



October 20, 2006

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FEDERAL ELECTION
COMMISSION
OFFICE OF LEGAL
COUNSEL
2006 OCT 23 A 10: 04

Lawrence H. Norton , Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Complaint Against Richard Pombo For Congress

MUR # 5857

Dear Mr. Norton,

Attached please find a complaint filed by McNerney for Congress against Richard Pombo for Congress for violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. ("the Act"), and Commission regulations at 11 C.F.R. 1.1 et seq.

The complaint alleges that a television campaign advertisement produced and funded by the Richard Pombo for Congress campaign committee, that has been airing on multiple television stations in the Sacramento media market, violated the Act and Commission regulations for failing to include a proper disclaimer and written statement at the end of the advertisement stating that Richard Pombo, the candidate, authorized or approved the advertisement. The advertisement also violates the disclaimer requirements of the Federal Communications Act of 1934.

Also enclosed please find a self-addressed stamped envelope. Please return an endorsed-filed copy of the complaint. Thank you for your cooperation and assistance in this matter.

Very truly yours,

Gary Prost

McNerney for Congress

AJC/jd
Attachments

Paid for by McNerney for Congress

P.O. Box 12022
Pleasanton, CA 94588
www.jerrymcnerney.org

Contributions are not tax deductible for Federal Income Tax purposes.

Federal law requires political committees to report the name, mailing address, occupation and name of employer for each individual whose contribution aggregate in excess of \$200 in a calendar year. Corporate checks cannot be accepted. FEC# C00398644

Tel 925-833-0643

Fax: 925-833-0843

Email: jerry@jerrymcnerney.org

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COUNSEL

2006 OCT 23 P 3: 08

Before the Federal Election Commission

McNerney for Congress
6250 Village Pkwy
Dublin, CA 94568-2449
(925) 833 0643

VS.

MUR No.: 5857

Richard Pombo, Richard Pombo for Congress
Campaign Headquarters
6702 Inglewood Avenue, Suite K
Stockton, CA 95207
(209) 956-3976

COMPLAINT

Pursuant to 2 U.S.C. §437g, and upon information and belief, this complaint concerns violations of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. ("the Act"), and Commission regulations at 11 C.F.R. 110.11, by Richard Pombo, Richard Pombo for Congress ("Pombo for Congress"), the campaign committee for Representative Richard Pombo, who is a candidate running for re-election in the 11th Congressional District of California. Pombo for Congress is a political committee registered with the Commission.

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I. FACTS

On information and belief, Pombo for Congress produced a 30 second campaign advertisement for television (the "Pombo advertisement") which began airing on or about October 20, 2006, on broadcast and/or cable stations 10, 13, 3, 31, 40 and 58 in the Sacramento media market. This complaint alleges that the Pombo advertisement at issue is in violation of 2 U.S.C. § 441d and 11 C.F.R. § 110.11 for failing to include the proper disclaimer and written statement required for televised communications authorized by a candidate.

The following is a transcript of the campaign advertisement at issue, as transcribed by Gary Prost, Representative for the complainant, McNerney for Congress:

"Richard Pombo: I'm Richard Pombo and I authorize this message to protect our families.

"Pombo's youngest daughter: Me too.

"Narrator: What do we really know about liberal Jerry McNerney? According to his own published answers to Vote Smart, McNerney would stop law enforcement for monitoring terrorist phone calls into the US and repeal the federal death penalty for terrorists who bomb government buildings or who murder our law enforcement officers. Jerry McNerney isn't just wrong, he's wrong on the most important issues of our time."

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At the beginning of the Pombo advertisement, a statement appears at the bottom of the screen in white font and black background stating: "Paid For By Richard Pombo For Congress." Furthermore, Pombo for Congress failed to provide any written statement or disclaimer at the end of the advertisement, as required under federal election law , stating that Richard Pombo, the candidate, authorized or approved the advertisement.

II. LEGAL ANALYSIS

A. Pombo For Congress violated the Act and Commission regulations by failing to provide a proper disclaimer and written statement on the Pombo advertisement in conformity with the Act and Commission regulations.

The Pombo advertisement fails to provide a "clearly readable" written statement appearing at the end of the communication for a period of at least four seconds with a reasonable degree of color contrast between the background and the disclaimer statement. See 11 CFR 110.11(c)(3)(iii). Pombo for Congress has violated the Act and Commission regulations because the campaign advertisement at issue did **not** provide or display a written statement of any kind at the end of the campaign advertisement stating that Richard Pombo, the candidate, authorized or approved the advertisement, in violation of the Act and Commission regulations.

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B. Pombo for Congress also violated the Federal Communications Act of 1934 by failing to provide a proper written statement and clearly identifiable photographic or similar image of the candidate, Richard Pombo, at the end of the campaign advertisement.

The Communications Act of 1934 requires a federal candidate wishing to broadcast a television advertisement that makes direct reference to another candidate for the same office to include provision for a clearly readable written statement appearing at the end of the communication for a period of at least four seconds. In addition, the television ad must provide a clearly identifiable photographic or similar image of the candidate and a clearly readable pointed statement identifying the candidate and stating that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast. If a candidate does not comply with this requirement at any time during the 60 days before the general election, that candidate may not receive the lowest unit charge "for such broadcast or any other broadcast ... that occur on or after the date of such broadcast ..." 47 USC § 315(b)(2)(B). Moreover, the candidate's campaign must provide written certification to the broadcast station at the time of purchase that it will comply with this requirement. 47 USC § 315(b)(2)(E).

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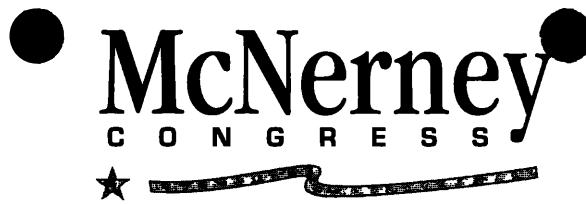
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The Pombo advertisement does not comply with the foregoing requirements. First, the Pombo advertisement fails to include provision for a clearly readable written statement appearing at the end of the communication for a period of at least four seconds. In addition, the Pombo advertisement fails to provide a clearly identifiable photographic or similar image of the candidate and fails to provide a clearly readable pointed statement identifying the candidate and a statement that the candidate has approved the broadcast and that the candidate's authorized committee paid for the broadcast.

III. CONCLUSION

Pombo for Congress's violation of and failure to comply with the Act and Commission regulations warrants further investigation and enforcement by the Commission. Demand is hereby made that the Commission enjoin Pombo for Congress, and any and all television stations in the Sacramento media market, from continuing to run and broadcast this campaign advertisement. Demand is further made that the Commission immediately investigate the matter and find Pombo for Congress in violation of the Act and Commission regulations for the reasons set forth herein.

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Respectfully submitted,

Gary Prost

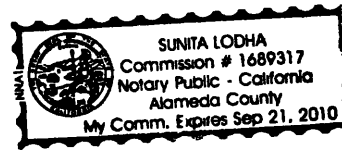
Gary Prost

McNerney for Congress

SWORN TO AND SUBSCRIBED before me on this 20th day of October, 2006.

Sunita Lodha

Notary Public



My Commission Expires: Sept 21 '10

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