FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3682

DATE FILMED 7/7/95 CAMERA NO. 2

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9504365520 2

MUR 3655

COMPLAINT - OCTOBER 15, 1992

9504365520 3

MARJORIE MARGOLIES MEZVINSKY
FOR U.S. CONGRESS

FEDERAL ELECTION COMMISSION
92 OCT 15 PM 5:05

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

OCT 15 10 05 AM '92

MUR 3655

October 13. 1992

Federal Election Commissioner
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioners:

The Marjorie Margolies Mezvinsky for Congress Campaign files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. SS 431 et seq., and related regulations of the Federal Election Commissioner ("FEC"), 11 C.F.R. SS 100.1 et seq, by Jon D. Fox, a candidate for the United States House of Representatives in the 13th Congressional District of Pennsylvania, and his principal campaign committee, the Fox for Congress Committeee ("the Committee") (referred to collectively hereafter as "Respondents").

Respondents have violated the FEC by failing to include proper identification notices on mailings attacking opponent Marjorie Margolies Mezvinsky. The FEC should take all necessary steps to correct this situation, including, if necessary, an audit of the books and records of the Committee, to ensure that the activities of the Committee have been conducted in complete compliance with the FECA and FEC regulations and to ensure that the public record accurately reflects the activities of the Committee.

Evidence of Violation: Failure to Included Required Disclaimer.

The FECA and the Commissioner's regulations require that any communication which advocates the election or defeat of a clearly identified candidate include a notice of who paid for the communication. 11 C.F.R. S 110.11. This requirement includes communications made by direct mail.

Attachment A to this Complaint is a mailing received by the public in the 13th Congressional District on or about October 9, 1992. The language of the mailing advocates the defeat of Marjorie Margolies Mezvinsky and promotes the election of Jon D. Fox. The mailing contains no disclaimer or other notice to identify the party who paid for the mailing. From the contents of the mailing, it is apparent that the Committee was responsible for the production and distribution of the mailing. The failure to include the disclaimer is a violation of the campaign laws.

Sincerely,

Kenneth Smukler
Campaign Manager

October 14, 1992
NOTARIAL SEAL
ARLENE RUDNEY HALPERN, Notary Public
City of Philadelphia, Phila. County
My Commission Expires June 22, 1995

Arlene Rudney Halpern Kenneth Smukler appeared before me October 14, 1992

P. O. BOX 157 ★ NARBERTH, PENNSYLVANIA 19072 ★ PHONE 215-664-5846 ★ FAX 215-664-7225

Paid for by Marjorie Margolies Mezvinsky for Congress Rob McCord Treasurer

9 5 0 4 3 6 5 5 5 2 0 4

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT 15 PM 5:06

Sworn to and subscribed before me this 14th day of October, 1992

Gilbert Rudney Halpern
Notary Public

NOTARIAL SEAL
GILBERT RUDNEY HALPERN, Notary Public
City of Philadelphia, Phila. County
My Commission Expires June 22, 1996

9504365520 5

Jon D. Fox

92 OCT 15 P.. 5:06

October 7, 1992

Dear Fellow Montgomery County Resident,

With only four weeks left until election day, I wanted to drop you a short note to explain to you my reason for running for Congress, and outline my dreams and aspirations for the 13th District should you choose me to succeed Larry Coughlin in the U.S. House of Representatives.

As you may know, I have spent the last 20 years living and working here in Montgomery County. These have been very fulfilling and worthwhile years. But if there's one thing I've found, it's that no matter how long and how hard we work to make things better here in Montgomery County, there are those in Washington working just as long and just as hard to make things worse.

I'm running for Congress to change that.

There are many changes to be made in Washington. We've got to create jobs without raising taxes, control government spending to bring down the deficit, and enact term limits for members of Congress -- no more than12 years in and out.

But perhaps the biggest change that has to be made in Congress deals not with issues, but with **attitudes**.

Anyone who watched the Thomas/Hill hearings knows what I'm talking about. For too long, lawmakers on Capitol Hill have given short shrift to women and families in our society. But with families being placed under increasing pressure and women taking an ever-growing and important role in our nation, the time is long past for Washington to realize not only that families sitting around the breakfast table are just as important as those who sit around the boardroom table, but that **gender should not be a qualification to sit at either one**.

Throughout my service to Montgomery County, I've always tried to put Montgomery County families first. Some of my accomplishments include:

- **Child Protection** - I drafted legislation to provide a statewide clearinghouse for missing children. In addition, I also authored legislation to increase penalties for child abusers and to initiate fire safety regulations to protect children in day care centers.

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- **Health Care** - I am a cofounder of the Montgomery County AIDS Task Force, and played an active role in the fight to create the Montgomery County Health Department, which now provides prenatal care and well-baby clinics in an attempt to lower the infant mortality rate.

- **Violent Crime** - I wrote the expanded Crime Victims Bill of Rights in Pennsylvania. As an Assistant DA, I aggressively prosecuted cases involving violent sex crimes against women and children, and served as a volunteer lecturer for Women Against Rape. My long-term committment to the Montgomery County Women's Center and Laurel House has given me the background to understand the challenges women are facing today.

- **Education** - I introduced bills to increase state aid for college education and increase subsidies for basic education, special education and adult literacy.

Let me make one last point about my record which has been distorted over the course of this campaign: **I am pro-choice, and believe that abortion is a private decision to be made between a woman and her physician**. Furthermore, I fully support Roe v. Wade and will support legislation to codify its provisions should the Supreme Court ever overturn it.

As you know, past accomplishments don't mean anything if they are not matched by future deeds. So let me assure you of one thing: If you choose to send me to Congress, **I will continue to make it my priority to fight for Montgomery County families.**

Whether it's married parents of two or a divorced parent of three, I believe the most pressing issue facing all families is **economic security**. Now, what do I mean by that? Economic security is the right of all Americans to earn a decent wage. But it goes beyond that.

Economic security means knowing you'll have a job when you go back to work. In this day of two-income households, it is both unfair and unrealistic to ask women to choose between having a family and enjoying a career. I support the Family and Medical Leave Act passed by Congress because it strikes the proper and necessary balance between the office and the home.

Economic security means knowing your worth in the workplace isn't less than any man's. For too long, women have been discriminated against in their jobs. There's discrimination of the paycheck, which is why I support breaking the glass ceiling to afford everyone the opportunity to rise to their level of competence. And

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there's discrimination of an uglier kind, which is why I support the Equal Remedies Act, a bill to repeal caps on damages for women victims of intentional sex discimination.

Economic security means knowing your health is just as important as anyone else's. There are special medial concerns which have a profound impact on all women in America. I support the principles of the Women's Health Equity Act, which would significantly improve research on women's health, women's access to prenatal and general health care services, and preventive health care for women.

Economic Security means knowing your children will have a better life than you. Preparing the next generation for leadership means giving them the skills to compete. That means improving our schools so that the education our children receive is truly world class. But it also means giving them the tools to compete. That means getting our economy moving again so there are jobs for students when they graduate. And it means reducing the $333 billion dollar deficit, so the legacy we leave our children is one of excellence, not debt.

I believe the choice for U.S. Congress is clear this year. It's not a matter of gender. Rather, it is a choice between an individual with 20 years of civic involvement with Montgomery County families or an individual who lists not one instance of Montgomery County public service on her biography.

I would be honored to have your support on November 3rd so that we can continue working for the improvement of the quality of lives of each and every Montgomery County family.

Sincerely,

Jon

Jon D. Fox

P.S. Please feel free to contact me at 886-3510 if you have questions or would like more information about my 20 years of service to Montgomery County.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

Kenneth Smukler, Campaign Manager
Marjorie Margolies Mezvinsky for Congress Campaign Committee
P.O. Box 157
Narberth, PA 19072

RE: MUR 3655

Dear Mr. Smukler:

This letter acknowledges receipt on October 15, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Jon D. Fox, Fox for Congress Committee and Frank Jenkins, as treasurer. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3655. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan Bernstein

Jonathan A. Bernstein
Assistant General Counsel

Enclosure
Procedures

2504365520 9

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

Jon D. Fox
312 Glen Lane
Elkins Park, PA 19117

RE: MUR 3655

Dear Mr. Fox:

The Federal Election Commission received a complaint which indicates that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3655. Please refer to this number in all future correspondence.

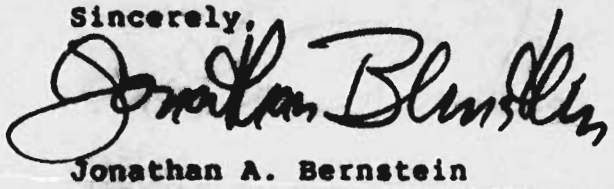
Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against you in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

25043655210

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,



Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

2504365521 1

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 19, 1992

Frank Jenkins, Treasurer
Fox for Congress Committee
231 S. Easton Road
Glenside, PA 19038

RE: MUR 3655

Dear Mr. Jenkins:

The Federal Election Commission received a complaint which indicates that the Fox for Congress Committee ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3655. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

95043655212

If you have any questions, please contact Richard M. Zanfardino, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Jonathan A. Bernstein
Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9504365521 3

OGC No. 7636

FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 NOV 24 PM 1:53

Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

November 24, 1992

Richard N. Zanfardino
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463

Re: MUR 3655

Dear Mr. Zanfardino:

Please find enclosed, the response filed by the Fox for Congress Committee, et al. in the above-referenced matter. Should you have any further questions on this, please contact me at your earliest convenience.

Thank you for your time and attention to this matter.

Very truly yours,

Paul E. Sullivan

Enclosure
cc: Jon D. Fox
Chairman Aikens
Vice Chairman Thomas
Commissioner Elliott
Commissioner McGarry
Commissioner Potter
Commissioner McDonald

9504365521 4

BEFORE THE FEDERAL ELECTION COMMISSION

In re:	)	
	)	
	)	MUR 3655
Fox for Congress Committee	)	Response to Complaint
and Frank Jenkins, as Treasurer,	)	
et al.	)	
	)	

I

FACTS

Pursuant to 2 U.S.C. §437g(a)(1) the Fox for Congress Committee, ("Committee") and Frank Jenkins as Treasurer of the Committee and Jon D. Fox, ("Respondents") file this document in response to the Complaint filed by Kenneth Smulker, Campaign Manager for Mezvinsky for U.S. Congress Campaign, against Respondents. ("Complaint").

