FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4094

DATE FILMED 8/23/95 CAMERA NO. 1

CAMERAMAN EES

9504366493 4

STONE FOR CONGRESS
810 E. HARRISON
HARLINGEN, TEXAS 78550
(210) 421 5711

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
OCT 20 1 59 PM '94

MUR 4094

SUBJECT: Advertising Violation Complaint

TO: Federal Elections Commission

FROM: Erol A. Stone

Pursuant to your rule 110.11(a) regarding campaign advertising, I have personally observed that many of my opponents campaign signs are not in compliance with your requirements. I have personally observed signs with no disclaimer whatever, some with invalid disclaimers, and yet others with disclaimers too small to read except by very close and studied scrutiny.

As evidence for this complaint, please see the enclosed copy of the article from the Brownsville Herald, dated 10-7-94.

Also, I am enclosing a sample of a small campaign card which plainly has no disclaimer. The larger campaign push card has an incorrect disclaimer, in that it lists Alvaro D. Saenz, CPA, Treasurer. That is not true. Mr. Saenz does not serve the Ortiz campaign as Treasurer, or in any other capacity.

I call upon the Commission to require the Ortiz for Congress Committee to get all of its campaign advertising in compliance with the Commission's regulations.

Sincerely,

Erol A. Stone

State of Texas
County of Cameron

Subscribed and sworn before me, Erol A. Stone on the 17th day of October, 1994.

MARGARET ANN RAMIREZ
STATE OF TEXAS
My Commission Expires

Margaret Ann Ramirez
Margaret Ann Ramirez
Notary Public
Commision expires: 6-29-95

Paid for by STONE FOR CONGRESS Jamie Whittemore, Treasurer 1514 Tyler, Harlingen, Texas 78550

95043664935

# YOUR CONGRESSMAN IN ACTION

REPRESENTATION
SERVICE
SENIORITY

**Solomon Ortiz**

27th DISTRICT, TEXAS

Paid for by the Ortiz for Congress Committee,
Frank Tompkins, Chairman, Alvaro D. Saenz, CPA, Treasurer,
P. O. Box 7806, Corpus C[illegible], Texas 78467-7806

Solomon Ortiz
U.S. CONGRESS

ALVARO SAENZ IS NOT SERVING THE ORTIZ CAMPAIGN IN ANY CAPACITY!

9 5 0 4 3 6

# Here's what your Congressman, Solomon P. Ortiz, has done for you lately:

★ Solomon P. Ortiz has a **96.5% voting record** while representing the 27th District, a record equalled by few congressmen.

★ Solomon P. Ortiz and his staff have responded to **hundreds of thousands** of inquiries from constituents.

★ Solomon P. Ortiz has acquired seniority and is presently serving on three powerful committees **each vital to jobs and incomes** for families in the 27th District:

- Armed Services Committee
- Select Committee on Narcotics Abuse and Control
- Merchant Marine and Fisheries Committee

Thank You For Your **Vote**

Your Congressman
Solomon P. Ortiz

Solomon Ortiz
U.S. CONGRESS

Not Printed at Taxpayer Expense

9 5 0 4 3 6 6 4 9 3 7

Friday, October 7, 1994

The Brownsville Herald

# VALLEY & STATE

Sports ▸ 12A
Comics ▸ 19A

A

# Some Ortiz signs lack political disclaimer

By HENRY KRAUSSE
Herald Staff Writer

The Solomon Ortiz re-election campaign signs are red, white and blue, with a row of stars across the top. Look closely, and you'll see an ink stamp: "Political adv. paid for by Ortiz for Congress Committee."

The disclaimer, and another stamp reminding campaign workers not to place the signs in public right of way, appear as 1-inch-high gray smudges to viewers driving by in their cars. They are legible only from a few feet away.

Some of the signs don't carry the stamp at all, which is a violation of Texas election law and which surprised Ortiz campaign workers who were told of it this week.

"I've never known them to fail to do that. These guys are not rookie campaigners," said Frank Tompkins, who is managing the Ortiz campaign from his Corpus Christi office. "It's a matter of pride with them as much as anything else."

Ortiz, D-Corpus Christi, who was first elected in 1982, is seeking a seventh term representing the 27th Congressional District, which includes Brownsville. He is being challenged by Republican Erel Stone, a Harlingen businessman, in the Nov. 8 election.

Raineo Shih, a campaign staffer at the Ortiz headquarters in Corpus Christi, said the campaign signs had to be hand-stamped because of a "miscommunication" with a Brownsville printer.

When the signs were about to be distributed two weeks ago, she received a call from the Brownsville campaign office, she said.

