

**LAW OFFICES OF ANDREW P. PUGNO**

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VIA OVERNIGHT MAIL

May 31, 2006

Office of the General Counsel  
Enforcement Division  
Federal Election Commission  
999 E St NW  
Washington DC 20463-0001

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2006 JUN - 1 A 10: 01

Re: Response to Complaint

MUR 5725  
V. Eric Roach  
Eric Roach for Congress  
David Bauer, Treasurer

Dear Office of the General Counsel:

The undersigned represents Mr. V. Eric Roach, Eric Roach for Congress (a principal campaign committee), and its treasurer, Mr. David Bauer (collectively, "Respondents"). Attached please find Statements of Designation of Counsel executed by both Mr. Roach (Exh. 1) and Mr. Bauer (Exh. 2).

Pursuant to 2 U.S.C. § 437g(a)(1), this letter is a joint response to the two complaints filed by Jess Durfee ("Complainant") and designated by the Commission as MUR 5725 and MUR 5727. This response is filed timely within the extension of time granted by the Commission to June 1, 2006.

Respondents acknowledge that the requisite written disclaimers for each of the two subject communications were inadvertently omitted. However, Respondents request that no action be taken by the Commission and, instead, both matters be closed. An investigation does not warrant the use of the Commission's limited resources in these cases because, among other reasons: the disclaimer omissions were totally inadvertent and isolated occurrences, immediate corrective action was taken in each case upon discovery of the omission, and under the particular circumstances the omissions were not prejudicial or likely to mislead the voters in any material respect.

It is also worth noting that Mr. Roach did not prevail in the April 13, 2006 Special Election for California's 50<sup>th</sup> Congressional District, and is not actively campaigning for the Republican nomination in the regular Primary Election taking place June 6, 2006 (although his name remains on the ballot along with over 14 other candidates who filed their candidacies prior to the Special Election in April).

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**MUR 5725**

**(Mail Disclaimer)**

**I. Summary of Complaint**

Respondents mass-mailed a letter, signed by the candidate's wife (Mrs. Meg Roach) advocating Mr. Roach's election in the April 13, 2006 Special Election to fill the vacancy in the 50<sup>th</sup> Congressional District of California. The mailing did not include the "paid for by" disclaimer required by 2 U.S.C. § 441d(a). (See sample at Exh. 3, attached hereto.)

**II. Response**

As a procedural matter, the "all-purpose acknowledgement" dated March 23, 2006 and attached to Complainant's letter in MUR 5725 is deficient. It fails to state that the contents of the complaint are "sworn to" by the person filing the complaint in the presence of a notary public, as required by 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4(b)(2). Thus, the Commission has no jurisdiction to proceed in this matter, and it should be dropped. (11 C.F.R. § 111.5(b).)

On the merits, Respondents acknowledge that a majority of the copies of the subject letter did not initially include the required disclaimer under 2 U.S.C. § 441d(a). However, Respondents request that the matter be closed without further action in light of the facts that the omission was inadvertent, that the Respondents took immediate corrective action, and the other following mitigating circumstances.

**III Mitigating Considerations**

**A. The Inadvertent, Isolated and Proportionally Diminutive Nature of the Occurrence**

Over a short period of about 10 weeks, Respondents' campaign vendors produced and mailed 23 distinct mass-mailers for the campaign. Of the 23 mailers, only the one (1) subject mailer omitted the required "paid for by" disclaimer – all of the other 22 mailers complied fully with the law. The omission of the disclaimer on the subject letter was simply an inadvertent oversight by the campaign's mass-mail vendors, isolated to just the one occurrence. The isolated nature of this single occurrence demonstrates that it was not in willful or careless disregard for the governing regulations, but rather a simple mistake.

As a percentage of the campaign's direct mail and overall expenditures, the offending mailer was only a tiny fraction. Evidence is available to show that the subject mailer accounted for only approximately three percent (3%) of expenditures on direct mail, and came to less than 1% of the campaign's overall expenditures.

