



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

THIS IS THE BEGINNING OF MUR # 4071

DATE FILMED 1-4-96 CAMERA NO. 4071

CAMERAMAN S.E.G.

06043701

KING COUNTY
Democrats

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

SEP 29 10 09 AM '94

MUR 4071

George W. Zander, Chair

Lawrence M. Noble, Esquire
General Counsel
Federal Election Commission
999 E Street, N.W., 6th Floor
Washington, D.C. 20463

Re: Complaint against the Rick White
for Congress Committee and
Dawna K. Munson, as Treasurer

Dear Mr. Noble:

This letter constitutes a complaint against the Rick White for Congress Committee ("White Committee" or "respondent") and Dawna K. Munson, as Treasurer for knowingly and willfully violating the Federal Election Campaign Act of 1971, as amended (the "Act").

Introduction

Rick White is a candidate for the United States Congress from the first district of Washington. His principal campaign committee, the Rick White for Congress Committee, lists as its address P.O Box 8156, Kirkland, Washington, 98034.

In short, the White Committee has violated the disclaimer requirements of the Act by producing and airing a television ad that misrepresents who paid for the ad.

Facts

The facts of this complaint center on a campaign advertisement produced by the White Committee and aired repeatedly on Seattle television stations. A videotaped copy is enclosed with this complaint.

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The ad in question begins with a clear disclaimer which states "Paid for by Maria Cantwell for Congress Cmte."¹ The picture is frozen on the disclaimer, which is also accompanied by the logo of the Cantwell Committee as the ad begins.

The ad closes with a barely readable disclaimer stating "Paid for by the Rick White for Congress Committee" over a tiny portion of a picture of a screen-size picture of candidate Maria Cantwell. No where in the ad does either a picture of Rick White or the White Committee logo appear.²

The White Committee television ad is intentionally misleading and confusing to viewers.³ The White Committee intentionally misrepresents who has paid for the ad by including two different disclaimer statements, one at the start of the ad and one at the conclusion of the ad. In fact, the Cantwell Committee disclaimer is clearer, more readable and appears on the screen longer than the White Committee disclaimer. More viewers are likely to think the Cantwell Committee paid for the ad than the White Committee.

The Violation

The White Committee television ad fails to comply with the disclaimer requirements of the Act, by containing two distinct disclaimer statements. The disclaimer requirements of the Act are set forth in 2 U.S.C. section 441d and provide that whenever a candidate pays for political advertising, that advertising must clearly state that it has been paid for by the candidate's authorized committee:

¹Maria Cantwell is Rick White's opponent in the 1994 general election in the first district of Washington.

²In addition, the ad contains a voiceover while the Cantwell Committee disclaimer appears which says "Maria Cantwell for Congress..." in a different voice from the remainder of the ad's narration.

³By personal knowledge, numerous residents of the first district have inquired in person and by telephone whether the ad in question is a Cantwell Committee ad.

(a) Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, . . . "

(1) if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee . . . (emphasis added)

The regulations promulgated by the Commission on this issue are quite clear with respect to the disclaimer requirements:

9 6 0 4 3 7 0 1 3 4 7
... a disclaimer . . . 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. 11 cfr section 110.11(a)(1) (emphasis added)

By including two disclaimers, it is not at all clear who paid for the ad: the Cantwell Committee or the White Committee. Having two different disclaimers is misleading and instead of giving adequate notice to the viewer as to who paid for the ad, is so confusing as to result in no notice at all. In fact, the disparity between the two disclaimers here makes it seem that the Cantwell Committee is the one that paid for the ad. Thus, the White Committee does not clearly state who paid for the ad.

Conclusion

The White Committee ad fails to comply with either the letter or the spirit of section 441d, and for that reason, the Commission should find reason to believe that the White Committee has violated the Act, open an

investigation into this matter, and require the maximum civil penalty authorized by law. In addition, the Commission should seek to have the White Committee cease and desist from using this ad until the disclaimer fully meets the requirements of the Act.

Thank you for your attention to this matter.