"As far as I know, we did tell the staff down there to stamp it. I distinctly remember talking to someone who told me how stiff her elbow was. Our staff stayed up past midnight to get it stamped on there," Shih said.

"There's no definition (in the election laws) on how big these disclaimers have to be," she said.

Tompkins said there was no mixup, just a decision to print new signs using an older silk-screen with the disclaimer removed because Ortiz had changed campaign treasurers and the old disclaimer no longer was accurate.

A new screen containing the new disclaimer would be "pretty

(See SIGNS, Page 19A)

## — Signs —

(Continued from Page 11A)

expensive," so the hand-stamp option was chosen, he said.

He also said the small disclaimers complied with state law, and wondered how many were distributed without the disclaimer stamp.

"I suppose if you put out several thousand of them, you may miss one. I know you have to put them on," he said. The intent here was to meet the election laws."

A quick survey of downtown streets within a few blocks of the Brownsville Herald revealed the Ortiz signs, five of them, did not contain the stamp.

Cindy Stapper, a staff attorney with the Texas Secretary of State's office, said the violation is a Class B misdemeanor, but agreed with Tompkins and Shih that the law doesn't mention how large the disclaimer has to be.

"I don't think the election code addresses any size restriction," Stapper said.

Stone could not be reached for comment. Some of his supporters at a recent campaign appearance here complained about the invisible disclaimers on his opponent's signs, but Stone didn't mention it.

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
Oct 20 1 59 PM '94

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 26, 1994

Erol A. Stone
Stone for Congress
810 E. Harrison
Harlingen, TX 78550

RE: MUR 4094

Dear Mr. Stone:

This letter acknowledges receipt on October 20, 1994, of your complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). The respondent(s) 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 4094. Please refer to this number in all future communications. For your information, we have attached a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

Enclosure
Procedures

9504366429 39

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 26, 1994

Frank A. Tompkins
Ortiz for Congress
P.O. Box 7806
Corpus Christi, TX 78467

RE: MUR 4094

Dear Mr. Tompkins:

The Federal Election Commission received a complaint which indicates that Ortiz 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 4094. 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.

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If you have any questions, please contact Alva E. Smith at (202) 219-3400. For your information, we have enclosed a brief description of the Commission's procedures for handling complaints.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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

cc: Solomon P. Ortiz

95043366491

Solomon P. Ortiz
U.S. Congressman
27th District, Texas

November 8, 1994

Campaign Headquarters
Post Office Box 7006
Corpus Christi, Texas 78467-7006

Mary L. Taksar, Attorney
Central Enforcement Docket
FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

RE: MUR 4094

Dear Ms Taksar:

We are in receipt of your letter of October 26, 1994 regarding the above referenced complaint. The 27th Congressional District spans a distance in excess of one hundred sixty (160) miles from north to south. It covers an area of over 500 square miles. We have well over 2,000, 4'x 4', campaign signs distributed throughout this large area, in addition to an even greater number of various other signs, placards, and bumper stickers. There has also been an abundance of "Push Card" and other type material used in the campaign.

When we were first notified by our opponent of these alleged discrepancies, we explained to him that much of our recent material was "carry-over" stock from previous campaigns. The silk screens for the 4'x 4' signs had been used for every election beginning in 1982. Our Campaign Treasurer, up until a few months before this election campaign, has always been Mr. Alvaro D. Saenz. When he resigned, we made every effort to change our material, however, our volunteer campaign workers, in some instances, may have inadvertently failed to remove Mr. Saenz's name.

Our volunteers have made a consistent effort throughout this long and arduous period to see that all campaign literature complied with the Federal Election Commission guidelines and we will continue to do so through November 8th and beyond. Previous to, and following our opponent's complaint, we attempted insure that all of our signs and other materials carried the proper disclaimers. Some signs had been rubber stamped, while others had labels affixed with both the campaign information and the Highway Right of Way disclaimers. We discovered that many of our signs had been torn down, possibly by our opposition, while others had had the ink stamp rubbed off, and/or the labels removed.

You will note from the enclosures that our opponent's campaign is equally guilty of FEC violations. Obviously, if this complaint is pursued further, we will reserve the right to file against him under the same statutes.

Hopefully, this explanation will serve to satisfy the Commission. If you require further information, or assistance in this matter, please let us know and we will respond promptly.

