

***Stand Up For California!***  
**“Citizens making a difference”**

[www.standupca.org](http://www.standupca.org)

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Jan. 7, 2010

Attorney Randy Riddle  
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**RE: Conflict of Interest – Councilmember Nathaniel Bates**

Dear City Attorney Riddle:

*Stand Up For California!* writes today to request an ethical and legal determination over a potential conflict of interest for Council Member Nathaniel Bates. This is a serious request, as *Stand Up For California!* is aware of a previous federal grand jury investigation into the alleged kick-backs of Councilmember Bates in 2000 with other local Developers.<sup>1</sup>

At the January 5, 2010 council meeting it was made public that Councilmember Bates broadcasts a program on KCRT Channel 28 underwritten by the developer Jim Levine, a.k.a. Upstream. As you know, this developer is involved in a highly controversial project of a proposed off reservation tribal casino with the City of Richmond.

This existence of a real or perceived conflict of interest between the private interests and the fiduciary responsibilities of the councilman raises serious concerns over any vote that involves the developer Jim Levine, Upstream and/or land use at Point Molate. The amount of money that is involved is unknown as well as the time-frame in which the funding has occurred.

Unfortunately, this raises a red flag regarding any funding to the city, elected officials or political committees by Mr. Levine or Upstream. Certainly, the City nor its Council wishes to give the appearance of accepting soft-money for furtherance of a councilmember's political career in exchange for support of any developers project.

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<sup>1</sup> Jan 18, 2000, Contra Costa Times article. “Mike Bauman, owner and president of Bauman Landscape, said he testified that two employees told him Councilmen Nat Bates and Richard Griffin had approached them with an offer to support the firm's bid on the Parkway project in exchange for \$20,000 donations to a political action committee.(See --article Attached).

Until such time as resolution of the potential conflict of interest is resolved, we request that Councilmember Nathaniel Bates exclude himself from any and all votes regarding land use issues at Point Molate.

Sincerely,



Cheryl Schmit – Director  
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[cherylschmit@att.net](mailto:cherylschmit@att.net)

**CC:** Honorable Gayle McLaughlin – Mayor  
Honorable Council Member Tom Butt  
Federal Bureau of Investigation – Civil Corruptions Unit  
Fair Political Practices Commission

**Attachment:** Jan. 18, 2000 Contra Costa Times Article of IRS, FBI and federal grand jury investigation involving Councilman Nathaniel Bates.

**1/18/2000**

**RICHMOND** Managers with two major city contractors said they told a federal grand jury that two city councilmen solicited \$20,000 payments from their firms in 1996, just weeks before the council awarded a \$3 million roadway construction job both companies had sought.

Both managers, who testified in November before a grand jury investigating suspected City Hall corruption in Richmond, said they turned down the alleged requests.

Bauman Landscape Inc. of Richmond and San Rafael-based Ghilotti Brothers Construction were the two lowest bidders for the job to build a segment of the \$200 million Richmond Parkway, the largest public works effort in city history.

Yet in a highly unusual approval process, the council gave the job to a third contractor whose bid exceeded the lowest by more than \$250,000.

Mike Bauman, owner and president of Bauman Landscape, said he testified that two employees told him Councilmen Nat Bates and Richard Griffin had approached them with an offer to support the firm's bid on the parkway project in exchange for a \$20,000 donation to a political action committee.

"I said, No way, " Bauman told the Times. Bauman said he contacted federal authorities the next day through an industry associate.

Mario Ghilotti, vice president and general manager of Ghilotti Brothers, said he testified that Bates and former mayor George Livingston approached high-level company officials, soliciting a \$20,000 annual fee for expert consulting on contract bids.

"They said they could get (bids) through faster because they knew the workings of City Hall," Ghilotti said, recounting his testimony.

Bates and Griffin, who both pushed hard for the third bidder at council hearings on the contract, denied the allegations.

"I never put any pressure on Bauman or anyone else to give me a financial contribution. Absolutely not," Griffin said.

Asked if he tried to solicit money from any of the bidders, Bates said, "Absolutely not."