The Complaint alleges that a three-page letter sent out on the letterhead of Jon D. Fox promoting his candidacy for election to the United States House of Representatives from the thirteenth district in Pennsylvania was paid for by the Committee but failed to include in the letter the requisite disclaimer notice as mandated by 2 U.S.C. §441d. A true and complete copy of the letter as submitted in the Complaint is attached hereto at Exhibit "A" and fully incorporated herein. ("Letter") The Complaint alleges that the Committee paid for this mailing and the disclaimer notice should have indicated that it was paid for by Fox for Congress Committee. The Complaint also alleges in the first paragraph that there were violations of the Federal Election Campaign Act of 1971, as amended ("FECA") by Jon D. Fox, candidate for the United States House of Representatives, however, the text of the Complaint merely alleges a violation by the Committee. It makes no specific allegation against Mr. Fox.

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The Letter was printed by Impress Printing, Inc. of Montgomeryville, Pennsylvania on October 5, 1992 and was delivered to the campaign on October 6, 1992. (See attached at Exhibit "B", The Declaration of William Winneberger, hereinafter "Decl.") The letterhead which was utilized for printing the Letter had previously been used by the Committee for mailings and these previous mailings had listed at the bottom of the page the appropriate disclaimer indicating it was paid for by the Fox for Congress Committee. (See Decl.)

II

ARGUMENTS

The disclaimer was deleted on the Letter due to a mistake by the printing company.

As set out in the testimony by William Winneberger in the attached Declaration at Exhibit "B", the standard letterhead which previously had the appropriate disclaimer on it was printed without the disclaimer. His explanation for the company's failure to include the disclaimer on the letterhead was that it must have fallen off the artwork before the pieces were printed. The Commission should also note in the Decl. of Mr. Winneberger that the letter was folded in such a fashion so as to obscure the area in which the Impress Printing Company had been instructed to place the disclaimer. (Decl.)

The Respondents do not contest the fact that the letter advocated the election of a clearly identified candidate, specifically Mr. Fox. Nor do they contest the fact that the disclaimer notice did not appear in the Letter as it was mailed. However, as the Committee has demonstrated above, the printing company who printed the letter mistakenly deleted the disclaimer which the

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Committee had specifically instructed be included on the letter. Thus, the testimony presented to the Commission on this matter evidences the fact that the Committee took all reasonable steps to ensure that the proper disclaimer was printed on the letter, however due to a mistake by the printer, it was in fact deleted.

For the reasons stated above, it is obvious the Committee did not intentionally delete the disclaimer. In addition, it was clear from the letterhead and text, that this came from the Committee and not an unauthorized source.

Therefore, the Committee and Mr. Jenkins as treasurer would request that the Commission make a finding of no reason to believe and close the file against the Committee and Mr. Franklin as treasurer for the Committee.

With regard to the apparent allegation made in the Complaint against the candidate, Jon D. Fox, due to the fact that the Complainant has failed to allege any facts whatsoever which would constitute a violation of the FECA by Mr. Fox in his individual capacity, it is requested that the Commission make a finding of no reason to believe and close the file.

Respectfully submitted,

Paul E. Sullivan
Counsel for Respondents

ATTACHMENTS

95043655217

STATEMENT OF WILLIAM WINNEBERGER

On September 30, 1992, my company, Impress Printing, Inc., received a verbal order from the Fox for Congress Committee for 7,000 letters identified by them as the "women's letter." It was specified in the order that we print the letter on personalized stationary from the candidate, Jon Fox, and that the disclaimer be placed in the same place we had put it on previously done similar work; on the back, bottom of the first piece of stationary which was the second page of the three page letter.

The content of the letter and the letterhead fully identified the individual sending the piece, the office he was seeking and gave the telephone number of the campaign's office.

The letter was printed on October 5, 1992, folded and delivered to the campaign on October 6, 1992, and the campaign billed for $810.72, plus tax, for the printing of the letter. The manner in which it was folded totally obscured the area in which we had been instructed to place the disclaimer.

On October 14, 1992, Richard C. Adams, Jon Fox's campaign manager telephoned me and related that a complaint had been filed with the Federal Election Commission alleging that the "women's letter" did not carry any disclaimer. Adams further informed me that he had examined a sample of the letter in question and found the allegation to be factual.

My only explanation to Adams was that the copy for the tag line must have fallen off the artwork before the piece was shot.

William Winneberger, Sales Rep.
Impress Printing, Inc.
P.O. Box 39
Montgomeryville, PA 18936
(215) 646-3875

Sworn to and subscribed, before me, Charles Joseph, A Notary Public, on this 23rd day of October, 1992.

NOTARIAL SEAL
CHARLES A. JOSEPH, Notary Public
Jenkintown, Montgomery Co.
My Commission Expires Feb. 25, 1993

9504365521 8

MUR #3655

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3655

NAME OF COUNSEL: Paul R. Sullivan

ADDRESS: The Singletary Mansion
1866 The Alameda
San Jose, CA 95126

TELEPHONE: (408) 971-1260

92 DEC 17 PM 2:30

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

10/27/92
Date

Signature Richard C. Adams
Campaign Manager

RESPONDENT'S NAME: Fox For Congress Committee

ADDRESS: 211 E. Baptist Road
Glenside, PA 19038

TELEPHONE: HOME

BUSINESS (215) 886-3510

9043655219

MUR 3682

COMPLAINT - OCTOBER 30, 1992

9504365522 0

OGC# 7224

MARJORIE MARGOLIES MEZVINSKY

FOR U.S. CONGRESS

MUR 3682

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 OCT 30 PM 3:05

October 28, 1992

Federal Election Commissioner
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioners:

The Marjorie Margolies Mezvinsky for Congress Campaign files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. SS 431 et seq., and related regulations of the Federal Election Commissioner ("FEC"), 11 C.F.R. SS 100.1 et seq, by Jon D. Fox, a candidate for the United States House of Representatives in the 13th Congressional District of Pennsylvania, and his principal campaign committee, the Fox for Congress Committeee ("the Committee") (referred to collectively hereafter as "Respondents").

Respondents have violated the FEC by failing to include proper identification notices in a newspaper advertisement advocating the election of Jon Fox. The FEC should take all necessary steps to correct this situation, including, if necessary, an audit of the books and records of the Committee, to ensure that the activities of the Committee have been conducted in complete compliance with the FECA and FEC regulations and to ensure that the public record accurately reflects the activities of the Committee.

Evidence of Violation: Failure to Include Required Disclaimer.

The FECA and the Commissioner's regulations require that any communication which advocates the election or defeat of a clearly identified candidate include a notice of who paid for the communication. 11 C.F.R. S 110.11. This requirement includes advertisements printed in a periodical.

Attachment A to this Complaint is a copy of a political advertisement that appeared in the October 14th issue of the Jewish Exponent. The Jewish Exponent is a weekly publication that is distributed in and around the 13th Congressional District of Pennsylvania. The advertisement clearly advocated the election of Jon Fox for Congress and, as such, falls within the requirements set forth in 11 C.F.R. S 110.11. The advertisement contains no disclaimer or other notice to identify the party who paid for the advertisement. From the contents of this advertisement, it is apparent that the Committee was responsible for the publication of the advertisement and the failure to include the appropriate disclaimer. This failure is a violation of the camplaign laws.

Sworn to and subscribed before me this 28 day of October, 1992.

Arlene Rudney Halpern
Notary Public

Sincerely,

Kenneth Smukler
Campaign Manager

NOTARIAL SEAL
ARLENE RUDNEY HALPERN, Notary Public
City of Philadelphia, Phila. County
My Commission Expires June 22, 1996

NARBERTH, PENNSYLVANIA 19072 ★ PHONE 215-664-5846 ★ FAX 215-664-7225

Paid for by Marjorie Margolies Mezvinsky for Congress, Rob McCord, Treasurer

'50436552211

POLITICAL ADVERTISEMENT

✡ ✡ ✡

Candidate for Congress
13th District

JON D. FOX

A dedicated member of the Jewish Community who will work tirelessly for Israel and the Middle East peace process

✡ ✡ ✡

'5043655222

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4200932691

10/28/92

Ken Smukler 215 664 1846 Federal Election
MMM for Congress Ste 200 Commission FEC
One Prudential Bld 999 E ST NW
Bala Cynwyd PA 19004 Washington DC 20463

X CHIC # 1577

X

1550

DESTINATION COPY

1550

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1992

Kenneth Smukler, Campaign Manager
Marjorie Margolies Mezvinsky for Congress
815 Woodbine Avenue
Narbeth, PA 19072

RE: MUR 3682

Dear Mr. Smukler:

This letter acknowledges receipt on Octber 31, 1992, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Fox for Congress Committee, and Frank Jenkins, as treasurer, and the Jewish Exponent. The respondents will be notified of this complaint within five days.

You will be notified as soon as the Federal Election Commission takes final action on your complaint. Should you receive any additional information in this matter, please forward it to the Office of the General Counsel. Such information must be sworn to in the same manner as the original complaint. We have numbered this matter MUR 3682. Please refer to this number in all future correspondence. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Anne Weissenborn

Anne Weissenborn
Acting Assistant General Counsel

Enclosure
Procedures

,50436552224

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1992

Frank Jenkins, Treasurer
Fox for Congress Committee
231 S. Easton Road
Glenside, PA 19038

RE: MUR 3682

Dear Mr. Jenkins:

The Federal Election Commission received a complaint which indicates that Fox for Congress ("Committee") and you, as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3682. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Committee and you, as treasurer, in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

,50436552225

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Anne Weissenborn

Anne Weissenborn
Acting Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

9504365522 6

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 5, 1992

Jewish Exponent
226 S. 16th Street
Philadelphia, PA 19102

RE: MUR 3682

Dear Gentlemen:

The Federal Election Commission received a complaint which indicates that the Jewish Exponent may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint is enclosed. We have numbered this matter MUR 3682. Please refer to this number in all future correspondence.

Under the Act, you have the opportunity to demonstrate in writing that no action should be taken against the Jewish Exponent in this matter. Please submit any factual or legal materials which you believe are relevant to the Commission's analysis of this matter. Where appropriate, statements should be submitted under oath. Your response, which should be addressed to the General Counsel's Office, must be submitted within 15 days of receipt of this letter. If no response is received within 15 days, the Commission may take further action based on the available information.