Sincerely,

Frank A. Tompkins
Chairman and Treasurer
Ortiz For Congress Reelection Campaign

# STONE FOR CONGRESS

# Solomon Ortiz

POL. ADV. PAID BY ORTIZ FOR CONGRESS COMMITTEE, FRANK TOMPKINS, CHAIRMAN, P. O. BOX 7806, CORPUS CHRISTI, TX 78467

## U.S. CONGRESS

9 5 0 4 3 6 6 4 9 4 3

# Make Your Vote Count On November 8th

**Solomon Ortiz**

27th DISTRICT, TEXAS

2504366494 4

# Congressman Solomon P. Ortiz A Representative Of All The People

- ★ Solomon P. Ortiz is a driving force behind the North American Free Trade Agreement (NAFTA) that will create thousands of jobs and business opportunities throughout South Texas.
- ★ Solomon P. Ortiz will continue to make crime, education and jobs his priorities.
- ★ Solomon P. Ortiz serves on important congressional committees that are vital to jobs and incomes for families in South Texas:
  - ★ Armed Services Committee
    *Chairman, Military Morale and Welfare Panel*
  - ★ Merchant Marine & Fisheries
    *Chairman, Gulf of Mexico and Oceanography Subcommittee*

**MAKE YOUR VOTE COUNT**

Solomon Ortiz
U.S. CONGRESS

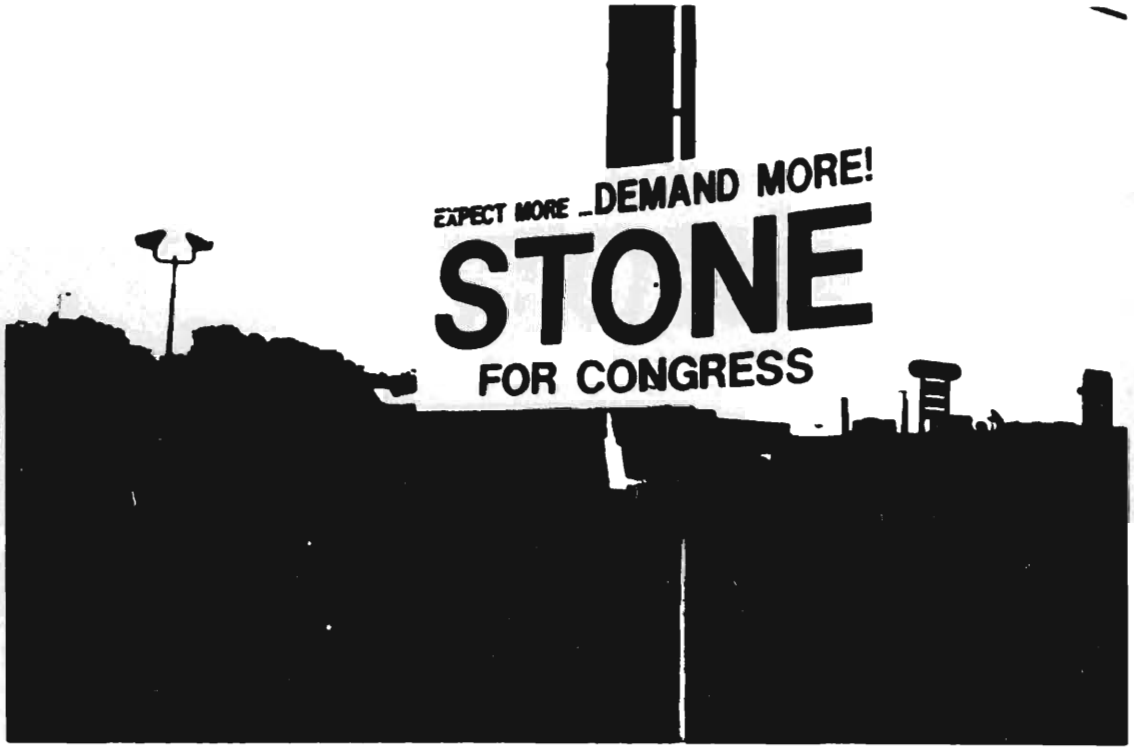
Not Printed at Taxpayer Expense
Paid for by the Ortiz for Congress Committee, Frank Tomsains, Chairman
P.O. Box 7806, Corpus Christi, Texas 78467-7806

9504366494 5

EXPECT MORE ...DEMAND MORE!