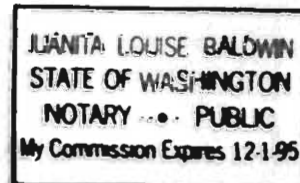
Sincerely,

Nancy R. Rising
Nancy Rising

George Zander
George Zander

Subscribed and sworn to before me this 26th day of September, 1994.

Juanita Baldwin (notary public)



Subscribed and sworn to before me this 27th day of September, 1994.

Hylah Jacques,
Notary Public in and for the
State of Washington, residing
at Seattle.
my commission expires 9/20/97.

96043701348



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 6, 1994

Nancy Rising
George Zander
Democratic Party, King County
1411 Fourth Ave., Suite 1106
Seattle, WA 98101

RE: MUR 4071

Dear Ms. Rising and Mr. Zander:

This letter acknowledges receipt on September 29, 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.

Your letter seeks injunctive relief to prevent the Rick White for Congress Committee from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant your request for injunctive relief at this time.

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 4071. 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

96043701349



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

October 6, 1994

Dawna K. Munson, Treasurer
Rick White for Congress Committee
P.O. Box 8156
Kirkland, WA 98034

RE: MUR 4071

Dear Ms. Munson:

The Federal Election Commission received a complaint which indicates that the Rick White 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 4071. 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.

The complainant seeks injunctive relief to prevent the Rick White for Congress Committee from continuing to engage in the allegedly improper activity. 2 U.S.C. § 437g(a)(6) provides that the Commission may seek such relief at the end of the administrative enforcement process. Accordingly, the Commission will not grant the complainant's request for injunctive relief at this time. The Commission will proceed with the processing of the remainder of the complaint pursuant to 2 U.S.C. § 437g(a).

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Dawna K. Munson, Treasurer
Rick White for Congress Committee
Page 2

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.

If you have any questions, please contact Joan McEnery 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

96043701351

Dawn K. Munson
Rick White For Congress Committee
P.O. Box 8156
Kirkland, WA 98034

October 25, 1994

**VIA FACSIMILE AND
OVERNIGHT COURIER**

Office of the General Counsel
Federal Election Commission
Washington D.C. 20463
Attn: Mary L. Takner, Esq.
Facsimile: 202-219-3923

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

OCT 25 5 52 PM '94

Re: MUR 4071

Dear Ms. Takner:

As Treasurer of the Rick White For Congress Committee, I received your October 6, 1994 letter referencing the above noted number on October 11, 1994. Because I and the Committee desire to accurately and appropriately respond to the issues raised in your letter and the complaint attached thereto, we respectfully request that the Federal Election Commission provide us with an additional 20 days, through November 15, 1994, to do so. As you can imagine, these are hectic days in the campaign and my efforts must be devoted primarily to properly ensuring that contribution and expenditure filings for the Committee are timely made. Moreover, the Committee is seeking to arrange for counsel to assist it in responding to the Commission's letter and hopes to have selected and fully advised such counsel by that time.

Should you have any questions regarding the above, please contact me as soon as possible at (206) 441-3500 or contact Mark Munson at (206) 583-8579. Please confirm the Commission's grant of the extension by return facsimile to Mark P. Munson at (206) 285-8500. Thank you for your consideration of these matters and the Commission can expect our formal response no later than November 15, 1994.

Very truly yours,
Rick White For Congress Committee

Dawn K. Munson
Dawn K. Munson, Treasurer

cc: Richard A. White

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 1, 1994

Dawna K. Munson, Treasurer
Rick White for Congress Committee
P.O. Box 8156
Kirkland, WA 98034

RE: MUR 4071
Rick White for Congress
Committee and Dawna K. Munson,
as Treasurer

Dear Ms. Munson:

This is in response to your letter dated October 25, 1994, requesting an extension until November 15, 1994 to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in your letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 15, 1994.

If you have any questions, please contact Joan McEnery at (202) 219-3400.