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 matter to be made public. 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.

'5043655227

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Anne Weissenborn

Anne Weissenborn
Acting Assistant General Counsel

Enclosures
1. Complaint
2. Procedures
3. Designation of Counsel Statement

'50436552228

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 NOV 25 PM 3:33

OGC7712

JEWISH EXPONENT
INSIDE MAGAZINE
JEWISH TIMES

November 24, 1992

Ms. Anne Weissenborn
Acting Assistant General Counsel
Federal Election Commission
Washington, DC 20463

Dear Ms. Weissenborn:

Re: MUR3682

This letter is in response to the above referenced matter.

The Jewish Exponent is owned by the Jewish Federation of Greater Philadelphia. The newspaper serves as the voice of the organized Jewish community of Philadelphia and its suburbs. As is stated in our charter, any funds realized in excess of operating expenses are made available to the Jewish Federation of Greater Philadelphia for disbursal to various social programs assisting the Jewish community in Philadelphia and Israel.

Yes, the ad for Jon D. Fox did appear in the Jewish Exponent. All political ads are printed in the format provided by the advertiser but are labelled by the newspaper as a POLITICAL ADVERTISEMENT.

Prior to your communication of November 5th, we were not aware of the Federal Election Campaign Act of 1971. Since your communication, all members of our advertising and production staffs have been made fully aware of what we as a newspaper must do in the future to comply with this act.

We now realized we erred in publishing this ad as it appeared. The advertisement, unlike the numerous other campaign ads we received, did not come to us with the required statement of sponsorship.

Please be assured that something like this will not occur again and your letter has sufficiently warned the Jewish Exponent of all the provisions of the Federal Election Campaign as of 1971.

Since any fine you may levy against the Jewish Exponent will have the result of reducing community funds, we ask that there not be any penalty for this one violation of this act.

Thank you for your attention in this matter.

Sincerely,

Richard Waloff
Business Director

C: Raymond Shapiro, Esquire
Ken Rosenberg, Esquire

9 2 2 5 5 6 5 3 4 0 5

JEWISH EXPONENT/INSIDE 226 SOUTH 16TH STREET/PHILADELPHIA, PA 19102-3392 215-893-5700 • FAX# 215-546-3957
JEWISH TIMES 103-A TOMLINSON ROAD/HUNTINGDON VALLEY, PA 19006-4297 215-938-1177 • FAX# 215-938-0692

Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIN COPY ROOM

DEC 3 11 44 AM '92

92 DEC -3 PM 3: 11

December 1, 1992

Jeffrey Long
Federal Election Commission
General Counsel's Office
999 E Street, N.W.
Washington, DC 20463

Re: MUR ~~3655~~ 3682

Dear Mr. Long:

Please find enclosed, the response filed by the Fox for Congress Committee, et al. in the above-referenced matter. Should you have any further questions on this, please contact me at your earliest convenience.

Thank you for your time and attention to this matter.

Very truly yours,

Paul E. Sullivan

Enclosure
cc: Jon D. Fox
Chairman Aikens
Vice Chairman Thomas
Commissioner Elliott
Commissioner McGarry
Commissioner Potter
Commissioner McDonald

9504365520

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
92 DEC -3 PM 3:11

In re:	)	
	)	
	)	MUR 3682
Fox for Congress Committee	)	Response to Complaint
and Frank Jenkins, as Treasurer	)	
	)	
	)	

I

FACTS

Pursuant to 2 U.S.C. §437g(a)(1) the Fox for Congress Committee, ("Committee") and Frank Jenkins as Treasurer of the Committee, ("Respondents") file this document in response to the Complaint filed by Kenneth Smulker, Campaign Manager for Mezvinsky for U.S. Congress Campaign, against Respondents. ("Complaint").

The Complaint alleges that the Committee placed a newspaper advertisement, promoting the candidacy of Jon Fox for election to the United States House of Representatives from the thirteenth district in Pennsylvania, was paid for by the Committee but failed to include in the ad the requisite disclaimer notice as mandated by 2 U.S.C. §441d. A true and complete copy of the Complaint is attached hereto at Exhibit "A" and fully incorporated herein. ("Letter") The Complaint alleges that the Committee paid for this ad and by failing to print the disclaimer notice violated the Federal Election Campaign Act of 1971, as amended ("FECA").

The Committee believes that the requisite disclaimer notice was included in the camera ready art presented to the newspaper. However, a search has failed to produce the artwork.

It was the standard policy and custom to include the disclaimer notice on all advertisements in compliance with the FECA. In a previously filed complaint (MUR 3655) it

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was also alleged that the Committee failed to include the appropriate disclaimer. However, a sworn affidavit was submitted in that case wherein the printer acknowledges it was his mistake.

This previous MUR is raised in this response to demonstrate the customary standards used by the Committee in making certain that public communications had the proper disclaimer.

In this case, it is clear there is no disclaimer on the ad. The artwork has been sought but not found. The Committee contends it was originally on the draft artwork, but the single piece of evidence is missing. The fact this was a rather small advertisement, with a simple "Elect Fox to Congress" type message, shows any conceivable confusion to the public was surely of a *de minimis* nature. In fact, the complainant states, "From the contents of this advertisement, it is apparent that the Committee was responsible for the publication of the advertisement. . ." (See Exhibit "A") If it was as apparent as stated by the complainant, then the general public was also well aware the Fox for Congress Committee was responsible for the ad. The point being, little, if any public policy was violated.

Due to the *de minimis* nature of the issue, Respondent requests the Commission close the file.

Respectfully submitted,

Paul E. Sullivan
Counsel to Respondents

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EXHIBIT A

5043655233

OBC# 722

MUR 3682

RECEIVED
FEDERAL ELECTION COMMISSION
92 OCT 30 PM 3:05

October 28, 1992

Federal Election Commissioner
999 E Street, N.W.
Washington, D.C. 20463

Dear Commissioners:

The Marjorie Margolies Mezvinsky for Congress Campaign files this complaint charging violations of the Federal Election Campaign Act of 1971, as amended ("FECA"), 2 U.S.C. SS 431 et seq., and related regulations of the Federal Election Commissioner ("FEC"), 11 C.F.R. SS 100.1 et seq, by Jon D. Fox, a candidate for the United States House of Representatives in the 13th Congressional District of Pennsylvania, and his principal campaign committee, the Fox for Congress Committee ("the Committee") (referred to collectively hereafter as "Respondents").

Respondents have violated the FEC by failing to include proper identification notices in a newspaper advertisement advocating the election of Jon Fox. The FEC should take all necessary steps to correct this situation, including, if necessary, an audit of the books and records of the Committee, to ensure that the activities of the Committee have been conducted in complete compliance with the FECA and FEC regulations and to ensure that the public record accurately reflects the activities of the Committee.

Evidence of Violation: Failure to Include Required Disclaimer.

The FECA and the Commissioner's regulations require that any communication which advocates the election or defeat of a clearly identified candidate include a notice of who paid for the communication. 11 C.F.R. S 110.11. This requirement includes advertisements printed in a periodical.

Attachment A to this Complaint is a copy of a political advertisement that appeared in the October 14th issue of the Jewish Exponent. The Jewish Exponent is a weekly publication that is distributed in and around the 13th Congressional District of Pennsylvania. The advertisement clearly advocated the election of Jon Fox for Congress and, as such, falls within the requirements set forth in 11 C.F.R. S 110.11. The advertisement contains no disclaimer or other notice to identify the party who paid for the advertisement. From the contents of this advertisement, it is apparent that the Committee was responsible for the publication of the advertisement and the failure to include the appropriate disclaimer. This failure is a violation of the campaign laws.

Sworn to and subscribed
before me this 28 day of
October, 1992.
Jane Lang Chalfant
Notary Public

Sincerely,

Kenneth Smukler
Campaign Manager

NOTARIAL SEAL
JARLENE RUDNEY HALPERN, Notary Public
City of Philadelphia, Phila. County
My Commission Expires April 27, 1996

NARBERTH, PENNSYLVANIA 19072 ★ PHONE 215-664-5846 ★ FAX 215-664-7225

Paid for by Marjorie Margolies Mezvinsky for Congress: Rob McCord, Treasurer

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POLITICAL ADVERTISEMENT

✡ ✡ ✡

Candidate for Congress
13th District

JON D. FOX

A dedicated member of the Jewish Community who will work tirelessly for Israel and the Middle East peace process

✡ ✡ ✡

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FEDERAL ELECTION COMMISSION
DEC 21 10 35 AM '92

STATEMENT OF DESIGNATION OF COUNSEL

MUR 3682

NAME OF COUNSEL: Paul E. Sullivan

ADDRESS: The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

TELEPHONE: (408) 971-1340

92 DEC 21 PM 3:30

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

12/17/92
Date

Brian M. Tynan
Signature
BRIAN M. TYNAN

RESPONDENT'S NAME: Fox For Congress Committee

ADDRESS: 231 S. Easton Road
Glenside, PA 19038

TELEPHONE: HOME

BUSINESS(215) 886-3510

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RECEIVED
F.E.C.
SECRETARIAT
94 FEB 18 AM 9:39

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT **SENSITIVE**

MUR: 3655, 3682
STAFF MEMBER: Richard Denholm

COMPLAINANTS:

MUR 3655
& 3682: Kenneth Smukler

RESPONDENTS:

MUR 3655: Jon D. Fox
Fox for Congress Committee and Frank Jenkins, as treasurer

MUR 3682: Jon D. Fox
Fox for Congress Committee and Frank Jenkins, as treasurer
The Jewish Exponent

RELEVANT STATUTES: 2 U.S.C. § 441d(a)
11 C.F.R. § 110.11(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

These matters arise from complaints filed with the Federal Election Commission ("Commission") during the 1992 election cycle. Each complaint alleges the distribution of

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documents without the disclaimer required by 2 U.S.C. § 441d(a). Accordingly, the complaints are treated in one report. Details about the generation of each particular matter and the material facts of each case are provided in the next section.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires a disclaimer for communications that expressly advocate the election or defeat of a clearly identified candidate through any newspaper, direct mailing, or other form of general public political advertising. 2 U.S.C. § 441d(a). The disclaimer must clearly identify the person or political committee who paid for the communication. Id. If it was paid for by someone other than a candidate's authorized political committee, the disclaimer must also state whether the communication was authorized by the candidate or candidate's committee. Id.