# STONE

FOR CONGRESS

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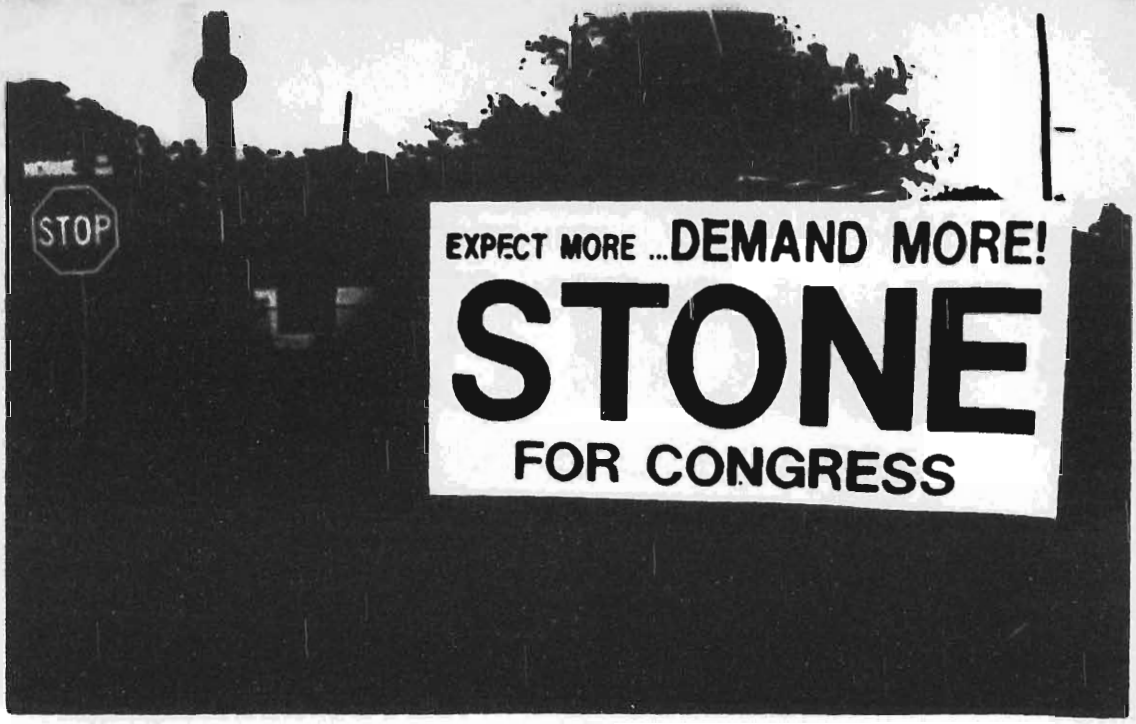


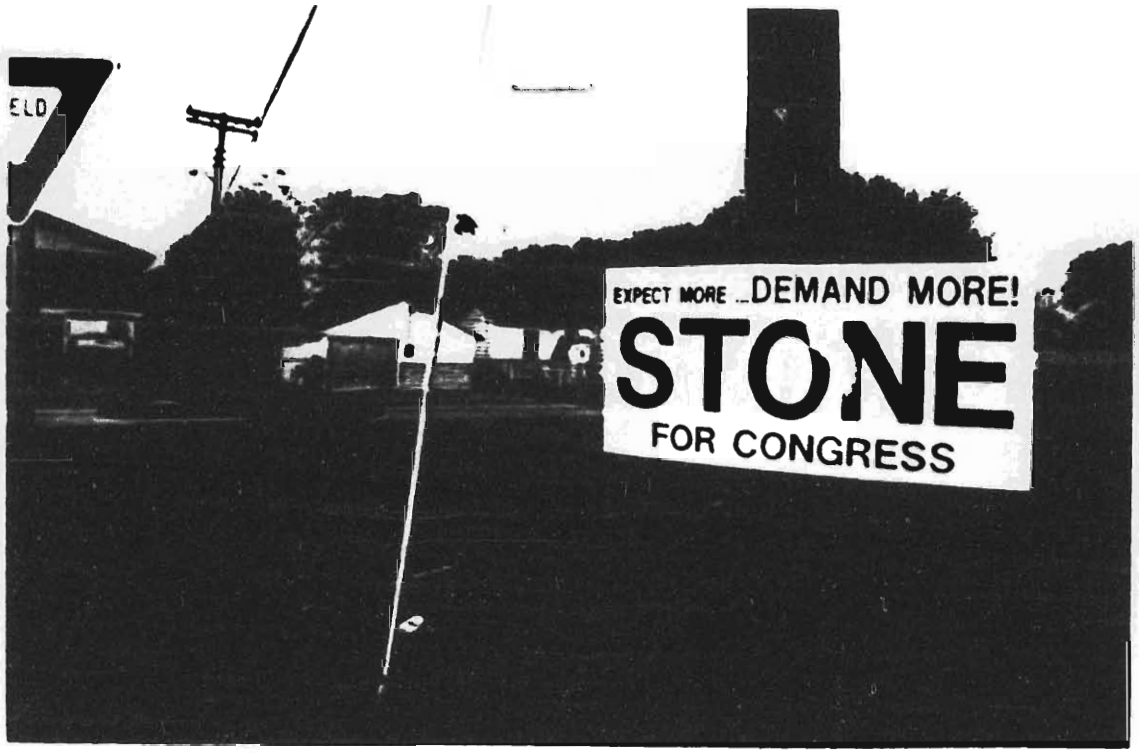


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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 4094
DATE COMPLAINT FILED: October 20, 1994
DATE OF NOTIFICATION: October 26, 1994
DATE ACTIVATED: February 16, 1995
STAFF MEMBER: Tracey L. Ligon