Sincerely,

Mary L. Taksar

Mary L. Taksar, Attorney
Central Enforcement Docket

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Nov 21 12 09 PM '94

Dawn K. Munson
Rick White For Congress Committee
P.O. Box 8156
Kirkland, WA 98034
(206) 441-3500

November 17, 1994

**VIA FACSIMILE AND
OVERNIGHT COURIER**

Office of the General Counsel
Federal Election Commission
Washington D.C. 20463
Attn: Mary L. Taksar, Esq.
Facsimile: 202-219-3923

Re: MUR 4071

Dear Ms. Taksar:

I refer to my letter to you of October 25, 1994 (copy enclosed). I cannot find that we received any response from you on this matter (although I understood that extensions of the type requested in my letter are routinely granted) which explains why we did not respond to you before our self-imposed deadline of November 15, 1994. (I have also been ill since the night of the election.) In any event, we are working on a response but we are also in the process of attempting to engage Mr. Bill Canfield of the Holland & Knight firm to assist the committee in this matter and certainly want him to review that response before it is filed. If you could contact me and let me know when you definitely want a response, I would be grateful. My telephone number is 206-441-3500 and my facsimile number is 206-441-1551. We certainly hope to resolve this matter as soon as possible.

Very truly yours,
Rick White For Congress Committee

Dawn K. Munson

Dawn K. Munson, Treasurer

cc: Richard A. White
Bill Canfield

96043701354

Dawn K. Munson
Rick White For Congress Committee
2201 Sixth Avenue, Suite 1400
Seattle, WA 98121
(206) 441-3500

November 21, 1994

Nov 22 3 19 PM '94

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

VIA FACSIMILE

Federal Election Commission
Washington D.C. 20463
Attn: Joan McEnery, Esq.
Facsimile: 202-219-3923

Re: MUR 4071

Dear Ms. McEnery:

Thank you for your call today in response to my letter and facsimile of last week. As I indicated, I was quite surprised to learn that the FEC had issued a response to the Committee's request of October 25, 1994 - I certainly have not seen that document! (Actually, it would be quite helpful to me if you could send me a copy of that letter, either by facsimile or by mail.)

As I indicated, we are in the process of engaging Mr. William B. Canfield to assist the Committee in handling this matter. To properly document that engagement, I enclose here a completed version of the form the FEC included with the original complaint. I have sent an original version of this document to Mr. Canfield today. Because I am unfamiliar with the requirements of your office, or the procedures involved in responding to this matter, I would be grateful if you could deal with him, at least primarily, with respect to the complaint and how the Committee is to respond.

I feel a need to respond to your directive today that I formally request another extension through November 28, 1994. I guess I do so. However, after our conversation, I received a phone message from Mr. Canfield as follows: "He put a detailed call into the FEC today regarding extension. He has yet to hear back from them. He is on his way out of town and will be back on Monday (the 28th!)." While it is my objective to be as cooperative as possible to get this issue resolved (and soon), now I don't know what to do other than to keep you fully advised of our situation. Please let me know if

Jean McEnery, Esq.
November 21, 1994
Page 2

you think I should be doing anything else at this time. Thank you again for responding to my letter of last week.

Very truly yours,
Rick White For Congress Committee

Dawna K. Munson
Dawna K. Munson, Treasurer

cc: Richard A. White
Bill Canfield

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Nov 22 3 19 PM '94

STATEMENT OF DESIGNATION OF COUNSEL

NR 4071

NAME OF COUNSEL: Mr. William B Canfield

ADDRESS: Holland & Knight
2100 Pennsylvania Avenue, N.W. Suite 400
Washington, D.C. 20037

TELEPHONE: (202) 862-5960

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.

11/21/94
Date

Dawn K. Munson
Signature

RESPONDENT'S NAME: DAWNA K. MUNSON

ADDRESS: 2201 SIXTH AVE

SUITE 1400

SEATTLE WA 98121

HOME PHONE: (206) 285-8587

BUSINESS PHONE: (206) 441-3500

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LAW OFFICES

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

HOLLAND & KNIGHT Nov 22 4 37 PM '94

WASHINGTON, D.C.
FORT LAUDERDALE
JACKSONVILLE
LAKELAND
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

2100 PENNSYLVANIA AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20037-3802

TELEPHONE (202) 955-3000

FAX (202) 955-5884

SPECIAL COUNSEL

SEAW. LIGOTTA,
PARENTS, EMBENIO
& SCHWARTZ, P.C.GARDEN CITY, NY
NEW YORK, NY

November 22, 1994

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
6th Floor
Washington, D.C. 20436

Re: M.U.R. #4071, Rick White For Congress Committee

Dear Mr. Noble:

I have today been retained in the above captioned matter to represent the Rick White for Congress Committee before the Federal Election Commission and I enclose a Designation of Counsel statement.