Commission regulations further require that the disclaimer appear in a clear and conspicuous manner so that the reader, observer, or listener is given adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1). The disclaimer is not required to be on the front face or page of the advertisement, so long as it is somewhere within the communication. Id. Bumper stickers, pins, buttons, pens and similar small items are exempted from

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the disclaimer requirement because of the undue inconvenience of printing on such items. 11 C.F.R. § 110.11(a)(2).

B. The Cases

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Pages 4 - 7 contain information not relevant to this case.

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3. MURs 3655 and 3682

These matters were generated by complaints filed by Kenneth Smukler on behalf of the Margolies-Mezvinsky for U.S. Congress Campaign. In MUR 3655, the complaint was filed against: the Fox for Congress Committee and Frank Jenkins, as treasurer, and Jon D. Fox ("Respondents"). In MUR 3682, the complaint was filed against Respondents and the Jewish Exponent, a Philadelphia newspaper.

The complaint in MUR 3655 alleges that Respondents mailed 7,000 letters in the 13th Congressional District of Pennsylvania. The letters allegedly advocated the election of Jon D. Fox to the House of Representatives, and these letters were mailed without the disclaimer required by 2 U.S.C. § 441d(a).

Respondents do not contest that the letters advocated the election of Mr. Fox and were mailed without disclaimers. Instead, they submit an affidavit from the printer. The printer states that the Committee instructed him to print the letters and include a disclaimer at the back, bottom of the second page. (Attachment C-4, at 1). Before the printer gave the mailing to Respondents, he folded it. Apparently, the fold covered the area where the disclaimer would have been visible if it had been

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printed on the document. Id. The printer's only explanation is that the disclaimer must have "fallen off" prior to printing, and the absence of the disclaimer may not have been readily apparent to Respondents because the mailing was folded. Id.

Despite Respondents' assertion that the failure to include a disclaimer was unintentional, they nonetheless sent out 7,000 pieces of campaign literature without a disclaimer.[2] The printer's affidavit also indicates that the mailing was returned to Respondents after printing. Thus, it appears that Respondents had an opportunity to review the mailing before it was sent out, and it was their responsibility to ensure that the mailing contained the appropriate disclaimer.

Accordingly, this Office recommends that the Commission find reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a). Because there is no indication that Jon D. Fox was personally involved in the alleged violation, this Office recommends that the Commission find no reason to believe that he violated this provision of the Act with respect to MUR 3655.

The complaint in MUR 3682 contains similar allegations against Respondents and the Jewish Exponent.[3] The complaint

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2. The general election in Pennsylvania's 13th Congressional District was hotly contested. Marjorie Margolies-Mezvinsky defeated Jon Fox by approximately 1,000 votes.

3. The Jewish Exponent is a non-profit, weekly newspaper distributed to Philadelphia's Jewish community. Its circulation is 50,000 copies. 2 Gale Directory of Publications and Broadcast Media (Karen Troshynski-Thomas & Deborah M. Burek, eds., 126th ed. 1994).

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alleges that Respondents paid for a political advertisement in the newspaper's October 14, 1992 edition. The advertisement advocated the election of Jon D. Fox[4] and was printed in the newspaper without a disclaimer. (Attachment D-2, at 1).

Respondents do not dispute the complaint's allegations, but they contend that their standard practice was to include a disclaimer in the original artwork submitted to newspapers. (Attachment D-3, at 1).[5] Respondents state that they "...believe that the requisite disclaimer notice was included in the camera ready art presented to the newspaper." Id. The Jewish Exponent directly contradicts Respondents' assertion and states that "the advertisement, unlike the numerous other campaign ads we received, did not come to us with the required statement of sponsorship."[6] (Attachment D-4, at 1).

Respondents and the Jewish Exponent admit that the advertisement was published without the required disclaimer, but the reason for the lack of a disclaimer is unclear in that they fault each other for the violation. Under the Act, however, it is Respondents' obligation to ensure that their advertisement

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4. The advertisement read "Candidate for Congress JON D. FOX, A dedicated member of the Jewish Community who will work tirelessly for Israel and the Middle East peace process." (Attachment D-2, at 1).

5. Respondents were unable to produce the original of this advertisement.

6. The newspaper admits that it ran the advertisement knowing that it did not have the disclaimer statement that was typical of other political advertisements, but it claims ignorance of the Act. Id. The newspaper also did not submit the original advertisement to this Office.

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includes the appropriate disclaimer. Accordingly, this Office recommends that the Commission find reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a) with respect to MUR 3682. This Office also recommends that the Commission find no reason to believe that the Jewish Exponent violated 2 U.S.C. § 441d(a).[7] Finally, because there is no indication that Jon D. Fox was personally involved in the alleged violation, this Office recommends that the Commission find no reason to believe that he violated this provision of the Act with respect to MUR 3682.

III. MERGER OF MURS 3655 AND 3682

This Office recommends that the Commission merge MUR 3655 and MUR 3682. Both matters involve the same respondents, Fox for Congress Committee and Frank Jenkins, as treasurer, and both matters involve allegations that Respondents violated 2 U.S.C. § 441d(a).[8] These matters also can be dealt with comprehensively in one conciliation agreement, and this approach should facilitate the uniform and expeditious resolution of the issues involved in both matters. Accordingly, this Office

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7. Because 2 U.S.C. § 441d(a) applies only to the person making the expenditure (and Fox for Congress made the expenditure for the advertisement), this section does not apply to the Jewish Exponent.

8. This assumes that the Commission accepts this Office's recommendation to find no reason to believe that the Jewish Exponent violated 2 U.S.C. § 441d(a) and close the file as to this Respondent.

recommends that the Commission merge MUR 3655 and MUR 3682, and hereafter refer to this matter as MUR 3682.

IV. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY WITH RESPECT TO MURS 3655 AND 3682

This Office recommends that the Commission offer to enter into conciliation with the Fox for Congress Committee and Frank Jenkins, as treasurer, prior to a finding of probable cause to believe. This Office has attached a proposed conciliation agreement for the Commission's approval. (Attachment E).

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V. RECOMMENDATIONS

MUR 3655 and MUR 3682:

1. Merge MUR 3655 and MUR 3682, and hereafter refer to this matter as MUR 3682.

2. Find reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

3. Find no reason to believe that Jon D. Fox violated 2 U.S.C. § 441d(a), and close the file as to this respondent.

4. Find no reason to believe that the Jewish Exponent violated 2 U.S.C. § 441d(a), and close the file as to this respondent.

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5. Enter into conciliation, prior to a finding of probable cause to believe, with the Fox for Congress Committee and Frank Jenkins, as treasurer.

6. Approve the attached proposed conciliation agreement. Attachment E.

7. Approve the attached Factual and Legal Analysis, and appropriate letters.

Lawrence M. Noble
General Counsel

Date 2/17/94

BY: [signature]
Lois G. Lerner
Associate General Counsel

'5043655247

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURS 3655
Jon D. Fox;	)	AND 3682
Fox For Congress Committee and Frank Jenkins, as treasurer;	)	
The Jewish Exponent	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 3, 1994, do hereby certify that the Commission decided by a vote of 5-0 to take the following actions with respect to the above-captioned matters:

1. Merge MUR 3655 and MUR 3682, and hereafter refer to this matter as MUR 3682.

2. Find reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

3. Find no reason to believe that Jon D. Fox violated 2 U.S.C. § 441d(a), and close the file as to this respondent.

4. Find no reason to believe that the Jewish Exponent violated 2 U.S.C. § 441d(a), and close the file as to this respondent.

(continued)

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5. Enter into conciliation, prior to a finding of probable cause to believe, with the Fox for Congress Committee and Frank Jenkins, as treasurer.

6. Approve the proposed conciliation agreement recommended in the General Counsel's report dated February 17, 1994.

7. Approve the Factual and Legal Analysis and appropriate letters as recommended in the General Counsel's report dated February 17, 1994.

Commissioners Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision; Commissioner Aikens did not vote.

Attest:

3-4-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MARCH 14, 1994

Richard Waloff, Business Director
Jewish Exponent
226 South 16th Street
Philadelphia, PA 19102

RE: MUR 3682
Jewish Exponent

Dear Mr. Waloff:

On November 5, 1992, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On March 3, 1994, the Commission found, on the basis of the information in the complaint, and the responses thereto, that there is no reason to believe the Jewish Exponent violated 2 U.S.C. § 441d(a). Accordingly, the Commission closed its file in this matter as it pertains to the Jewish Exponent.

This matter will become a part of the public record within 30 days after the file has been closed with respect to all other respondents involved. The Commission reminds you that the confidentiality provisions of 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) remain in effect until the entire matter is closed. The Commission will notify you when the entire file has been closed.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

50436552 50

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MARCH 14, 1994

Mr. Paul E. Sullivan, Esq.
The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

RE: MUR 3655 and MUR 3682
Jon D. Fox and Fox for
Congress Committee and
Frank Jenkins, as
treasurer

Dear Mr. Sullivan:

On October 19 and November 5, 1992, the Federal Election Commission notified your clients of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to your clients at that time.

Upon further review of the allegations contained in the complaints, and information supplied by you, the Commission, on March 3, 1994, found that there is reason to believe the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Act. The Commission also found no reason to believe that Jon D. Fox violated 2 U.S.C. § 441d(a) and closed its file in this matter as it pertains to Mr. Fox. On that same date, the Commission also determined to merge MUR 3655 and MUR 3682. Both matters will now be known as MUR 3682. 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 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.

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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.

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 matter 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 Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

For the Commission,

Trevor Potter
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Conciliation Agreement

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Fox for Congress Committee and Frank Jenkins, as treasurer **MUR: 3682**

A. The Law

The Federal Election Campaign Act of 1971, as amended, (the "Act") requires a disclaimer for communications that expressly advocate the election or defeat of a clearly identified candidate through any newspaper, direct mailing, or other form of general public political advertising. 2 U.S.C. § 441d(a). The disclaimer must clearly identify the person or political committee who paid for the communication. Id. If it was paid for by someone other than a candidate's authorized political committee, the disclaimer must also state whether the communication was authorized by the candidate or candidate's committee. Id.