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## B. Corrective and Remedial Action Taken

Also significant is the Respondents' forthcoming acknowledgment of the error and immediate corrective action taken to remedy the situation to the fullest extent possible. In fact, only about 60% of the letters signed by Mrs. Roach had actually been mailed by the time the missing disclaimer was discovered. To correct the situation, Respondents incurred the cost of "ink-jetting" the proper disclaimer on the remaining 40% of the pre-printed letters prior to mailing them to voters. Thus, only a fraction of the expenditure actually failed to contain the proper disclaimer.<sup>1</sup>

Respondents also took further corrective action by sending a *second* letter to voters, also signed by Mrs. Roach and utilizing the same letterhead and handwriting as the first letter, but this time it included the proper "paid for by" disclaimer. (See Exh. 4, attached hereto.) Respondents mailed the second Mrs. Roach letter to roughly 70,000 households, or 90% of the voters who may have received the first letter lacking the proper disclaimer. Whatever uncertainty those voters may have had about whether or not the first letter signed by Mrs. Roach was authorized and paid for by Mr. Roach's campaign (and we assert there was little or no uncertainty), any such uncertainty would clearly have been removed by the second, similar letter signed by Mrs. Roach and bearing the proper disclaimer.

## C. Lack of Prejudicial Harm

The Complaint itself demonstrates that the unintentional, partial omission of the "paid for by" disclaimer did not create any prejudice to voters *with regard to the governmental interests that the requirement was designed to advance*. Complainant's stated point of contention is that the Respondents' mass-mailing had been cleverly "designed to resemble a 'personal note'" from the wife of the candidate. (MUR 5725 Complaint, ¶¶ 2 and 4.) Complainant asserts that such "misleading communication is at the heart of the original rationale for disclaimer requirements." (*Id.* at ¶ 4.) Yet, in reality the purpose of "paid for by" disclaimer requirement is not to inform voters that personal-appearing letters are actually pre-printed and mass-mailed.

Instead, it is well-established that the governmental interest served by the disclaimer requirement is to provide the voting public with important information about the relationship between the candidate and the person or group that paid for the communication. (*FEC v. Public Citizen* (11<sup>th</sup> Cir. 2001) 268 F.3d 1283, 1287.) Thus, the disclaimer requirement "protects the integrity of the electoral process by keeping separate the messages of candidates and independent groups." (*Id.* at p. 1287.) It also ensures that voters know when a candidate has or has not authorized so-called "negative advertising" during a campaign, which may itself influence a voter's choice of candidate. (*Id.* at p. 1288; see also *FEC v. Survival Education Fund, Inc.* (2<sup>nd</sup> Cir. 1995) 65 F.3d 285, 295 ["core purpose" of § 441d(a) is to inform the public whether or not election communications are made "at the behest of candidates"].)

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<sup>1</sup> It is estimated that \$23,500 was spent to print and mail approximately 50,000 copies of the mailer without the disclaimer. Approximately \$16,700 was spent to "ink-jet" the disclaimer on the remaining 30,000 copies before they were mailed.

In light of these statutory purposes, the inadvertent omission of the “paid for by” disclaimer on the first letter signed by Mrs. Roach was not *materially* prejudicial to the voters in this case. The relationship between Mr. Roach and Mrs. Roach is obvious – the letter clearly communicated their status as husband and wife. (See Exh. 3, p. 1, ¶ 1 [“I... ask you to vote for my husband, Eric Roach”]; p. 1, ¶ 4 [“...my husband’s campaign...”]; p. 2, ¶ 2 [“Eric is a devoted husband and father of our five children”].) The letter’s emphasis on the Roachs’ marriage relationship also substantially reduced the risk (if any) of voter confusion about whether “the communication is independent advocacy or an authorized communication.” (*FEC v. Public Citizen, supra*, 268 F.3d at p. 1289, fn. 8.) The letter also did not implicate the statute’s objective of informing voters whether the candidate has authorized “negative advertising,” because the letter only favorably communicated the candidate’s suitability for office and did not attack any opponent.<sup>2</sup>

In short, because the omission did not materially impair the statute’s purpose of informing voters about (1) the relationship between the candidate and the person sending the communication or (2) whether the candidate has authorized negative advertising, the technical disclaimer violation was not materially prejudicial.

<sup>2</sup> Please note that the letter’s statement that “Eric and I have been thoroughly dismayed at the way Congress has been acting of late” (Exh. 3, p. 2, ¶ 3) cannot be understood to attack any of the other candidates in the Special Election because there was no incumbent in the race. The congressional seat was vacated by former congressman Randy “Duke” Cunningham, triggering the Special Election to fill the vacancy.

