of the most egregious schemes to evade the registration and reporting requirements of the Political Reform Act ever to come to light. It is a case tailor-made for vigorous enforcement by the Commission, in the interests of the voters of California. We therefore ask that you make this investigation a high priority.

Sincerely,

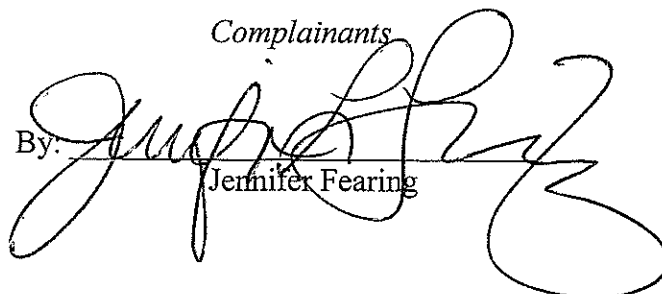
YES ON PROP. 2 – CALIFORNIANS FOR HUMANE FARMS,  
SPONSORED BY THE HUMANE SOCIETY OF THE US, FARM  
SANCTUARY & OTHER ANIMAL PROTECTION GROUPS,  
FAMILY FARMERS, VETERINARIANS, & PUBLIC HEALTH  
PROFESSIONALS

&

JENNIFER FEARING,

*Complainants*

By:



Jennifer Fearing