Commission regulations further require that the disclaimer appear in a clear and conspicuous manner so that the reader, observer, or listener is given adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1). The disclaimer is not required to be on the front face or page of the advertisement, so long as it is somewhere within the communication. Id. Bumper stickers, pins, buttons, pens and similar small items are exempted from the disclaimer requirement because of the undue inconvenience of printing on such items. 11 C.F.R. § 110.11(a)(2).

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B. The Cases

1. MURs 3655 and 3682

These matters were generated by complaints filed by Kenneth Smukler on behalf of the Margolies-Mezvinsky for U.S. Congress Campaign. In MUR 3655, the complaint was filed against: the Fox for Congress Committee and Frank Jenkins, as treasurer, and Jon D. Fox ("Respondents"). In MUR 3682, the complaint was filed against Respondents and the Jewish Exponent, a Philadelphia newspaper.

The complaint in MUR 3655 alleges that Respondents mailed 7,000 letters in the 13th Congressional District of Pennsylvania. The letters allegedly advocated the election of Jon D. Fox to the House of Representatives, and these letters were mailed without the disclaimer required by 2 U.S.C. § 441d(a).

Respondents do not contest that the letters advocated the election of Mr. Fox and were mailed without disclaimers. Instead, they submit an affidavit from the printer. The printer states that the Committee instructed him to print the letters and include a disclaimer at the back, bottom of the second page. Before the printer gave the mailing to Respondents, he folded it. Apparently, the fold covered the area where the disclaimer would have been visible if it had been printed on the document. The printer's only explanation is that the disclaimer must have "fallen off" prior to printing, and the absence of the disclaimer may not have been readily apparent to Respondents because the mailing was folded.

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Despite Respondents' assertion that the failure to include a disclaimer was unintentional, they nonetheless sent out 7,000 pieces of campaign literature without a disclaimer.[1] The printer's affidavit also indicates that the mailing was returned to Respondents after printing. Thus, it appears Respondents had an opportunity to review the mailing before it was sent out, and it was their responsibility to ensure that the mailing contained the appropriate disclaimer.

Accordingly, there is reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a) with respect to MUR 3655. Because there is no indication that Jon D. Fox was personally involved in the alleged violation, there is no reason to believe that he violated this provision of the Act with respect to MUR 3655.

The complaint in MUR 3682 contains similar allegations against Respondents and the Jewish Exponent.[2] The complaint alleges that Respondents paid for a political advertisement in the newspaper's October 14, 1992 edition. The advertisement

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1. The general election in Pennsylvania's 13th Congressional District was hotly contested. Marjorie Margolies-Mezvinsky defeated Jon Fox by approximately 1,000 votes.

2. The Jewish Exponent is a non-profit, weekly newspaper distributed to Philadelphia's Jewish community. Its circulation is 50,000 copies. 2 Gale Directory of Publications and Broadcast Media (Karen Troshynski-Thomas & Deborah M. Burek, eds., 126th ed. 1994).

advocated the election of Jon D. Fox[3] and was printed in the newspaper without a disclaimer.

Respondents do not dispute the complaint's allegations, but they contend that their standard practice was to include a disclaimer in the original artwork submitted to newspapers.[4] Respondents state that they "...believe that the requisite disclaimer notice was included in the camera ready art presented to the newspaper." The Jewish Exponent directly contradicts Respondents' assertion and states that "the advertisement, unlike the numerous other campaign ads we received, did not come to us with the required statement of sponsorship."[5]

Respondents and the Jewish Exponent admit that the advertisement was published without the required disclaimer, but the reason for the lack of a disclaimer is unclear in that they fault each other for the violation. Under the Act, however, it is Respondents' obligation to ensure that their advertisement includes the appropriate disclaimer. Accordingly, there is reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a) with respect to MUR 3682. Finally, because there is no indication

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3. The advertisement read "Candidate for Congress JON D. FOX, A dedicated member of the Jewish Community who will work tirelessly for Israel and the Middle East peace process."

4. Respondents were unable to produce the original of this advertisement.

5. The newspaper admits that it ran the advertisement knowing that it did not have the disclaimer statement that was typical of other political advertisements, but it claims ignorance of the Act. The newspaper also did not submit the original advertisement to this Office.

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that Jon D. Fox was personally involved in the alleged violation, there is no reason to believe that he violated this provision of the Act with respect to MUR 3682.

2. MERGER OF MURS 3655 AND 3682

After finding reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a) in MUR 3655 and MUR 3682, the Commission voted to merge MUR 3655 and MUR 3682, and hereafter refer to this matter as MUR 3682.

5043655257

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 4, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul E. Sullivan, Esquire
1225 I Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 3682
Fox for Congress Committee and
Frank Jenkins, as treasurer

Dear Mr. Sullivan:

On March 14, 1994, you were notified that the Federal Election Commission determined to enter into negotiations directed toward reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On that same date you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that conciliation negotiations entered into prior to a finding of probable cause to believe are limited to a maximum of 30 days. To date, you have not responded to the proposed agreement. The 30 day period for negotiations will soon expire. Unless we receive a response from you within five days, this Office will consider these negotiations terminated and will proceed to the next stage of the enforcement process.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II

Richard M. Denholm II
Attorney

5043655258

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 22, 1994

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Paul E. Sullivan, Esquire
1225 I Street, N.W., Suite 500
Washington, D.C. 20005

RE: MUR 3682
Fox for Congress
Committee and
Frank Jenkins, as
treasurer

Dear Mr. Sullivan:

Based upon complaints filed with the Federal Election Commission and information supplied by your clients, on March 3, 1994, the Commission found that there was reason to believe the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a), and instituted an investigation of this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation of 2 U.S.C. § 441d(a) has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

5043655260

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Fox for Congress Committee	)	MUR 3682
and Frank Jenkins, as treasurer	)	
	)	
	)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On March 3, 1994, the Federal Election Commission ("the Commission") found reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, ("Respondents") violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The time for pre-probable cause conciliation has now elapsed, and Respondents have not submitted a counteroffer nor any additional information.

II. ANALYSIS

The Act requires a disclaimer for communications that expressly advocate the election or defeat of a clearly identified candidate through any newspaper, direct mailing, or other form of general public political advertising. 2 U.S.C. § 441d(a). The disclaimer must clearly identify the person or political committee who paid for the communication. Id. If it was paid for by someone other than a candidate's authorized political committee, the disclaimer must also state whether the communication was authorized by the candidate or candidate's committee. Id.

Commission regulations further require that the disclaimer appear in a clear and conspicuous manner so that the reader, observer, or listener is given adequate notice of the identity of

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persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1). The disclaimer is not required to be on the front face or page of the advertisement, so long as it is somewhere within the communication. Id. Bumper stickers, pins, buttons, pens and similar small items are exempted from the disclaimer requirement because of the undue inconvenience of printing on such items. 11 C.F.R. § 110.11(a)(2).

MUR 3682 was generated by complaints filed on behalf of Marjorie Margolies-Mezvinsky for Congress alleging two separate instances in which Respondents failed to include a proper disclaimer.[1] First, Respondents mailed 7,000 letters in the 13th Congressional District of Pennsylvania which advocated the election of Jon D. Fox to the House of Representatives. These letters were mailed without the disclaimer required by 2 U.S.C. § 441d(a).

Respondents do not contest that the letters advocated the election of Mr. Fox and were mailed without disclaimers. Instead, they submit an affidavit from the printer. The printer states that the Committee instructed him to print the letters and include a disclaimer at the back, bottom of the second page. Before the printer gave the mailing to Respondents, he folded it. Apparently, the fold covered the area where the disclaimer would have been visible if it had been printed on the document. The

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1. Originally, these were two separate matters, MUR 3655 and MUR 3682. On March 3, 1994, the Commission determined to merge MUR 3655 and MUR 3682 and refer to this matter as MUR 3682.

printer's only explanation is that the disclaimer must have "fallen off" prior to printing, and the absence of the disclaimer may not have been readily apparent to Respondents because the mailing was folded.

Despite Respondents' assertion that the failure to include a disclaimer was unintentional, they nonetheless sent out 7,000 pieces of campaign literature without a disclaimer.[2] Further, the printer's affidavit indicates that the mailing was returned to Respondents after printing. Thus, Respondents had an opportunity to review the mailing before it was sent out, and it was their responsibility to ensure that the mailing contained the appropriate disclaimer.

Second, Respondents paid for a political advertisement in the Jewish Exponent's October 14, 1992 edition[3] which advocated the election of Jon D. Fox.[4] The advertisement was printed in the newspaper without a disclaimer.

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2. The general election in Pennsylvania's 13th Congressional District was hotly contested. Marjorie Margolies-Mezvinsky defeated Jon Fox by approximately 1,000 votes.

3. The Jewish Exponent is a non-profit, weekly newspaper distributed to Philadelphia's Jewish community. Its circulation is 50,000 copies. 2 Gale Directory of Publications and Broadcast Media (Karen Troshynski-Thomas & Deborah M. Burek, eds., 126th ed. 1994).

4. The advertisement read "Candidate for Congress JON D. FOX, A dedicated member of the Jewish Community who will work tirelessly for Israel and the Middle East peace process."

Respondents do not dispute these facts, but they contend that their standard practice was to include a disclaimer in the original artwork submitted to newspapers.[5] Respondents state that they "...believe that the requisite disclaimer notice was included in the camera ready art presented to the newspaper." The Jewish Exponent directly contradicts Respondents' assertion and states that "the advertisement, unlike the numerous other campaign ads we received, did not come to us with the required statement of sponsorship."[6]

Respondents and the Jewish Exponent admit that the advertisement was published without the required disclaimer, but the reason for the lack of a disclaimer is unclear in that they fault each other for the violation. Under the Act, however, it is clear that it is Respondents' obligation to ensure that their advertisement includes the appropriate disclaimer.

In both of these instances, Respondents concede that they distributed campaign materials without including disclaimers of any kind. Therefore, the Office of the General Counsel recommends that the Commission find probable cause to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

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5. Respondents were unable to produce the original of this advertisement.

6. The newspaper admits that it ran the advertisement knowing that it did not have the disclaimer statement that was typical of other political advertisements, but it claims ignorance of the Act. The newspaper also did not submit the original advertisement to this Office.