My efforts on behalf of the Committee were only initiated today, and I await receipt of full documentation materials. Additionally, I will need a brief period of time to review the information. Therefore, I ask that you extend the time frame for a response until Friday, December the 2nd, 1994.

Thank you in advance for your understanding of these circumstances and I look forward to your response.

Sincerely,

HOLLAND & KNIGHT

William Canfield/mec

William B. Canfield III

Enclosure

WAS-79110

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

STATEMENT OF DESIGNATION OF COUNSEL

NOV 22 4 46 PM '94

NO. 4071NAME OF COUNSEL: Mr. William B. CanfieldADDRESS: Holland & Knight
2400 Pennsylvania Avenue, N.W. Suite 400
Washington, D.C. 20037TELEPHONE: (202) 862-5960

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.

11/21/94
DateDawn K. Munson
SignatureRESPONDENT'S NAME: DAWNA K. MUNSONADDRESS: 2201 SIXTH AVE
SUITE 1400
SEATTLE WA 98121HOME PHONE: (206) 285-8587BUSINESS PHONE: (206) 441-3500

96043701359



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

November 28, 1994

William B. Canfield, Esq.
Holland & Knight
2100 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20037

RE: MUR 4071
Rick White for Congress
Committee and Dawna K. Munson,
as Treasurer

Dear Mr. Canfield:

This is in response to the letter from your clients, Rick White for Congress Committee and Dawna K. Munson, as treasurer, dated November 21, 1994, requesting an extension until November 28, 1994 to respond to the complaint filed in the above-noted matter. After considering the circumstances presented in the letter, the Office of the General Counsel has granted the requested extension. Accordingly, your response is due by the close of business on November 28, 1994.

If you have any questions, please contact Joan McEnery at (202) 219-3400.

Sincerely,

Mary L. Taksar (JLH)
Mary L. Taksar, Attorney
Central Enforcement Docket

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LAW OFFICES

HOLLAND & KNIGHT

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

NOV 30 10 03 AM '94

WASHINGTON, D.C.
FORT LAUDERDALE
JACKSONVILLE
LAKE LAND
MIAMI
ORLANDO
ST. PETERSBURG
TALLAHASSEE
TAMPA
WEST PALM BEACH

2100 PENNSYLVANIA AVENUE, N.W.

SUITE 400

WASHINGTON, D.C. 20037-3202

TELEPHONE (202) 955-3000

FAX (202) 955-5564

SPECIAL COUNSEL

SHAW, LICITRA,
PARENTE, ESERNIO
& SCHWARTZ, P.C.

GARDEN CITY, NY
NEW YORK, NY

November 28, 1994

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: M.U.R. # 4071, Rick White for Congress Committee

Dear Mr. Noble:

This letter will serve as the formal response of the Rick White for Congress Committee ("the Committee") in the above captioned Matter Under Review. As you know, the above captioned MUR was initiated as the result of a complaint filed on September 29, 1994 by the King County, Washington Democrat Party. The complaint refers to an advertisement paid for and authorized by the Committee. I have reviewed a copy of that advertisement in preparing this response. Because the complaint states that a copy of the advertisement at issue in this matter has been forwarded to your office by the complainant, I will retain my copy of the advertisement but will make a copy available to you should the need arise.