"To make the accusation that anybody can just come in here and buy a bid, it's just not true," he said.

Livingston, Griffin's brother-in-law and a longtime political ally of Bates, declined to comment. Livingston had left the council in 1993.

The testimony sheds light on a far-reaching federal probe that went public in October when scores of FBI and IRS agents, in an early-morning sweep, visited dozens of influential political and business leaders with ties to Richmond.

Most questions, according to people visited, surrounded possible payoffs to city officials in exchange for votes or favors. Bates and Griffin said they have not testified before the grand jury, and that federal officials have not told them they are targets in the probe.

Several people who were questioned by the FBI or called before the grand jury said they were asked specifically about the parkway contract, known as Richmond Parkway 1B-South, Phase 1. Some believe it is the focus of the investigation.

Federal authorities reviewing several city deals have requested dozens of boxes of records related to 1B-South, Phase 1 one of eight major pieces of Richmond Parkway, a 7.6-mile link between Interstates 80 and 580 and a critical new avenue for development in the city.

Bates and Griffin, longtime allies on the council, said they do not remember meeting with any firms before the council awarded the job.

They said they do not recall many details of the contract or the bidding process, except that the third bidder had what they saw as the strongest plan for putting minority-owned subcontractors and, more importantly, black-owned companies to work.

Yet city records show none of the three bidders met the city's prescribed minority hiring goals for the project, throwing the contract into more subjective waters where the council weighed each firm's effort to comply.

The debate on 1B-South stretched over three contentious council meetings. Despite advice from the city attorney to rebid the project, the council, by one vote, awarded the contract in November 1996. Of the seven parkway segments now completed, it was the only one not given to the lowest bidder.

#### The testimony

Last October, managers from Bauman and Ghilotti Brothers were subpoenaed to testify in front of a federal grand jury seated at the U.S. District Court in Oakland.

Three managers Mario Ghilotti, Mike Bauman and a high-ranking Bauman manager who asked that his name not be printed because he didn't want the notoriety of being identified as a witness in the case agreed to talk with the Times about their sworn testimony.

All three said they testified that the firms were solicited after submitting their bids for the project Aug. 30, 1996, but before the City Council first met to discuss the job Nov. 5.

Mario Ghilotti of Ghilotti Brothers said he testified that Bates and Livingston approached the company as "former mayors" who worked for Inside Public Relations, a lobbying and consulting business set up by the pair. They offered their services to "expedite contract approvals," Ghilotti said.

"I've hired consultants before, but I've never hired a consultant who's sitting on a council to smooth out a job," Ghilotti told the Times.

City records show Bates paid for a Richmond business license for the firm in February 1994, when he was off the council. Bates said he left the firm before he was elected to the council in 1995, and that Livingston maintained it out of his home. Livingston said the agency remains "kind of" active.

"We worked with anyone who had a problem with governmental agencies," Bates said, declining to name specific clients. "Lobbying, consulting, whatever their needs were. Both of us had a long history of political experience, and we utilized it to assist other people."

Between them, Livingston and Bates have served more than four decades on the council.

The Bauman manager who spoke on condition of anonymity said he testified that he, a colleague, Bates and Griffin met at a brunch set up by a representative of a subcontractor the company had slated for part of the parkway job.

"We were talking about the job and about working with (the subcontractor), " the Bauman official said.

"About halfway through, that's when (Bates and Griffin) brought through the idea that we should contribute to this fund. They say they would like us to donate \$20,000 to this campaign fund, a certain PAC." he said. "They said they could almost assure us the job if we made the contribution."

The Bauman official said he did not remember the name of the political action committee.

He said he testified that he told Bates and Griffin he lacked the authority to approve a company campaign contribution, then immediately took the offer to his boss, Mike Bauman.

Bauman said he told the grand jury his employees approached him asking what to do after being asked for a campaign contribution. Bauman told the Times he called an industry associate the next day for advice, and the associate helped him contact the FBI.

"We didn't know what to do. It was kind of a shock, " Bauman said "The reason why we called the FBI is we didn't want this kind of stuff going on."