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III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

Date 6/22/94

Lawrence M. Noble
General Counsel

5043655265

Paul E. Sullivan, Esq.
Attorney-at-Law

The Singletary Mansion
1565 The Alameda
San Jose, CA 95126

RECEIVED
FEDERAL ELECTION
COMMISSION
ADMINISTRATIVE DIVISION
JUL 15 4 40 PM '94

July 15, 1994

Richard Denholm II, Esq.
Federal Election Commission
General Counsel's Office
999 E St., NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
JUL 18 9 45 AM '94

RE: MUR 3682

Dear Mr. Denholm:

Enclosed, please find the response brief to the General Counsel's probable cause brief, in the above referenced matter.

Very truly yours,

Paul E. Sullivan
Counsel for Respondents

CC: Mr. Jon Fox
Chairman Potter
Vice-Chairman McDonald
Commissioner Aikens
Commissioner Elliott
Commissioner McGarry
Commissioner Thomas

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BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF, Fox for Congress Committee and Frank Jenkins, as Treasurer	MUR 3682 Probable Cause Response Brief

In accordance with 2 USC Section 437g(a)(3), the Fox for Congress Committee and Frank Jenkins, as Treasurer ("Respondent") file this brief in response to the General Counsel's probable cause brief dated June 22, 1994.

The basis of the complaint and that upon which the Commission found reason to believe (RTB) is an allegation that the Respondent failed to include a proper disclaimer notice as required by 2 USC Section 441d(a) on two pieces of public advertising; the first, a direct mail letter which hereinafter will be referred to as the "Woman's Letter" and the second, a small newspaper advertisement in the Jewish Exponent, hereinafter referred to as the "newspaper advertisement".

Copies of the Woman's Letter and the newspaper advertisement have been presented to the Commission and the Respondent does not dispute the fact that the disclaimer notice was not included in either of the two public advertising pieces. Respondent, however, does dispute the Counsel's position that the general public was unaware of the entity mailing the Woman's Letter and strongly dispute the facts alleging the scope of the distribution of the newspaper advertisement. For those two reasons, the Respondent submits that the lack of the disclaimer notice on both items constituted a de minimous violation which should be recognized by the

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Commission and dismissed.

A. In view of the structure of the Woman's Letter, the public was well aware that it was delivered by the Respondent.

The Woman's Letter on its face indicated that it was forwarded to the voters by Mr. Fox and was not the subject of an independent expenditure effort nor that of a third party group supporting Mr. Fox.

The fact should not be lost on the Commission that the letter was forwarded on the personal letterhead of Mr. Fox, which set forth his name at the top of the first page. In addition, the entire letter was structured in the first person and signed by Mr. Fox. It was also a personal letter reflecting on his past experience, his position on issues and it designated a direct phone number into his campaign by which the recipients of the letter could call him directly. The letter was not of a "negative advertising" nature; rather it promoted the positions which Mr. Fox had taken during the campaign. There is little concern from a public policy standpoint that a third party or independent expenditure committee was issuing a "negative" campaign piece without the ability to determine the identity of the sponsor of the direct mail.

Despite the fact the specific words "paid for by Fox for Congress" did not specifically appear, it was abundantly clear to the recipient of the letter that this was sent out by Mr. Fox personally and not the direct mail piece of a third party entity. From a public policy standpoint,

the letter provided the public with specific notice as to who was issuing the mail and that is the basis upon which the disclaimer notice regulation was developed. In this particular case, there was little, if any doubt whatsoever, that this letter came from Mr. Fox and his campaign.

As a second component of the mitigating circumstances, the evidence shows this was not the result of negligence on the behalf of the Respondent, but on behalf of the printer. In the Respondent's RTB brief previously submitted to the Commission, Mr. William Winneberger, the printer, submitted an affidavit to the Commission stating that the Respondent specifically instructed the printer to put the standard disclaimer on the bottom of the stationery (See Attachment "A"). Since that time, Respondent's further review of the Committee's 1992 records has revealed the original invoice which was issued by Impress Printing and a full and complete copy of that is attached hereto and incorporated herein (See Attachment "B"). The Commission should note that the invoice specifically lists under instructions to, "Drop in usual disclaimer: Paid for by Fox for Congress committee, Frank W. Jenkins, Treasurer."

The Respondent took all reasonable and prudent actions to request that the appropriate disclaimer notice be inserted into the Woman's Letter. Buttressing that contention is the Impress Printing invoice itself, which indicates to drop in the "usual disclaimer"; reference to the "usual" disclaimer indicates that it had been the standard practice of the Respondent to request and insist that the disclaimer notice be included in all mailings.

In view of the efforts of the Respondent to instruct the printer to place the appropriate

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disclaimer on the Woman's Letter, the fact that the letter clearly indicated it was from John Fox, that the letter was a promotional piece for John Fox and not one of a negative nature for which the public policy regarding disclaimers was intended, Respondent submits to the Commission that this is of a de minimous nature and would request the Commission to make a RTB finding and close the file.

B. The complaint fails to provide sufficient evidence as to whether the Exponent newspaper article in fact was received by anyone within the 13th Congressional District and on that basis, the Commission should close the file on this portion of the complaint.

The second contention in the complaint involves a newspaper ad in the newspaper, "Jewish Exponent". The advertisement, which is rather small, (approximately 3" x 3") indicates that it is a political advertisement for John Fox for Congress, albeit it does not contain the specific language as required by Section 441d(a).

The General Counsel's probable cause brief, at page 3, footnote 3, states that the Jewish Exponent is a weekly newspaper distributed in Philadelphia's Jewish community. Citing to the Gale Directory of Publications and Broadcast Media, as authority, the Counsel states that the newspaper has a circulation of 50,000 copies. Respondent does not challenge nor necessarily dispute the circulation claimed in the Counsel's probable cause brief.

However, upon completion of his investigation the General Counsel's office does not put

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forth any evidence to the Commission as to the quantity of the newspapers which were distributed in the 13th Congressional District. The Counsel's footnote regarding circulation of the newspaper states that it was "distributed to Philadelphia's Jewish community". The Commission, however, should take official notice of the fact that the 13th Congressional District does not include any portion of the city of Philadelphia. It is in essence a suburban district of the city of Philadelphia. The original complaint on this issue (MUR 3655) indicates that the newspaper is distributed in and around the 13th Congressional District of Pennsylvania. The distribution in those vicinities outside the Congressional District clearly does not have an impact upon the voters of the 13th District and therefore should not be considered relevant to this proceeding. This is a position which the Commission has acknowledged in past cases, especially those involving potential in-kind contributions for literature distributed inside a candidates district and outside the district.

The Counsel could have ascertained during his investigation and presented to Respondent and the Commission a reasonable determination as to the quantity of the distribution of the newspaper in the 13th Congressional District. Failing to present that evidence to Respondent in Counsel's probable cause brief, Respondent submits that the facts in this case do not warrant any reasonable basis upon which the Commission can determine the quantity of distribution into the 13th District. If there were only a dozen distributed in the District, it certainly would not warrant a probable cause finding. Respondent does not contend Counsel present a specific verifiable number. However, failing to provide even a general number based upon its investigation, the presumption should be in Respondents favor and presume the number is

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sufficiently insignificant to justify a probable cause finding. On that basis, the Commission should make a finding of reason to believe and close the file.

Based upon the foregoing arguments, Respondent respectfully requests that the Commission make a finding of reason to believe and close the file on this matter.

Respectfully Submitted,

Paul E. Sullivan

Counsel for Respondent

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ATTACHMENT A

STATEMENT OF WILLIAM WINNEBERGER

On September 30, 1992, my company, Impress Printing, Inc., received a verbal order from the Fox for Congress Committee for 7,000 letters identified by them as the "women's letter." It was specified in the order that we print the letter on personalized stationary from the candidate, Jon Fox, and that the disclaimer be placed in the same place we had put it on previously done similar work; on the back, bottom of the first piece of stationary which was the second page of the three page letter.

The content of the letter and the letterhead fully identified the individual sending the piece, the office he was seeking and gave the telephone number of the campaign's office.

The letter was printed on October 5, 1992, folded and delivered to the campaign on October 6, 1992, and the campaign billed for $810.72, plus tax, for the printing of the letter. The manner in which it was folded totally obscured the area in which we had been instructed to place the disclaimer.

On October 14, 1992, Richard C. Adams, Jon Fox's campaign manager telephoned me and related that a complaint had been filed with the Federal Election Commission alleging that the "women's letter" did not carry any disclaimer. Adams further informed me that he had examined a sample of the letter in question and found the allegation to be factual.

My only explanation to Adams was that the copy for the tag line must have fallen off the artwork before the piece was shot.

William Winneberger, Sales Rep.
Impress Printing, Inc.
P.O. Box 39
Montgomeryville, PA 18936
(215) 646-3875

Sworn to and subscribed, before me, Charles Joseph, A Notary Public, on this 23rd day of October, 1992.

NOTARIAL SEAL
CHARLES A. JOSEPH, Notary Public
Jenkintown, Montgomery Co.
My Commission Expires Feb. 25, 1993

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ATTACHMENT B

INVOICE NO.
3455

IMPRESS PRINTING

PLEASE REMIT TO:
IMPRESS PRINTING
P.O. BOX 39
MONTGOMERYVILLE, PA. 18936

SOLD TO:

Fox for Congress
231 S. Easton Road

Glenside, PA 19038

SHIP TO:

Fox for Congress
231 S. Easton Road

Glenside, PA 19038

ACCOUNT NO.	SALESPERSON	PURCHASE ORDER NO.	SHIP VIA	DATE SHIPPED	TERMS	CONTACT
FOX001	BW		Local Delivery	10/06/92	Net 30 days	B. Tynan

QUANTITY	DESCRIPTION	PRICE
	* * * * I N V O I C E * * * *	
7,000	Item : Fox Womens Letter Paper: Offset 60# Cougar Opaque FinSz: 8.5x11 F Ink: Black Reflex Blue B Ink: Black Instr: Drop in usual disclaimer: Paid for by Fox for Congress Committee, Frank W. Jenkins, Treasurer	

5 0 4 3 1 6 5 5 2 / 6

S NET 30 DAYS. 2% INTEREST PER
ON ANY OVERDUE BALANCE

Thank You
We Appreciate
Your Business

SALE AMOUNT	$810.72
FREIGHT	$.00
SALES TAX	$48.65
LESS DEPOSIT	$.00
TOTAL DUE	$859.37

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

NOV 15 10 05 AM '94

In the Matter of	)	
	)	
Fox for Congress Committee and Frank Jenkins, as treasurer	)	MUR 3682
	)	
	)	
	)	

SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter was generated by complaints filed by Kenneth Smuckler on behalf of the Friends of Marjorie Margolies-Mezvinsky committee. On March 3, 1994, the Federal Election Commission (the "Commission") found reason to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, ("Respondents") violated 2 U.S.C. § 441d(a). On that same date, the Commission decided to enter into pre-probable cause conciliation negotiations and approved a conciliation agreement

Respondents did not respond to the Commission's offer to conciliate this matter. On June 22, 1994, this Office forwarded to Respondents a probable cause brief, to which Respondents' counsel has submitted a reply brief. This General Counsel's Report contains a probable cause recommendation.