The complaint alleged that the Committee violated 2 United States Code 441d in the preparation of a television advertisement which commented upon the public record of Congresswoman Maria Cantwell. The complaint alleged that the Committee intentionally mislead and confused the voters in the First Congressional District of Washington by including in their advertisement a portion of a previously aired Cantwell advertisement, including the Cantwell Committee's disclaimer. It is important to note that, in making this assertion, the complainant acknowledges that the Committee included at the end of its advertisement the required disclosure notice that the ad had been authorized and paid for by the Rick White for Congress Committee. The complaint appears to conclude that because the Committee used previously aired Cantwell footage,

Lawrence M. Noble, Esq.
November 30, 1994
Page 2

including a Cantwell Committee disclaimer, and properly included its own disclaimer, voters in the First Congressional District would be unable to discern that the White Committee's ad had been paid for and authorized by the White Committee. We simply reject such an assertion and dispute that any violation of the Federal Election Campaign Act, amended ("the Act") has occurred. Consequently, we ask that the Commission find that there is no reason to believe that a violation of the Act has occurred, dismiss the complaint brought by the King County, Washington Democrat Party, and take no further action against the Committee in this matter.

Facts: The advertisement at issue in this MUR was prepared by the Committee on September 8, 1994 and can best be described as a typical, 30 second political ad. Its sole purpose was to enlighten potential voters as to the voting record of a Congressional incumbent. To accomplish that goal, the advertisement at issue sought to juxtapose the incumbent's public assertion, in her own political advertising, that she represented "change that's working" in Washington (and thus should be reelected), with her actual voting record in Congress, which strongly supported the legislative positions advocated by President Clinton.

To illustrate the fact that incumbent Cantwell had asserted that she was an agent of change in Congress, while simultaneously casting a series of votes supportive of the President, the Committee utilized the last five seconds of a previously aired Cantwell ad which contained both a photograph of Ms. Cantwell, as well as printed text and a "voice over" which asserted that Cantwell represented "change that's working." Because the last five seconds of the Cantwell advertisement contained the assertion about "change" which the Committee sought to highlight, the Committee used the last five seconds of the Cantwell advertisement in its complete form, without editing. In its unedited form, the last five seconds of the Cantwell advertisement also contained the Cantwell Committee's required disclaimer. The White Committee could have chosen to edit the last five seconds of the Cantwell advertisement so as to visually eliminate the Cantwell Committee's disclaimer. Had it made such an edit, the Cantwell Committee could have argued that the White Committee had edited or "doctored" the Cantwell ad. To preclude such an assertion, the last five seconds of the Cantwell ad were used in an unedited form.

At the end of the 30 second White Committee advertisement, the Committee ran its federally mandated disclaimer. While it is true that the White Committee's advertisement thus contained both a Cantwell Committee disclaimer (as shown in the last five seconds of a previously aired Cantwell Committee advertisement) and a White Committee disclaimer, it is clear from any objective review of the White Committee's advertisement that the ad was paid for and

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Lawrence M. Noble, Esq.
November 30, 1994
Page 3

authorized by the White Committee, not the Cantwell Committee. In fact, the only assertion that the ad provoked confusion as to the actual sponsor was the assertion made by the King County Democrat Party during the course of the recently completed general election.

Legal Analysis: The Act requires, at section 441d(a)(1), that political advertising which advocates the election or defeat of a clearly identified candidate and which is paid for by a candidate, must contain a clear statement that the communication had been paid for and authorized by such candidate. The advertisement aired by the White Committee, which is at issue in this MUR, clearly meets that statutory requirement.

Notwithstanding the assertions made by the complainant, the statute does not contain any restriction on the utilization by a campaign committee of footage taken from a previously aired advertisement of another campaign which also contained that committee's disclaimer. The statute seeks only to insure that the sponsor of political advertising, which advocates the election or defeat of a federal candidate, discloses to the public the identity of the committee which authorized and paid for the advertisement being aired.

In implementing this statutory disclaimer requirement, the Commission has adopted language, found at 11 CFR 110.11(a)(1), which provides that the disclaimer used in such a political advertisement must "appear and be presented in a clear and conspicuous manner to give...the observer...adequate notice of the identity of persons who paid for and, where required, who authorized the communication." The White Committee's disclaimer, which ran at the conclusion of its advertisement, at issue in this MUR, clearly met that regulatory requirement.

As with the statutory language, the Regulations adopted by the Commission seek only to inform the public of the identity of an individual, group or committee that paid for any political advertisement which advocated the election or defeat of a clearly identified federal candidate. The use by the White Committee of its own disclaimer at the conclusion of its advertisement clearly met that stated objective. The viewer of the advertisement at issue here would clearly understand, having viewed this 30 second advertisement, that the sponsor of the advertisement was the White Committee.