Bauman said he talked to Mario Ghilotti in the days after the alleged offer. He said Ghilotti called him back a week or two later, saying Bates and Livingston had made a similar offer to his firm.

"Mario called and said, I couldn't believe it until they did it to me, " Bauman said.

Both firms ultimately lost the parkway project to the third bidder, Ghilotti Construction Co. of Santa Rosa. Once a single business, Ghilotti Construction and Ghilotti Brothers split in July 1992.

Ghilotti Construction won the contract with a bid that was \$254,000 more than the original low bidder. Reached last week, Jim Ghilotti, vice president and general manager of Ghilotti Construction, said, "I'm sorry, we cannot comment at this time."

Assistant U.S. Attorney Ben Burch, one of the prosecutors handling the Richmond case, said Monday that Ghilotti Construction is not a target of the investigation.

"Ghilotti Construction is not a suspect, " Burch said. He would not elaborate.

George Grotz, the FBI's spokesman in San Francisco, declined to comment.

The players

The three companies that bid on the project are no strangers to working in Richmond. Over the past decade they have won more than \$40 million in city contracting work.

In the 1990s, **Ghilotti Construction** completed six city contracts for more than \$14 million, including three parkway jobs worth \$11.9 million, city finance records show. In that time, **Ghilotti Brothers** won 14 city contracts worth more than \$7 million. **Bauman Landscape** handled 29 jobs for nearly \$20 million.

Before voting for **Ghilotti Construction** on the 1B-South contract, **Bates** and **Griffin** pushed for the firm, saying it had the best affirmative action plan. They stressed that the firm's bid assigned 26 percent of the job to black-owned subcontractors certified by city staff.

"I do know (**Ghilotti Construction**) had a lot of Richmond representation," **Griffin** told the Times this month, referring to the firm's roster of subcontractors. "Based on some information I had received, some of those people were Richmond residents, and some were ex-cons, and they were working very hard to straighten out their lives."

In public meetings in November 1996, **Bates** and **Griffin** said the two lower bids which called for 6 percent and 11 percent of the work to go to black-owned companies were an affront to a city where almost half of residents are black.

Council members **Irma Anderson**, **Alex Evans** and **Lesa McIntosh** also voted for **Ghilotti Construction**.

Mayor **Rosemary Corbin** and Councilmen **Tom Butt** and **John Marquez** voted no. **Donna Powers**, who left the council in November, abstained because of a conflict of interest. Her husband, **Tom Powers**, had worked as a consultant with **Bauman** on a county project, she said.

"All I can do is say, Hey, I know what I did, and what I did was legitimate and on the up and up, " **Bates** told the Times. "I can't control what people think or their assumptions. That's the way these bids go you win some and lose some.

"I don't recall all of the ins and outs, " said **Bates**. "All I can say is as a general rule, the bidder with the strongest affirmative action gets the job."

#### A convoluted process

A Times investigation into the 1B-South contract award from the first ranking of bids to its final approval reveals a more subjective process that started when all three companies failed to meet the city's goals for putting minorities and women to work.

The council was mixed in its support of the contractors and at times inconsistent. Some wanted all the bids tossed out. In recent interviews with eight of nine council members,

all said they do not have a clear memory of the process, which spanned three council sessions.

In audio and video recordings of the meetings, one thing is clear: **Bates** and Griffin argued forcefully for **Ghilotti Construction**.

"You ought to look at what (the third bidder) has to offer, and award the contract to him," **Bates** said Nov. 5, 1996, when the council first discussed the contract.

State contract law requires bidding for public work to follow a simple rule: The lowest responsive bidder gets the contract.

In 1996 before state Proposition 209 outlawed minority and women preferences in contracting contractors in Richmond were deemed "responsive" only if they paired their bids with a plan to use disadvantaged subcontractors on the job.

The city's stated goals for 1B-South were for certified minority-owned companies to do 30 percent of the work, and women-owned companies to do 10 percent.

All three bidders fell short of those goals. That left the process resting on a second standard in the city's affirmative action ordinance: so-called "good-faith" efforts to achieve the goals.