II. ANALYSIS

Full discussion of the Respondents' violations in this matter is contained in the General Counsel's Brief signed on June 22, 1994. The factual and legal analysis set forth in the General Counsel's Brief is incorporated as if fully set forth herein.

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This matter concerns two separate instances in which Respondents failed to include a proper disclaimer on campaign communications.[1] First, Respondents mailed 7,000 letters (the "letters") in the 13th Congressional District of Pennsylvania which advocated the election of Jon D. Fox to the House of Representatives.[2] Second, Respondents paid for a political advertisement in the Jewish Exponent's[3] October 14, 1992, edition (the "advertisement") which advocated Mr. Fox's election.[4] Of

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1. The Act requires a disclaimer for communications that expressly advocate the election or defeat of a clearly identified candidate through any newspaper, direct mailing, or other form of general public political advertising. 2 U.S.C. § 441d(a). The disclaimer must clearly identify the person or political committee who paid for the communication. Id. Commission regulations further require that the disclaimer appear in a clear and conspicuous manner so that the reader, observer, or listener is given adequate notice of the identity of persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(1).

2. In the letter, Mr. Fox states, among other things, that "I believe the choice for U.S. Congress is clear this year. It's not a matter of gender. Rather, it is a choice between an individual with 20 years of civic involvement with Montgomery County families or an individual who lists not one instance of Montgomery County public service on her biography. I would be honored to have your support on November 3rd so that we can continue working for the improvement of the quality of lives of each and every Montgomery County family." (See General Counsel's Report, dated February 17, 1994, at Attachment C-2.)

3. The Jewish Exponent is a non-profit, weekly newspaper distributed to Philadelphia's Jewish community. Its circulation is 50,000 copies. 2 Gale Directory of Publications and Broadcast Media (Karen Troshynski-Thomas & Deborah M. Burek, eds., 126th ed. 1994).

4. The advertisement read "Candidate for Congress JON D. FOX, A dedicated member of the Jewish Community who will work tirelessly for Israel and the Middle East peace process."

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note, Respondents concede that "the disclaimer notice was not included in either of the two public advertising pieces." (Attachment 1, at 1.)

Respondents argue, however, that factors mitigate the violation and, thus, the Commission should only find reason to believe and close the file in this matter. (Id. at 6.) First, Respondents argue that a disclaimer was not really needed on the letter and that, in any case, the blame for the omission of the disclaimer should be placed on the printer. Specifically, Respondents assert that "the [l]etter[s] on [their] face indicated that [they were] forwarded to the voters by Mr. Fox and ... not the subject of an independent expenditure effort nor that of a third party group supporting Mr. Fox." (Id. at 2.) Additionally, Respondents argue that the "evidence shows this was not the result of negligence on the behalf of the Respondent, but on behalf of the printer." (Id. at 3.) Respondents submit, for the first time in this matter, the printer's invoice and argue that "[t]he Commission should note that the invoice specifically lists under instructions to, '[d]rop in usual disclaimer: Paid for by Fox for Congress committee, Frank W. Jenkins, Treasurer.'"[5] (Id.

5. Respondents also attach the same affidavit from the printer that was attached to their response to the complaint. This affidavit was discussed in the General Counsel's Report, dated February 17, 1994. The printer states that his company was instructed to include the disclaimer, but failed to do so. The printer's affidavit also avers that the mailing was returned to Respondents after printing, but before mailing. Thus, Respondents had the last chance to review the mailing before it was sent.

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at 4.) Respondents assert that "reference to the 'usual' disclaimer indicates that it had been the standard practice of the Respondent to request and insist that the disclaimer notice be included in all mailings." (Id.)

Neither argument vitiates the fact that a violation occurred. Contrary to Respondents' suggestion that a disclaimer was unnecessary, the Act requires that even communications of express advocacy authorized by a candidate must clearly state who paid for the communication. 2 U.S.C. § 441d(a)(1). Respondents' argument equates apparent authorization with payment when the Act requires notice of both. While the letter at issue indicates authorization because it is signed by Mr. Fox, the letter does not disclose who paid for the letter. Consequently, Respondents' distribution of 7,000 pieces of campaign literature without a disclaimer was a clear violation of the Act.

Respondents' argument that the violation is "de minimus" because the printer was at fault is also without merit. The printer's affidavit avers that the letters were submitted to Respondents after printing. Consequently, Respondents had the opportunity to review the letter before mailing it out. Further, not only did the Respondents have the opportunity to correct the omission, it was their legal obligation to ensure that the mailing was in compliance with the Act. They failed to do so and sent out 7,000 campaign letters without the proper disclaimer, in violation of 2 U.S.C. § 441d(a).

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Turning to the newspaper advertisment, Respondents and the Jewish Exponent admit that the advertisement was published without the required disclaimer. In response to the complaint, Respondents had contended that the "disclaimer notice was included in the camera ready art presented to the newspaper." The Jewish Exponent directly contradicted this assertion, and the Respondents do not raise that argument here nor do they offer any explanation for why the disclaimer was omitted.

Instead, Respondents make the disingenuous argument that the advertisement did not have an extensive impact on voters in the 13th Congressional District. (Attachment 1, at 6.) Respondents argue that the Jewish Exponent is distributed in the city of Philadelphia, but "the 13th Congressional District does not include any portion of the city of Philadelphia." (Attachment 1, at 5.) Respondents assert that "[t]he distribution in those vicinities outside the Congressional District clearly does not have an impact upon the voters of the 13th District and therefore should not be considered relevant to this proceeding." (Id.) Respondents do not dispute that the Jewish Exponent has a circulation of 50,000 in and around the 13th Congressional District. The argument they make is that distribution of the advertisement outside the borders of the 13th Congressional District -- e.g., in Philadelphia -- would have no impact on voters in the area which Respondents describe as a "suburban district of the city of Philadelphia." (Id. at 6.)

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Respondents' argument fails for several reasons. First, Respondents do not contend that no newspapers were distributed in the 13th Congressional District, so their argument tacitly acknowledges some impact. Further, Respondents' position appears to ignore the reality of commuting; the 13th Congressional District includes Montgomery County, Pennsylvania, which literally borders the city of Philadelphia. (Attachment 3.) Finally, and probably most telling, is that Respondents' argument makes no sense because the campaign itself chose to advertise in that paper - it was the campaign's own advertisement. It is improbable that a political committee would waste scarce financial resources by running a newspaper advertisement that was not specifically targeted at potential voters, especially in a hotly contested election involving a very limited geographic area. Further, the Jewish Exponent appears to have been an appropriate advertising vehicle in this election race because Mr. Fox's opponent, Congresswoman Marjorie Margolies-Mezvinsky, reports disbursements for advertisements in this same newspaper.[6] (See Attachment 2.)

In both of these instances, Respondents concede that they distributed campaign materials without including disclaimers of any kind. Based on the foregoing, the Office of the General Counsel recommends that the Commission find probable cause to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

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6. Similarly, political advertising in the Washington Post is certainly not limited to elections held only in the District of Columbia, but includes campaigning for races in Maryland and Virginia, as well.

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III. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY

Attached for Commission approval is a proposed conciliation agreement

Based on the foregoing, this Office recommends that the Commission approve the terms of the attached conciliation agreement.

IV. RECOMMENDATIONS

1. Find probable cause to believe that Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

2. Approve the attached conciliation agreement and the appropriate letter.

11/17/94
Date

Lawrence M. Noble
General Counsel

5043655283

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: NOVEMBER 17, 1994

SUBJECT: MUR 3682 - GENERAL COUNSEL'S REPORT DATED NOVEMBER 14, 1994.

The above-captioned document was circulated to the Commission on Tuesday, November 15, 1994 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	
Commissioner Elliott	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for Tuesday, November 29, 1994.

Please notify us who will represent your Division before the Commission on this matter.

5043655284

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3682
Fox for Congress Committee	)	
and Frank Jenkins, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 6, 1994, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 3682:

1. Find probable cause to believe that Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a).

2. Approve the conciliation agreement and the appropriate letter as recommended in the General Counsel's November 14, 1994 report.

Commissioners Aikens, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision. Commissioner Elliott dissented.

Attest:

12-9-94
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

5043655285

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 13, 1994

Mr. Paul E. Sullivan, Esquire
1225 I Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 3682
Fox for Congress Committee and
Frank Jenkins, as treasurer

Dear Mr. Sullivan:

On December 6, 1994, the Federal Election Commission found that there is probable cause to believe your clients, Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with their distribution of 7,000 letters and an advertisement in the Jewish Exponent that did not contain disclaimers.

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with a respondent. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a conciliation agreement that the Commission has approved in settlement of this matter. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the agreement. Please make the check for the civil penalty payable to the Federal Election Commission.

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If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Richard M. Denholm II, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

5043655287

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 20, 1995

Mr. Paul E. Sullivan, Esq.
1225 I Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 3682
Fox for Congress
Committee and Frank
Jenkins, as treasurer

Dear Mr. Sullivan:

On December 13, 1994, you were notified that the Federal Election Commission found probable cause to believe that your clients, Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a). On that same date, you were sent a conciliation agreement offered by the Commission in settlement of this matter.

Please note that pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), the conciliation period in this matter may not extend for more than 90 days, but may cease after 30 days. Insofar as more than 30 days have elapsed without a response from you, a recommendation concerning the filing of a civil suit will be made to the Commission by the Office of the General Counsel unless we receive a response from you within 15 days of receipt of this letter.

Should you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
MAY 16 10 02 AM '95

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Fox for Congress Committee and Frank Jenkins, as treasurer	)	MUR 3682
	)	
	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

Attached is a conciliation agreement that has been signed by Jan W. Friis, Jr.,[1] on behalf of the Fox for Congress Committee and Frank Jenkins, as treasurer. (Attachment 1.)