Lastly, I can find no reference in the published Advisory Opinions issued by the Commission that the Commission has ever taken a position on the specific disclaimer question which is at issue in this MUR.

Lawrence M. Noble, Esq.
November 30, 1994
Page 4

Conclusion: In preparing the advertisement at issue in this matter and by including its own clear and conspicuous disclaimer, the Committee clearly and unarguably complied with the statutory obligation regarding disclaimers found at 2 U.S.C. 441d(a)(1), as well as the regulatory language found at 11 CFR 110.11(a)(1). That the voters of the First Congressional District of Washington who viewed this advertisement were not confused as to its sponsorship is clear from the fact that no complaints, other than that filed by the King County Democrat Party, were made to the White Committee or in the media during the campaign.

Since the Committee clearly met its statutory obligation regarding the use of an adequate disclaimer in this particular advertisement, the Committee respectfully requests that (1) the Commission find no reason to believe that the Committee violated the Act in this matter, (2) the Commission take no further action against the Committee in this matter and (3) the Commission act to dismiss this complaint.

Sincerely,

HOLLAND & KNIGHT



William B. Canfield III

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Nov 30 11 08 AM '95

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 4071

DATE COMPLAINT FILED: 09/29/94
DATE OF NOTIFICATION: 10/06/94
DATE ACTIVATED: 10/17/95
STAFF MEMBER: Tom Andersen

COMPLAINANTS: George W. Zander, Chair, King County Democrats, and Nancy Rising

RESPONDENTS: Rick White for Congress Committee and Dawna K. Munson, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d(a)
11 C.F.R. § 110.11(a)(1)

INTERNAL REPORTS CHECKED: FEC Indices/Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter arises from a complaint filed with the Federal Election Commission ("the Commission") on September 29, 1994. George W. Zander, Chair, King County Democrats and Nancy Rising ("Complainants") allege that the Rick White for Congress Committee and Dawna K. Munson, as treasurer ("White Committee"), violated 2 U.S.C. § 441d(a)(1) by producing and airing a television advertisement without an appropriate disclaimer. On October 6, 1994, the Commission notified the White Committee of the complaint, and the White Committee has filed a response denying the allegations. Attachment 1.

Rick White was a candidate for the U.S. House of Representatives from Washington's 1st District in 1994. Mr. White won the 1994 general election with 52% of the vote,

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while the incumbent, Maria Cantwell, received 48%.

II. FACTUAL AND LEGAL ANALYSIS

A. The Television Advertisement

9 6 0 4 3 7 0 1 3 6 6
The communication in question is a thirty second commercial produced by the White Committee and aired on Seattle television stations during the 1994 election campaign. The ad begins with a five second excerpt from a previous commercial produced by the Maria Cantwell for Congress Committee ("Cantwell Committee"). A male voice, presumably from the original Cantwell ad, is heard saying "Maria Cantwell -- change that's working" while the same phrase covers the screen in large printed text. The original disclaimer appears at the bottom of the screen during this five second excerpt: "PAID FOR BY MARIA CANTWELL FOR CONG. CMTE."

Immediately before the Cantwell ad excerpt disappears, a female voice begins and continues throughout the remainder of the commercial:

Change that's working? Is she serious? Because in Washington, Maria Cantwell has practiced the same old politics. She voted with President Clinton over eighty percent of the time, resulting in the largest tax increase in American history, \$56 billion in new deficit spending, and an energy tax that would cost the average family nearly \$500 dollars a year. Change that's working? Change the channel!

During the last four seconds, a picture of Cantwell is shown on the screen along with the following disclaimer: "PAID BY THE RICK WHITE FOR CONGRESS COMMITTEE." A small picture of (presumably) Rick White is located on the left side of the

disclaimer.

B. Applicable Law

The Act requires that a disclaimer notice be affixed to any communication constituting "general public political advertising" that expressly advocates the election or defeat of any candidate for Federal office. 2 U.S.C. § 441d(a). If paid for and authorized by a candidate or an authorized political committee of a candidate, the communication must clearly state that it was paid for by such candidate or authorized committee. 2 U.S.C. § 441d(a)(1); 11 C.F.R. § 110.11(a)(1)(i).