Under the ordinance enacted in May 1995, a contractor can show good faith by, among other things, advertising for disadvantaged firms, calling on minority trade and assistance groups and identifying specific job areas that could go to minorities or women.

If the low bidder meets the good-faith test, it should win the job regardless of how close it came to the percentage hiring goals, said City Attorney Malcolm Hunter. Only if the low bidder misses both the goals and the good-faith hurdle can the city reject it for a higher bidder, the ordinance states.

On 1B-South, five members of the council awarded the job to the bidder with the highest price, **Ghilotti Construction**, even after:

**Ghilotti Brothers** was first judged to have made a good-faith effort both by city staff and by a council committee on affirmative action, city records show.

The committee recommended the contract go to **Ghilotti Brothers**.

The committee, sent back by the council to do a second review, recommended all bids be tossed out.

Hunter, the city attorney, advised rebidding the contract as the safest legal position.

## Bauman dismissed early

Opened in November 1997, Richmond Parkway was financed by sales taxes, bridge tolls, developer fees and contributions from cities and businesses benefiting from its construction and a growth boom anticipated along the route.

The 1B-South, Phase 1 segment was entirely road work paving, curbs, gutters, pipes, utilities on Garrard Boulevard near I-580. Three bids came in on the project: **Ghilotti Brothers** offered a price of \$3,074,000; Bauman bid \$3,181,000; **Ghilotti Construction** came in at \$3,328,000.

On many city projects, contractors earn bid discounts for supporting a local and diverse work force, with specific benchmarks for various ethnic groups. Used only to rank the bidders, the discounts have no bearing on whether a firm is deemed responsive to the city's affirmative action goals.

Bauman received a 6 percent bid discount on 1B-South, which landed it in the low spot, with an adjusted bid price of \$2,990,000, records show. No other discounts were given.

Bauman got the discount because it was located in Richmond and because its roster of subcontractors for the job met "all but one of the ethnic specific targets and both of the gender targets, " according to the city's Office of Contract Compliance.

But Sheila Reed, the lead compliance officer on the project, reported on Oct. 9, 1996 that Bauman missed the hiring goal for the project and did not take its good-faith efforts far enough.

The report deemed Bauman "non-responsive, " and recommended that the City Council disqualify the firm. In an interview, Reed said her opinion was based solely on research and that she was not lobbied or influenced by council members or anyone else.

Bauman's failure of the good-faith test was not unprecedented, said Reed. Companies have been known to come within a step of the city's affirmative action goals, but then fail to document their effort to take the last step, she said.

"Sometimes they assume they will make (the goals), so they don't do the good-faith documentation, " Reed said. "I just look at the paper when I make my judgment."

The council referred the issue to the Affirmative Action Committee, then composed of council members Griffin, Marquez and McIntosh. McIntosh left the City Council last year after being appointed to the East Bay Municipal Utility District board.

Butt is also named to the committee but has not regularly attended meetings, saying he thinks the affirmative action program has been "misused and abused."



One of the committee's primary duties is to judge good-faith efforts. More often, though, that job is left to the city's contract compliance staff, which scores the efforts on a 30-point scale. The council has convened the committee just a handful of times since 1995.

On Oct. 30, 1996, the committee, minus Butt, reviewed the contract compliance report and affirmed its recommendation, saying Bauman was short on good faith, according to a report to the City Council by McIntosh, the committee chairwoman.

Bauman was out of the running before the project ever went to a full council hearing.

### **Ghilotti vs. Ghilotti**

At the same meeting, Reed presented the committee with the contract compliance conclusion that **Ghilotti** Brothers, the next lowest bidder, "did establish a good-faith effort."

The committee, after reviewing the way Reed scored the two low bidders, agreed with her and forwarded a recommendation to the council to award the contract to **Ghilotti** Brothers.

But at a council hearing Nov. 5, a motion to give the contract to **Ghilotti** Brothers failed by one vote. Anderson, Corbin, Marquez and McIntosh voted yes; **Bates** and Griffin voted no. Butt, Evans and Powers abstained.