COMPLAINANT: Erol A. Stone

RESPONDENTS: Ortiz for Congress and
Frank A. Tompkins, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

## I. GENERATION OF MATTER

This matter was initiated by a signed sworn complaint filed with the Federal Election Commission ("the Commission") by Mr. Erol A. Stone on October 20, 1994. The complainant alleges that Ortiz for Congress and Frank A. Tompkins, as treasurer, (hereinafter "the committee") violated 2 U.S.C. § 441d by posting campaign signs without proper disclaimers identifying who authorized and paid for the communication.

## II. FACTUAL AND LEGAL ANALYSIS

### A. The Law

Pursuant to 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a), whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or

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defeat of a clearly identified candidate, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing, or any other form of general public political advertising, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by the authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized committee of a candidate, or an agent thereof, the communication shall clearly state that it is paid for by such other person and, is authorized by such candidate, authorized committee or agent. If such communication is not authorized by a candidate, an authorized committee of a candidate, or an agent thereof, the communication shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. Such disclaimers shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.[1] 11 C.F.R. § 110.11(a)(1). Such person is not required to place the disclaimer on the front face or page of any

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1. We note that on October 5, 1994, the Commission issued a Notice of Proposed Rulemaking, which addresses the meaning of the term "clear and conspicuous." Notice 1994-14. Under the proposed rules, a disclaimer would not be "clear and conspicuous" if it is in small type in comparison to the remainder of the material, or if the printing is difficult to read or if the placement is easily overlooked.

such material, as long as a disclaimer appears within the communication, except on communication, such as billboards, that contain only a front face. 11 C.F.R. § 110.11(a)(1). The requirements of 11 C.F.R. § 110.11(a)(1) do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed. 11 C.F.R. § 110.11(a)(2).

B. Discussion

The complainant alleges that the respondents violated 2 U.S.C. § 441d by posting campaign signs with no disclaimer, with an invalid disclaimer, or with a disclaimer "too small to read except by very close and studied scrutiny." In support of his allegations, the complainant enclosed a copy of a small campaign card bearing no disclaimer and a larger "push" card, which the complainant contends incorrectly identifies the committee's treasurer. The complainant also enclosed an article from The Brownsville Herald, dated October 7, 1994, which states that respondents' campaign signs bore an ink-stamped disclaimer that was legible only from a few feet away and appeared as one-inch-high gray "smudges" to viewers driving by in their cars. The article further indicated that some of the signs did not bear the ink stamp at all.

In response to the complaint, respondents state that a large portion of their campaign material was "carry over" stock from previous campaigns and that the silk screens for the over 2000 4' x 4' campaign signs that were distributed throughout the 27th Congressional District of Texas had been used for every election

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commencing in 1982 and bore the name of its former treasurer, Mr. Alvaro D. Saenz, who resigned a few months before the November, 1994 election campaign. Respondents state that volunteers made a consistent effort throughout the campaign period to see that all campaign literature complied with the law but may have, in some instances, inadvertently failed to remove the previous treasurer's name. Respondents also state that prior to and following the instant complaint, they attempted to insure that all of their signs and other materials bore proper disclaimers, noting that they discovered that some of their signs, which had been rubber stamped or had labels bearing disclaimers affixed, had been torn down, "possibly by our opposition" while others had had the ink stamp rubbed off, and/or labels removed.

While the complainant argues that "push" cards and some signs distributed by the respondents bore disclaimers which misidentified the treasurer in violation of 2 U.S.C. § 441d, we note that 11 C.F.R. § 110.11(a)(1), the regulation implementing 2 U.S.C. § 441d, requires, in this case, only that the disclaimers clearly and conspicuously state that the communication has been paid for by the authorized political committee; there is no requirement that names of committee officers be included in disclaimers. See 11 C.F.R. § 110.11(a)(1); Advisory Opinion 1976-35. Thus, while the respondents "may have" misidentified the political committee's treasurer in the disclaimer, this error is not violative of 2 U.S.C. § 441d.