The disclaimer must appear in a clear and conspicuous manner to give the observer adequate notice of the identity of persons who paid for the communication. 11 C.F.R. § 110.11(a)(1). The disclaimer need not appear on the front face or page of any such material, as long as it appears somewhere within the communication. Id.

C. Factual Allegations and Analysis

1. Summary of Complaint and Response

Complainants argue that the ad fails to comply with the requirements of 2 U.S.C. § 441d(a) by containing two different disclaimer statements. The ad begins with a "clear disclaimer" which states that it is paid for by the Cantwell Committee, and ends with a "barely readable disclaimer" by the White Committee. Complainants contend that "[h]aving two different disclaimers is misleading and instead of giving adequate notice to the viewer as to who paid for the ad, is so confusing as to result in no notice at all." Complainants also claim that the disparity in size and

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duration between the two disclaimers "makes it seem that the Cantwell Committee is the one that paid for the ad." Moreover, a screen-sized picture of Maria Cantwell is superimposed behind both disclaimers. Therefore, Complainants conclude, the White Committee violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(a)(1) by failing to clearly state who paid for the commercial.

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The White Committee concedes that its advertisement contained both a Cantwell Committee disclaimer and a White Committee disclaimer, but argues that it is clear from an objective review of the ad that it was paid for by the White Committee, not the Cantwell Committee. The White Committee claims that it used the excerpt "Maria Cantwell -- change that's working" to highlight the fact that "Cantwell had asserted that she was an agent of change in Congress, while simultaneously casting a series of votes supportive of the President" Attachment 1 at 2. The White Committee believes that if it had visually eliminated the disclaimer when utilizing the excerpt, it would have been accused of "doctor[ing] the Cantwell ad." Id. Finally, the White Committee reads 2 U.S.C. § 441d(a) as not restricting a committee's use of an opponent's advertisement, notwithstanding the inclusion of that ad's disclaimer in the new commercial.

2. Analysis

It appears that the White Committee's advertisement constitutes "express advocacy" and thus must include a disclaimer. 2 U.S.C. § 441d(a). The central issue is whether

the White Committee provided a disclaimer which was presented "in a clear and conspicuous manner to give . . . the observer . . . adequate notice of the identity of persons who paid for . . . the communication." 11 C.F.R. § 110.11(a)(1).

Although Complainants assert that a wide disparity exists regarding the visibility and duration of the two disclaimers, the lettering appears to be the same size, and both disclaimers are visible for approximately the same length of time. The Cantwell Committee disclaimer lasts about one second longer than the White Committee disclaimer, but this difference is negligible for purposes of comparison.

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The primary distinction between the two disclaimers is their different placement within the thirty second commercial. The Cantwell Committee disclaimer occupies the first five seconds of the ad, while the White Committee disclaimer appears during the last four seconds. While it is likely that a viewer may be confused as to who is responsible for the commercial after watching the first five seconds, this Office believes that any such doubt is quickly removed during the next few seconds. The speaker in the Cantwell excerpt who says "Maria Cantwell -- change that's working" is abruptly followed by a different speaker who exclaims "Change that's working? Is she serious?" Moreover, the first voice is male while the second is female. Thus, the viewer perceives a clean break between the Cantwell excerpt and the remainder of the commercial.

The negative, anti-Cantwell tone of the last twenty-five seconds of the commercial should disabuse the viewer of any

remaining belief that the Cantwell Committee paid for the ad. For example, the speaker emphasizes that Cantwell voted for "the largest tax increase in American history" while an unflattering picture of Cantwell is displayed next to a growing stack of dollar bills. A large red arrow is then shown rising upward while the caption "\$56 Billion New Deficit Spending" is emblazoned across it. Such negative images of Cantwell refute any possible suggestion that the Cantwell Committee produced the commercial.