**Bates** and Griffin argued vigorously for colleagues to pass over **Ghilotti** Brothers in favor of **Ghilotti** Construction.

"I think it's a slap in the face of every black citizen in this community, as well as the total population in this community, " **Bates** said, noting that **Ghilotti** Construction offered the most work to black-owned companies.

Marquez countered that other minority groups should be just as important as blacks. Mayor Corbin noted that **Ghilotti** Construction was the weakest bidder on women-owned participation.

Contract compliance records show the three bidders all earmarked between 33.6 percent and 35.7 percent of the project to companies owned by minorities or women. Bauman had the highest figure; **Ghilotti** Construction had the lowest.

Mario **Ghilotti** implored the council to take a closer look at his minority hiring practices.

"We played by the rules, " he said. "We did our best."

At one point in the meeting, the council was at an impasse. None of the options award the contract to one of the firms, rebid the contract or send the bids back to the Affirmative Action Committee found five votes.

Parkway director Larry Loder, the former head of the city's public works department, told the council, "In 37 years I've never seen this happen."

The council then voted again to send both **Ghilotti** firms back to the committee. The motion, made by Griffin and seconded by **Bates**, passed with support from Anderson, Evans, McIntosh and Powers.

**Bates** noted that the committee never looked at **Ghilotti** Construction's good-faith efforts.

"We ought to look at all of them to be fair and equitable," said **Bates**.

Yet the city's affirmative action ordinance states that compliance with the program is not relative: Either a low bidder is in compliance, regardless of the merits of higher bids, or not.

Hunter, the city attorney, declined to comment specifically on 1B-South, but said a responsive low bidder should always be awarded a job.

"That has always been the recommendation from the city attorney," said Marquez. "To do otherwise opens us up to lawsuits."

The vote meant **Ghilotti** Brothers would again be judged on its good-faith effort by the same committee that, just six days earlier, had ruled the firm "met the minimum requirements to establish a good-faith effort," according to the committee report.

The Affirmative Action Committee met again Nov. 8. This time, rather than review Reed's score sheet, committee member scored the firms themselves on the 30-point scale.

With a 21-point average needed to pass, **Ghilotti** Brothers received 16.33 points. All three committee members present Griffin, Marquez and McIntosh scored **Ghilotti** Brothers below 21.

The committee also voted on **Ghilotti** Construction.

According to the contract compliance report, **Ghilotti** Construction "established a good-faith effort to achieve the goals in general, but did not show a particular effort to secure the (women-owned business) participation of which their bid was severely lacking."

With passing scores from Griffin and McIntosh and a failing grade from Marquez, **Ghilotti** Construction averaged 20.67 points, just short of passing.

The committee voted 2-1 to recommend that the council reject both bids and force contractors to submit new plans and bids.

The vote

On Nov. 12, the council took up the contract again. Bates discussed how he wanted to "send a message" about hiring black firms by awarding the project to **Ghilotti Construction**.

Hunter, however, warned the council about giving the job to the high bidder.

"In light of everything, >your safest legal position is to reject all the bids and do it over again," Hunter said. In an interview last month, Hunter would not elaborate on his concerns.

The council deadlocked 4-4, with McIntosh absent, on a motion to award the contract to **Ghilotti Construction** and the hearing was continued a week.

On Nov. 19, the council voted 5-4 to award Richmond Parkway 1B-South, Phase 1 to **Ghilotti Construction**. Bates, Griffin, Anderson, Evans and McIntosh voted yes.

Mario **Ghilotti** threatened to sue the city at the final hearing, but never followed through.

"I'm not going to start suing the city and make the taxpayers pay even more money," **Ghilotti** said recently. "My lawyer said we would have won this thing. I said, 'My life is too short.' It's just awfully bad that happened."

Marquez called it the most unusual contract award process he has seen in 12 years on the council.

"It's not unusual to send a bid to the Affirmative Action Committee one time, but to go back to it twice and in essence reverse the decision, that was unusual," said Marquez.

Marquez remembers being angry. "We were taking unusual steps to give out a contract under unusual circumstances."