In addition, the small campaign card submitted by the complainant, which was presumably made and distributed by the

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respondents, appears to be 3 1/2 x 2 inches in size and, as such, is small enough to be considered exempt from the 441d disclaimer requirement pursuant to 11 C.F.R. § 110.11(a)(2).[2] See Advisory Opinion 1980-42 (applying the small item exemption to concert tickets); MUR 3092 (Commission applied small item exemption to 3 1/2 x 2 inch refrigerator magnet). Thus, it appears that the respondents have not violated 2 U.S.C. § 441d by distributing the small campaign card without a disclaimer.

As the complainant contends, however, the size of the disclaimers that were placed on respondents' campaign signs appears to be legally insufficient.[3] While Section 110.11(a)(1) does not specify minimum size requirements for disclaimers, the regulation does require that disclaimers be presented in a clear and conspicuous manner "to give the reader ... adequate notice of the identity of persons who paid for ... the communication." Although the record does not contain a picture of the signs at issue, the respondents indicated in their response that their "well over 2,000" campaign signs were 4' x 4' in size.

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2. The small campaign card has three stripes along its left side and contains the following language written inside what appears as stripes:

Solomon
Ortiz
U.S. CONGRESS

3. We note that the record does not contain a picture of the signs or information regarding the language content of the signs at issue aside from references to the disclaimers. However, in light of the fact that the respondents did not deny that the "campaign signs" at issue required disclaimers and construing the case in a light most favorable to the complainant, we presume that the signs fall within the type of communication that requires a disclaimer pursuant to the statute and regulation.

Significantly, respondents did not dispute the complainant's contentions that the respondents' hand/ink-stamped disclaimers "appear[ed] as one-inch-high gray smudges to viewers driving by in their cars" and were "too small to read except by very close and studied scrutiny."

Although the record does not reflect specifically where the over 2000 campaign signs were placed, the respondents indicated that the signs were distributed throughout the 27th Congressional District of Texas which, along with information contained in the complaint, suggest that the campaign signs were placed along the roadside, possibly among other places. It would seem that a one-inch-high disclaimer on a 4' x 4' sign would not be sufficient to give adequate notice of the identity of the persons who paid for the signs to readers that observed the signs from inside their cars, which would appear to be the likely vantage point of most viewers of roadside signs. Inasmuch as undisputed facts in the record appear to indicate that the disclaimers on the respondents' campaign signs did not meet the clear and conspicuous requirement, we recommend that the Commission find reason to believe that the respondents violated 2 U.S.C. § 441d.

## III. DISCUSSION OF CONCILIATION AND CIVIL PENALTIES

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## IV. RECOMMENDATIONS

1. Find that Ortiz for Congress and Frank A. Tompkins, as treasurer, violated 2 U.S.C. § 441d.

2. Approve the attached Factual and Legal Analysis.

3. Approve the attached conciliation agreement and appropriate letters.

Lawrence M. Noble
General Counsel

7/21/95
Date

BY: Lois G. Lerner
Associate General Counsel

Attachments:

1. Response to Complaint
2. Factual and Legal Analysis
3. Conciliation Agreement

95043664954

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**MEMORANDUM**

TO: Lawrence M. Noble
General Counsel

FROM: Marjorie W. Emmons/Bonnie J. Ross
Commission Secretary

DATE: July 26, 1995

SUBJECT: MUR 4094 - First General Counsel's Report dated July 20, 1995

The above-captioned document was circulated to the Commission on Friday, July 21, 1995 at 12:00 p.m.

Objections(s) have been received from the Commissioner(s) as indicated by the names(s) checked below:

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

This matter will be placed on the meeting agenda for Tuesday, August 1, 1995.

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

95043664955

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | MUR 4094 |
| Ortiz for Congress and | ) | |
| Frank A. Tompkins, as treasurer | ) | |

**AMENDED CERTIFICATION**

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 1, 1995, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 4094:

1. Find reason to believe that Ortiz for Congress and Frank A. Tompkins, as treasurer, violated 2 U.S.C. § 441d.

2. Approve the Factual and Legal Analysis attached to the General Counsel's July 20, 1995 report.

3. Direct the Office of General Counsel to send a letter of admonishment, but take no further action and close the file in this matter.

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

Attest:

8-9-95
Date

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

9504366496

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 7, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Erol A. Stone
Stone for Congress
810 E. Harrison
Harlingen, TX 78550

RE: MUR 4094
Ortiz for Congress and
Frank A. Tompkins, as Treasurer

Dear Mr. Stone:

This is in reference to the complaint you filed with the Federal Election Commission on October 20, 1994, concerning Ortiz for Congress and Frank A. Tompkins, as treasurer.