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APR 17 2006 2:40PM

NO. 329 P. 4



FEDERAL ELECTION COMMISSION  
Office of General Counsel  
999 E Street, NW  
Washington, DC 20463

STATEMENT OF DESIGNATION OF COUNSEL  
Please use one form for each Respondent/Witness  
FAX (202) 219-3923

MUR:                      #5725  
COUNSEL: Andrew Pugno  
FIRM: Law offices of Andrew Pugno  
ADDRESS: 101 Parkshore Dr. #100  
TELEPHONE - OFFICE: (916) 608-3065  
FAX: (916) 608-3066

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.

4/17/06                      David Bauer                      Treas.  
Date                              Signature                              Title

RESPONDENT/WITNESS NAME (PRINT): David Bauer  
MAILING ADDRESS: 2150 River Plaza Dr. #150  
Sacramento CA 95833  
TELEPHONE - HOME: (916) 791-6005  
OFFICE: (916) 473-8866

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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*Meg Roach*

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674 Via De La Valle, Suite 226 • Solana Beach CA 92075

Meg Roach

Dear Neighbor,

I am writing you a personal note today to ask you to vote for my husband, Eric Roach.

As we draw close to the April 11<sup>th</sup> "Special Election" for Congress, I'd like to challenge you to think about the values and attributes you would like in our new Congressman.

Is it important to you that our elected officials have our interests at heart; the interests of our families? Do you believe, as I do, that our elected officials should not be in the pocket of special interest groups?

Please know that my husband's campaign is more of a "grassroots" effort, in that he is not a career politician and is the only candidate who has pledged to not take any money from lobbyists, political action committees, or even politicians who have taken money from lobbyists or PAC's.

Many volunteers and great people are working alongside Eric, because they understand his vision and know that he is the right candidate for this election.

Eric's business background, success, and life's experiences make him perfect to represent our district in Washington. WE NEED HIM! We need his attitude, passion, and his fresh voice. We need his spirit, enthusiasm, good decision-making skills, pro-active nature, and his ability to see the big picture and get things done.

Eric is a devoted husband and father of our five children. He strongly believes in the importance of family, and has always made family his first priority.

Like many in our area, Eric and I have been thoroughly dismayed at the way Congress has been acting of late. And, I am very proud that Eric decided to "step up" to the plate and do something about it. He believes in a limited government - that our government should be smaller and should spend less of our tax dollars. He has great ideas for reform, and will work to change the way our government is responsible to each of us; he can make it better!

I hope that you will vote for Eric Roach for Congress. I know he will be a Congressman we will be proud of!

Sincerely,  
Meg Roach

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*Meg Roach*

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**Paid for by Eric Roach for Congress**

674 Via De La Valle, Suite 226 • Solana Beach, CA 92075

Meg Roach

Dear Friend,

I feel compelled to write you today because of recent attacks on my husband's character. As you know, my husband, Eric Roach, is running for Congress in the upcoming special election, April 11<sup>th</sup>. I knew that the campaign trail would be hard, especially since Eric is coming from outside the political arena, but no one is truly prepared for vicious attacks and innuendos that attempt to "tear down" the solid reputation of a man whose present sole interest is to serve his community and nation.

Eric represents a threat to those in power because his interests in government are altruistic. His interests are to represent us and not be beholden to the special interest groups that control so many of our politicians. Eric has become personally and financially successful because of the good choices he's made in his life to be honest in business dealings, and through showing integrity and strong moral character. Anything printed otherwise is simply not true and is a last ditch effort of a sad campaign bent on keeping the "establishment" in place.

When Eric was a young man, he voluntarily served an 18-month "mission" for our church. He was sent to Honduras to work among extremely poor people, helping them to build churches, homes, etc. He used the spare money that his family sent him from his own savings to pay for things the local people needed instead of using it for himself.

When he attended college, Eric always looked out for friends who needed help or guidance and took them under his wing without drawing attention to it.

In his work life, if there was a question of ethics, Eric always chose the honest, right, and true course, even at the expense of his job. When he sold his company in 1997, he issued a payout for every single employee that worked for his company, whether they were shareholders or not. This is something that I've never heard done before.

As a father of our 5 children, Eric has instilled good values and has been an excellent role model. When we have family time, he is always careful to include our extended family because family is the central feature of our lives.

People who get to know Eric as I do appreciate his sincerity, his leadership qualities, and his ability to navigate his own life in an exemplary way.

Interested voters tell me how impressed they are with Eric's knowledge of the issues we face and in his ability to provide real solutions.

Please consider supporting my husband, Eric Roach, for Congress representing the 50<sup>th</sup> district.

Sincerely,

Meg Roach

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