Evans said last week he does not recall being lobbied on his vote. He said he made his choice for **Ghilotti Construction** largely because of the firm's high marks for black-owned subcontractors. Evans said he specifically recalls agreeing with Bates' assessment.

Anderson said she does not remember the 1B-South contract approval process. "I cannot even tell you the situation or why I voted for it," she said. "What's best for the city that's how I make my decisions."

McIntosh declined comment, saying, "I don't think it's appropriate; there's an investigation going on."

Butt, Corbin, and Powers all said they do not recall specific details of the process.

This month, the city is moving on to the last phase of the massive parkway project. Bids are due Thursday for Section 1B-South, Phase II, which will transform the same segment of roadway into a four-lane divided highway and connect the parkway to Interstate 580 at Canal Boulevard.

The city on Dec. 16 held a meeting with potential bidders to outline its affirmative action goals and requirements for the \$4.5 million project.

Among the firms who attended and purchased the project plans from the city were Bauman Landscape, Ghilotti Brothers and Ghilotti Construction.

**RICHMOND** Even as city staff hustled Friday to gather documents subpoenaed in a broad federal probe of possible political corruption at City Hall, a federal grand jury was set to hear testimony Monday from at least one person subpoenaed this week.

Nearly all of the city's 13 departments including the Redevelopment Agency, planning and Port of Richmond were involved in the effort to meet a Monday deadline to hand over documents to the FBI. City officials have asked for an extension, and federal agents are not expected to call on the city until later next week, the Times has learned.

Although the FBI has refused to confirm an investigation is under way, scores of FBI and IRS agents descended Wednesday on political, labor, business and church leaders, asking whether they knew of any illegal payoffs to city officials in exchange for political favors.

Questions came up repeatedly about city power broker Darrell Reese's ties with developers and council members, according to people interviewed. Reese is former president of and political consultant for Local 188 of the International Association of Firefighters, the city's leading fund-raising organization.

The agents have asked the city for records going back to 1992, including contracts, checks and City Council voting records involving 10 individuals and companies that have had dealings with the city.

City Manager Isiah Turner has said four of the companies are Penterra Co., developer of the 385-acre Marina Bay redevelopment project; Bauman Landscape, a contractor involved in major road projects in Richmond; Port of Richmond shipping company Levin-Richmond Terminal Corp.; and Wickland Oil of Martinez, which in May dropped plans for a \$55 million pipeline to funnel crude oil from the Richmond shoreline to Delta refineries.

The Times learned Friday the other six are:

\* Dame Construction Co., one of the biggest housing developers in the El Sobrante Valley.

\* Ghilotti Construction Co., which won a \$10 million contract to build part of the Richmond Parkway.

\* Reese, who has worked as a political consultant for several of the companies named, including Penterra, Wickland, Levin, and Dame.

\* Inderjit Bal, owner of a low-rent rooming house whose use permit has come under fire several times from neighbors concerned about crime and from residents complaining of poor living conditions.

\* Architect Ricardo Magana, who was awarded a \$220,000 Redevelopment Agency contract to design shoreline projects in southern Richmond in 1997.

\* Hari Kalra, owner of the newly constructed Hilltop Food Mart, which Councilman Nat Bates fought for after it was rejected by the Planning Commission.

It was unclear Friday why federal authorities have singled out those 10. Reese is among at least seven people subpoenaed Wednesday to testify before a federal grand jury in the weeks ahead.

Bal, a 72-year-old El Sobrante resident who owns a 13-room resident hotel in Richmond's Iron Triangle neighborhood, said he was subpoenaed to appear Monday.

Bal said his hotel was forced to file for a conditional use permit in 1992 when someone claimed it had been vacant more than a year, a claim he denies.

In subsequent years, the city's Planning Commission twice voted to deny renewing the permit, but the council overruled the decisions.

Bal said Friday he was surprised to see FBI agents and did not know whether the subpoena related to the hotel.

"I asked them what this is all about, and they wouldn't tell me," Bal said. "They asked about Darrell Reese, and I said don't know him."

None of the other companies or individuals could be reached for comment late Friday.