Based on that complaint, on August 1, 1995, the Commission found that there was reason to believe Ortiz for Congress and Frank A. Tompkins, as treasurer, violated 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended. However, after considering the circumstances of this matter, the Commission determined to take no further action against Ortiz for Congress and Frank A. Tompkins, as treasurer, and closed the file in this matter on August 1, 1995. This matter will become part of the public record within 30 days. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

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

Sincerely,

Tracey L. Ligon
Attorney

Enclosure:
Factual and Legal Analysis

Celebrating the Commission's 20th Anniversary
YESTERDAY TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Ortiz for Congress and Frank A. Tompkins, as treasurer MUR: 4094

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Mr. Erol A. Stone on October 20, 1994. See 2 U.S.C. § 437g(a)(1).

A. The Law

Pursuant to 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a), whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing, or any other form of general public political advertising, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by the authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized committee of a candidate, or an agent thereof, the communication shall clearly state that it is paid for by such other person and, is authorized by such candidate, authorized committee or agent. If such communication is not authorized by a candidate, an authorized committee of a candidate, or an agent thereof, the communication

9504366495 8

shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. Such disclaimers shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.[1] 11 C.F.R. § 110.11(a)(1). Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication, except on communication, such as billboards, that contain only a front face. 11 C.F.R. § 110.11(a)(1). The requirements of 11 C.F.R. § 110.11(a)(1) do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed. 11 C.F.R. § 110.11(a)(2).

B. **Discussion**

The complainant alleges that the respondents violated 2 U.S.C. § 441d by posting campaign signs with no disclaimer, with an invalid disclaimer, or with a disclaimer "too small to read except by very close and studied scrutiny." In support of his allegations, the complainant enclosed a copy of a small campaign card bearing no disclaimer and a larger "push" card, which the complainant contends incorrectly identifies the committee's

1. We note that on October 5, 1994, the Commission issued a Notice of Proposed Rulemaking, which addresses the meaning of the term "clear and conspicuous." Notice 1994-14. Under the proposed rules, a disclaimer would not be "clear and conspicuous" if it is in small type in comparison to the remainder of the material, or if the printing is difficult to read or if the placement is easily overlooked.

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treasurer. The complainant also enclosed an article from The Brownsville Herald, dated October 7, 1994, which states that respondents' campaign signs bore an ink-stamped disclaimer that was legible only from a few feet away and appeared as one-inch-high gray "smudges" to viewers driving by in their cars. The article further indicated that some of the signs did not bear the ink stamp at all.

In response to the complaint, respondents state that a large portion of their campaign material was "carry over" stock from previous campaigns and that the silk screens for the over 2000 4' x 4' campaign signs that were distributed throughout the 27th Congressional District of Texas had been used for every election commencing in 1982 and bore the name of its former treasurer, Mr. Alvaro D. Saenz, who resigned a few months before the November, 1994 election campaign. Respondents state that volunteers made a consistent effort throughout the campaign period to see that all campaign literature complied with the law but may have, in some instances, inadvertently failed to remove the previous treasurer's name. Respondents also state that prior to and following the instant complaint, they attempted to insure that all of their signs and other materials bore proper disclaimers, noting that they discovered that some of their signs, which had been rubber stamped or had labels bearing disclaimers affixed, had been torn down, "possibly by our opposition" while others had had the ink stamp rubbed off, and/or labels removed.

While the complainant argues that "push" cards and some signs distributed by the respondents bore disclaimers which

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misidentified the treasurer in violation of 2 U.S.C. § 441d, we note that 11 C.F.R. § 110.11(a)(1), the regulation implementing 2 U.S.C. § 441d, requires, in this case, only that the disclaimers clearly and conspicuously state that the communication has been paid for by the authorized political committee; there is no requirement that names of committee officers be included in disclaimers. See 11 C.F.R. § 110.11(a)(1); Advisory Opinion 1976-35. Thus, while the respondents "may have" misidentified the political committee's treasurer in the disclaimer, this error is not violative of 2 U.S.C. § 441d.

In addition, the small campaign card submitted by the complainant, which was presumably made and distributed by the respondents, appears to be 3 1/2 x 2 inches in size and, as such, is small enough to be considered exempt from the 441d disclaimer requirement pursuant to 11 C.F.R. § 110.11(a)(2). See Advisory Opinion 1980-42 (applying the small item exemption to concert tickets); MUR 3092 (Commission applied small item exemption to 3 1/2 x 2 inch refrigerator magnet). Thus, it appears that the respondents have not violated 2 U.S.C. § 441d by distributing the small campaign card without a disclaimer.