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1. The agreement identifies Mr. Friis as the Fox for Congress Committee's 1994 campaign manager.

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II. ANALYSIS

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In light of the fact that the 90 day period for post-probable cause conciliation negotiations has expired, this Office further recommends that the Commission authorize this Office to send Respondents a letter requiring them to sign and submit the conciliation agreement within ten days of receipt of notification.

III. RECOMMENDATIONS

1. Reject the counteroffer of Fox for Congress Committee and Frank Jenkins, as treasurer.

2. Approve the attached conciliation agreement.

3. Approve the appropriate letter, which will require Respondents to sign and submit the proposed conciliation agreement within ten days of receipt of notification.

Lawrence M. Noble
General Counsel

5/15/95
Date

BY: [signature]
Lois G. Lerner
Associate General Counsel

50436552992

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS L.R.D.
COMMISSION SECRETARY

DATE: MAY 19, 1995

SUBJECT: MUR 3682 - GENERAL COUNSEL'S REPORT DATED MAY 15, 1995.

The above-captioned document was circulated to the Commission on TUESDAY, MAY 16, 1995 at 11:00 a.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Potter	
Commissioner Thomas	

This matter will be placed on the meeting agenda for TUESDAY, JUNE 6, 1995.

Please notify us who will represent your Division before the Commission on this matter.

5043655293

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3682
Fox for Congress Committee and	)	
Frank Jenkins, as treasurer	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on June 6, 1995, do hereby certify that the Commission decided by a vote of 5-0 to reject the recommendation contained in the General Counsel's May 15, 1995 report on MUR 3682 and instead accept the conciliation agreement submitted on behalf of the Fox for Congress Committee and Frank Jenkins, as treasurer.

Commissioners Aikens, Elliott, McDonald, Potter, and Thomas voted affirmatively for the decision; Commissioner McGarry was not present at the time of the vote.

Attest:

6-8-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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SENSITIVE

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Jun 9 9 56 AM '95

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 9, 1995

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

SUBJECT: MUR 3682

In the General Counsel's Report, dated May 15, 1995, this Office recommended that the Commission reject a counteroffer submitted on behalf of Fox for Congress and Frank Jenkins, as treasurer ("Respondents"). This Office further recommended that the Commission continue to pursue post-probable cause conciliation

During its June 6, 1995, Executive Session, the Commission voted to accept the signed conciliation agreement and $950.00 civil penalty submitted on behalf of Respondents. Based upon the foregoing, this Office recommends that the Commission close the file in this matter.

RECOMMENDATIONS

1. Close the file in MUR 3682.

2. Approve the appropriate letter.

Attorney Assigned: Richard M. Denholm II

5043655295

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Fox for Congress and Frank Jenkins, as treasurer.	)	MUR 3682
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 14, 1995, the Commission decided by a vote of 6-0 to take the following actions in MUR 3682:

1. Close the file in MUR 3682.

2. Approve the appropriate letter, as recommended in the General Counsel's Memorandum dated June 9, 1995.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter, and Thomas voted affirmatively for the decision.

Attest:

6-14-95
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., June 09, 1995 9:56 a.m.
Circulated to the Commission: Fri., June 09, 1995 12:00 p.m.
Deadline for vote: Wed., June 14, 1995 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1995

Mr. Richard Waloff, Business Director
Jewish Exponent
226 South 16th Street
Philadelphia, PA 19102

RE: MUR 3682

Dear Mr. Waloff:

This is to advise you that this matter is now closed. The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Friends of Marjorie Margolies-Mezvinsky
and Caren Moskowitz, as treasurer
P.O. Box 157
Narberth, PA 19072

RE: MUR 3682
Fox for Congress
and Frank Jenkins,
as treasurer

Dear Ms. Moskowitz:

This is in reference to the complaint filed by Kenneth Smukler on behalf of the Marjorie Margolies-Mezvinsky for Congress Campaign, with the Federal Election Commission on October 31, 1992. The complaint concerned possible violations of the Federal Election Campaign Act of 1971, as amended, ("the Act") by the Fox for Congress Committee and Frank Jenkins, as treasurer, and the Jewish Exponent.

After conducting an investigation in this matter, the Commission found that there was probable cause to believe the Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a) of the Act. On June 6, 1995, a conciliation agreement signed by these respondents was accepted by the Commission, thereby concluding this matter. Previously, the Commission found no reason to believe that the Jewish Exponent violated 2 U.S.C. § 441d(a). Accordingly, the Commission closed the file in this matter on June 14, 1995. A copy of this agreement is enclosed for your information.

If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

Enclosure
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 16, 1995

Mr. Paul E. Sullivan, Esq.
1225 I Street, N.W.
Suite 500
Washington, D.C. 20005

RE: MUR 3682
Fox for Congress
Committee and Frank
Jenkins, as treasurer

Dear Mr. Sullivan:

On June 6, 1995, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondents and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

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Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Richard M. Denholm II
Attorney

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Mar 8 8 47 AM '95

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Fox for Congress Committee	)	MUR 3682
and Frank Jenkins,	)	
as treasurer	)	

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Kenneth Smukler, campaign manager of Margolies-Mezvinsky for U.S. Congress. The Federal Election Commission ("Commission") found probable cause to believe that the Fox for Congress Committee and Frank Jenkins, as treasurer, ("Respondents") violated 2 U.S.C. § 441d(a).

NOW, THEREFORE, the Commission and Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Fox for Congress Committee is a political committee within the meaning of 2 U.S.C. § 431(4) and is the principal campaign committee of Jon D. Fox.

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2. Frank Jenkins is the treasurer of Fox for Congress Committee.

3. Pursuant to 2 U.S.C. § 441d(a), a disclaimer is required for communications that expressly advocate the election or defeat of a clearly identified candidate through any newspaper, direct mailing, or other form of general public political advertising. The disclaimer must clearly identify the person or political committee who paid for the communication. Id. If it was paid for by someone other than a candidate's authorized political committee, the disclaimer must also state whether the communication was authorized by the candidate or candidate's committee. Id.

4. Pursuant to 11 C.F.R. § 110.11(a)(1), it is required that the disclaimer appear in a clear and conspicuous manner so that the reader, observer, or listener is given adequate notice of the identity of persons who paid for and authorized the communication. The disclaimer is not required to be on the front face or page of the advertisement, so long as it is somewhere within the communication. Id.

5. On November 3, 1992, Jon D. Fox was a candidate for the United States House of Representatives in the general election in Pennsylvania's 13th Congressional District.

6. Respondents paid for and mailed 7,000 letters, dated October 7, 1992, in the 13th Congressional District of Pennsylvania. The letters expressly advocated the election of

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Jon D. Fox to the House of Representatives, and these letters were mailed without the disclaimer required by 2 U.S.C. § 441d(a).

7. Respondents do not contest that the letters advocated the election of Mr. Fox and were mailed without disclaimers.

8. Respondents submitted to the Commission a copy of the invoice from the printer, Impress Printing, which states: "Drop in the usual disclaimer: Paid for by Fox for Congress Committee, Frank W. Jenkins, Treasurer." The invoice also shows that the letters were shipped to the Fox for Congress Committee before being distributed.

9. William Winneberger, Sales Representative for Impress Printing, Inc., states in a sworn statement that the disclaimer was to be placed "on the back, bottom of the first piece of stationery which was the second page of the three page letter." Mr. Winneberger further states that "[t]he manner in which it was folded totally obscured the area in which we had been instructed [by the Fox campaign] to place the disclaimer." Mr. Winneberger also states that letters were "folded and delivered to the campaign on October 6, 1992."

10. It was Respondents' legal obligation to ensure that the mailing was in compliance with the Act, and Respondents had the opportunity to review the letters before mailing them out.

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11. The Jewish Exponent is a non-profit, weekly newspaper distributed in the Philadelphia area. Its weekly circulation is 50,000 copies.

12. Respondents paid for a political advertisement, measuring approximately 3"x3", in the Jewish Exponent's October 14, 1992, edition.

13. The advertisement expressly advocated the election of Jon D. Fox, and it was printed in the newspaper without the disclaimer required by 2 U.S.C. § 441d(a).

14. Respondents do not dispute that the advertisement expressly advocated the election of Jon D. Fox, and it was printed in the newspaper without the disclaimer required by 2 U.S.C. § 441d(a). Respondents contend that they did not intend to circumvent the Act's disclaimer requirement.

15. Respondents contend that the Jewish Exponent is distributed in the city of Philadelphia and its suburbs and the 13th Congressional District does not include any portion of the city of Philadelphia.

16. The Fox Committee itself chose to advertise in the Jewish Exponent.

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V. Fox for Congress Committee and Frank Jenkins, as treasurer, violated 2 U.S.C. § 441d(a) by paying for communications expressly advocating the election of Jon D. Fox to Congress, but failing to include required disclaimers on the communications.

VI. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Nine Hundred Fifty Dollars ($950.00) pursuant to 2 U.S.C. § 437g(a)(5)(A).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

BY: _____ Date 6/14/95
Lois G. Lerner
Associate General Counsel

FOR THE RESPONDENTS:

_____ Date 5-3-95
Name: Jan Morris Jr.
Position: 1994 campaign manager

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FOX FOR CONGRESS COMMITTEE
P.O. BOX 632
JENKINTOWN, PA 19046

60-7158/2319

2/14 1995

Pay to the order of FEDERAL ELECTION COMMISSION $ 800.00

EIGHT HUNDRED ——— 00/100 Dollars

ABINGTON SAVINGS BANK

For Conciliation Agreement

Dolores Rotelle

⑈002560⑈ ⑆231971568⑆ 028170 2092⑈53

2615

FOX FOR CONGRESS COMMITTEE
P.O. BOX 632
JENKINTOWN, PA 19046

60-7158/2319

3-30 1995

Pay to the order of Federal Election Commission $ 150.00

one hundred fifty ——— 00/100 Dollars

ABINGTON SAVINGS BANK

For Conciliation Agreement

⑈002615⑈ ⑆231971568⑆ 028170 2092⑈33

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C 20463

THIS IS THE END OF MUR # 382

DATE FILMED 7/7/95 CAMERA NO. 2

CAMERAMAN EES

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