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Finally, Complainants allege that the White Committee misleads viewers by placing its disclaimer over a screen-sized picture of Cantwell at the end of the advertisement. However, there is no legal requirement that a committee include a picture of its own candidate behind the disclaimer, nor is there any prohibition against using someone else's picture. Id.; 2 U.S.C. § 441d(a). See also MUR 1788, General Counsel's Report dated December 6, 1984 (candidate committee's television ad disclaimer allegedly shown in front of a person other than candidate is not a violation of law).

Upon analyzing the two disclaimers within the larger context of the entire thirty second commercial, this Office believes that the White Committee disclaimer provides the observer with adequate notice of the identity of the persons who paid for the communication, fulfilling the requirements of 11 C.F.R. § 110.11(a)(1).

Based on the foregoing, this Office recommends that the Commission find no reason to believe that the Rick White for

Congress Committee and Dawna K. Munson, as treasurer, violated 2 U.S.C. § 441d(a), and close the file as to this matter.

III. **RECOMMENDATIONS**

1. Find no reason to believe that the Rick White for Congress Committee and Dawna K. Munson, as treasurer, violated 2 U.S.C. § 441d(a).
2. Approve the appropriate letters.
3. Close the file.

Lawrence M. Noble
General Counsel

Date

11/29/95

BY:


Lois G. Lerner
Associate General Counsel

Attachment

1. Response to complaint

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Rick White for Congress Committee and
Dawna K. Munson, as treasurer.

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MUR 4071

CERTIFICATION

I, Marjorie W. Emons, Secretary of the Federal Election Commission, do hereby certify that on December 5, 1995, the Commission decided by a vote of 5-0 to take the following actions in MUR 4071:

1. Find no reason to believe that the Rick White for Congress Committee and Dawna K. Munson, as treasurer, violated 2 U.S.C. § 441d(a).
2. Approve the appropriate letters, as recommended in the General Counsel's Report dated November 29, 1995.
3. Close the file.

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

Attest:

12-6-95
Date

Marjorie W. Emons
Marjorie W. Emons
Secretary of the Commission

Received in the Secretariat:	Thurs., Nov. 30, 1995	11:08 a.m.
Circulated to the Commission:	Thurs., Nov. 30, 1995	4:00 p.m.
Deadline for vote:	Tues., Dec. 05, 1995	4:00 p.m.

mwd

960437013/2



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

December 11, 1995

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Nancy Rising and George Zander
King County Democrats
Suite 1106
1411 Fourth Ave.
Seattle, Washington 98101

RE: MUR 4071

Dear Ms. Rising and Mr. Zander:

On December 5, 1995, the Federal Election Commission reviewed the allegations of your complaint dated September 29, 1994, and found that on the basis of the information provided in your complaint, there is no reason to believe the Rick White for Congress Committee and Dawna K. Munson, as treasurer, violated 2 U.S.C. § 441d(a). Accordingly, on December 5, 1995, the Commission closed the file in this matter.

The Federal Election Campaign Act of 1971, as amended ("the Act") allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosures

First General Counsel's Report
Certification of Commission action

96043701373



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20461

December 11, 1995

William B. Canfield III, Esquire
Holland & Knight
Suite 400
2100 Pennsylvania Ave., N.W.
Washington, D.C. 20037-3202

RE: MUR 4071
Rick White for Congress
Committee
Dawna K. Munson, as
treasurer

Dear Mr. Canfield:

On October 6, 1994, the Federal Election Commission notified your clients, the Rick White for Congress Committee and Dawna K. Munson, as treasurer ("Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On December 5, 1995, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe the Committee violated 2 U.S.C. § 441d(a). Accordingly, the Commission closed its file 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

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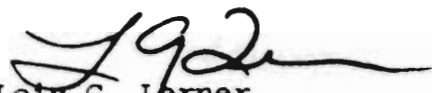
William B. Canfield III, Esquire
Page 2

on the public record before receiving your additional materials,
any permissible submissions will be added to the public record
upon receipt.

Sincerely,

Lawrence M. Noble
General Counsel

BY:


Lois G. Lerner
Associate General Counsel

Enclosure
First General Counsel's Report

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THIS IS THE END OF MUR # 4071

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4071

DATE FILMED 1-4-98 CAMERA NO. 2

CAMERAMAN S.E.G.

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