As the complainant contends, however, the size of the disclaimers that were placed on respondents' campaign signs appears to be legally insufficient.[2] While Section 110.11(a)(1)

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2. We note that the record does not contain a picture of the signs or information regarding the language content of the signs at issue aside from references to the disclaimers. However, in light of the fact that the respondents did not deny that the "campaign signs" at issue required disclaimers and construing the case in a light most favorable to the complainant, we presume that the signs fall within the type of communication that requires a disclaimer

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does not specify minimum size requirements for disclaimers, the regulation does require that disclaimers be presented in a clear and conspicuous manner "to give the reader ... adequate notice of the identity of persons who paid for ... the communication." Although the record does not contain a picture of the signs at issue, the respondents indicated in their response that their "well over 2,000" campaign signs were 4' x 4' in size. Significantly, respondents did not dispute the complainant's contentions that the respondents' hand/ink-stamped disclaimers "appear[ed] as one-inch-high gray smudges to viewers driving by in their cars" and were "too small to read except by very close and studied scrutiny."

Although the record does not reflect specifically where the over 2000 campaign signs were placed, the respondents indicated that the signs were distributed throughout the 27th Congressional District of Texas which, along with information contained in the complaint, suggest that the campaign signs were placed along the roadside, possibly among other places. It would seem that a one-inch-high disclaimer on a 4' x 4' sign would not be sufficient to give adequate notice of the identity of the persons who paid for the signs to readers that observed the signs from inside their cars, which would appear to be the likely vantage point of most viewers of roadside signs. Inasmuch as undisputed facts in the record appear to indicate that the disclaimers on the respondents' campaign signs did not meet the clear and conspicuous requirement,

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(Footnote 2 continued from previous page)
pursuant to the statute and regulation.

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we find that there is reason to believe that the respondents violated 2 U.S.C. § 441d.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

August 7, 1995

Mr. Frank A. Tompkins
Ortiz for Congress
P.O. Box 7806
Corpus Christi, TX 78467

RE: MUR 4094
Ortiz for Congress and
Frank A. Tompkins, as treasurer

Dear Mr. Tompkins:

On August 1, 1995, the Federal Election Commission found reason to believe that Ortiz for Congress and you, as treasurer, violated 2 U.S.C. § 441d, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that failing to present required discaimers on campaign material in a clear and conspicuous manner to give the reader adequate notice of the identity of the persons who paid for and, where required, who authorized the communication, is a violation of Section 441d of the Act. You should take steps to ensure that this activity does not occur in the future.

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.

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If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Vice Chairman

Enclosure:
Factual and Legal Analysis

cc: Representative Solomon P. Ortiz

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Ortiz for Congress and Frank A. Tompkins, as treasurer MUR: 4094

This matter was generated by a complaint filed with the Federal Election Commission ("the Commission") by Mr. Erol A. Stone on October 20, 1994. See 2 U.S.C. § 437g(a)(1).

A. The Law

Pursuant to 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a), whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing, or any other form of general public political advertising, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agents, shall clearly state that the communication has been paid for by the authorized political committee. If such communication is paid for by other persons but authorized by a candidate, an authorized committee of a candidate, or an agent thereof, the communication shall clearly state that it is paid for by such other person and, is authorized by such candidate, authorized committee or agent. If such communication is not authorized by a candidate, an authorized committee of a candidate, or an agent thereof, the communication

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shall clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. Such disclaimers shall appear and be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication.[1] 11 C.F.R. § 110.11(a)(1). Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication, except on communication, such as billboards, that contain only a front face. 11 C.F.R. § 110.11(a)(1). The requirements of 11 C.F.R. § 110.11(a)(1) do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed. 11 C.F.R. § 110.11(a)(2).

B. **Discussion**

The complainant alleges that the respondents violated 2 U.S.C. § 441d by posting campaign signs with no disclaimer, with an invalid disclaimer, or with a disclaimer "too small to read except by very close and studied scrutiny." In support of his allegations, the complainant enclosed a copy of a small campaign card bearing no disclaimer and a larger "push" card, which the complainant contends incorrectly identifies the committee's

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1. We note that on October 5, 1994, the Commission issued a Notice of Proposed Rulemaking, which addresses the meaning of the term "clear and conspicuous." Notice 1994-14. Under the proposed rules, a disclaimer would not be "clear and conspicuous" if it is in small type in comparison to the remainder of the material, or if the printing is difficult to read or if the placement is easily overlooked.

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treasurer. The complainant also enclosed an article from The Brownsville Herald, dated October 7, 1994, which states that respondents' campaign signs bore an ink-stamped disclaimer that was legible only from a few feet away and appeared as one-inch-high gray "smudges" to viewers driving by in their cars. The article further indicated that some of the signs did not bear the ink stamp at all.

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(Footnote 2 continued from previous page)
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we find that there is reason to believe that the respondents violated 2 U.S.C. § 441d.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4094

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