

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

Dec 21 11 31 AM '98

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4741

DATE COMPLAINT FILED: May 5, 1998

DATE OF NOTIFICATION: May 12, 1998

DATE ACTIVATED: July 16, 1998

STAFF MEMBER: Tamara K. Kapper

COMPLAINANT: Ralph Waite

RESPONDENTS: Mary Bono Committee and Kathie L. Parrish, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d(a)
11 C.F.R. § 110.11(a)(1), (5) and (6)

INTERNAL REPORTS CHECKED: FEC Indexes, Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter originated as a complaint submitted by Ralph Waite ("Complainant"), a candidate who ran in the April 7, 1998 Special Election held in the 44th Congressional District of California. Complainant alleges that the Mary Bono Committee and Kathie L. Parrish, as treasurer ("Bono Committee"), the principal campaign committee for U.S. Representative Mary Bono, violated 2 U.S.C. § 441d(a) by failing on two (2) separate occasions to place a disclaimer on campaign advertising literature which expressly advocated Ms. Bono's candidacy. The campaign literature at issue consists of a letter from Seymour Kaplan ("Kaplan Letter") that was mailed to California voters and a doorhanger type flyer ("doorhanger") that was distributed by the Bono Committee. Neither of the items contained a disclaimer and the Bono Committee acknowledges having produced and distributed both items. The complainant also alleges that the

doorhanger contained a statement from the Riverside Sheriff's Association PAC without the PAC's permission.¹

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), states that when an expenditure is made

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, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, such communication-

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[.]

2 U.S.C. § 441d(a).

According to 11 C.F.R. § 110.11(a)(1) the disclaimer shall be "presented 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." Exceptions to the disclaimer requirements include "bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer cannot be conveniently printed," 11 C.F.R. § 110.11(a)(6)(i), and advertisements "of such a nature that the inclusion of a disclaimer would be impractical" such as skywriting, watertowers or wearing apparel. 11 C.F.R. § 110.11(a)(6)(ii).

¹ The Riverside Sheriff's Association PAC is not registered with the Commission.

B. The Facts

The complainant provided copies of both campaign literature items distributed by the Bono Committee. The Kaplan Letter promotes Mary Bono's candidacy by expressly advocating her election for office by stating "...cast your ballot for Mary Bono for Congress." Attachment 1. The doorhanger advocates Ms. Bono's election to office by stating, *inter alia*, "Vote Tuesday April 7th United States Representative Mary Bono." Attachment 2. While the Bono Committee admits to having authorized and paid for both of these campaign advertisements, this Office is unable to determine the exact amount of money that was spent on both the Kaplan Letter and the doorhanger, in part because the Bono Committee's reports do not specifically itemize these disbursements.²

C. Legal Analysis

1. The Kaplan Letter

In response to the complaint, counsel for the Bono Committee admits that they failed to add a disclaimer to the Kaplan Letter, but contends that the omission was inadvertent. Attachment 4. Counsel asserts that "[t]he Committee produced seven mailings at or about the same time, all prepared and printed by the same vendor. The mailing in question was printed by a different vendor. Seven of the eight mailings contained the ... disclaimer." *Id.* Counsel did not address the amount of money the Bono Committee expended on the Kaplan Letter nor the number distributed to voters.

Although counsel for the Bono Committee contends that the omission of a disclaimer on the Kaplan Letter was inadvertent, pursuant to 2 U.S.C. § 441d(a) the Kaplan Letter was required

² The Bono Committee's 1998 Amended 12 Day Pre-Primary Election Report discloses disbursements totaling \$105,872 to Rodriguez & Co. for "Ads, Dubs, Doorhangers, Mail & Reimbursables, and Phone Banks/Misc. Exp." Attachment 3.

to have an authorization notice because it expressly advocated Ms. Bono's election, and was produced, paid for, and distributed by the Bono Committee. Therefore, there is reason to believe that the Bono Committee violated 2 U.S.C. § 441d(a) in this regard.

2. The Doorhanger

The doorhanger distributed by the Bono Committee expressly advocated the election of Mary Bono to Congress by use of the language cited above and by quoting an endorsement from *The Press Enterprise* which states, "...the 44th has been without representation long enough...Mary Bono needs to win by a majority, which is why we are recommending only her...."³ The complainant also alleges that the doorhanger contains language that clearly names him and contains a negative statement about him. The message reads,

WARNING FROM YOUR LOCAL DEPUTY SHERIFFS:
Candidate Ralph White is trying to smear Mary Bono and distort her record. DON'T BE A VICTIM. Call your local newspaper or television station if you are subject to any negative smear tactics from Ralph Waite. Thank you, DEPUTY RASSO

Att. 2.

Counsel acknowledges that the doorhanger did not contain a disclaimer but asserts that the Bono Committee thought that it was exempt from the requirement because it fell within the category of "similar small items" as described in the Commission's regulations at 11 C.F.R. § 110.11(a)(6)(i). They assertedly concluded that the doorhanger was smaller than a standard size bumper sticker, so believed that an authorization notice was unnecessary. In his response to the complaint, counsel for the Bono Committee did not indicate the number of copies of the

doorhangers that were distributed to voters, and the total amount of money expended on this campaign advertising.

After examining the doorhanger and counsel's explanation, this Office disagrees with the Bono Committee's decision to exclude the authorization notice for several reasons. First, the Commission previously determined that doorhangers are not exempt from the disclaimer requirement under 2 U.S.C. § 441d(a), and made a reason to believe finding against a party committee for its failure to include an authorization notice on a doorhanger that it distributed to voters. See closed MUR 2692. Thus, the doorhanger does not fall within the category of campaign material that is exempt from needing an authorization notice under 11 C.F.R. § 110.11(a)(6)(i) because of size. In this case, size was not a barrier; the message communicated on the doorhanger was printed in three (3) different type sizes that ranged from 1/8 to 5/8 of an inch. The smallest print size was easy to read and, thus, the doorhanger was large enough that the printer could have added the authorization notice conveniently to it in a clear and conspicuous manner, as prescribed by 11 C.F.R. § 110.11(a)(1).

Second, the doorhanger was distributed to the general public at their place of residence, which constitutes general public political advertising and requires an authorization notice under 2 U.S.C. § 441d(a). Lastly, placing the advertisement on the doorknob of a residence ensures its receipt by the resident, just as if it had been received in the mail.

Although counsel states that the omission on the doorhanger was a misunderstanding of the law, no evidence has been presented which indicates that the Bono Committee sought counsel to interpret the applicable law prior to distributing the doorhangers. In addition, a misunderstanding of the law does not negate the fact that a violation occurred. Therefore, this

Office recommends that the Commission include the expenditures for the doorhanger in its finding of a violation of 2 U.S.C. § 441d(a).

3. Use of a Non-Federal Committee's Name

The complainant also alleges that Mr. Art McNamara, President of the Riverside Sheriff's Association, indicated to him that the Bono Committee did not have permission to use the association's name on the doorhanger. Neither the Bono Committee nor the Riverside Sheriff's Association has communicated with the Commission regarding this particular allegation. In addition, this type of activity does not fall within the reach of the Act or the Commission's regulations. Therefore, this Office makes no recommendation regarding this issue.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find reason to believe that Mary Bono for Congress and Kathie L. Parrish, as treasurer, violated 2 U.S.C. § 441d(a), and enter into conciliation prior to a finding of probable cause to believe.
2. Approve the attached proposed Factual and Legal Analysis and the conciliation agreement.

3. Approve and send the appropriate letter.

Lawrence M. Noble
General Counsel

12-18-98
Date

BY:

Lois G. Lerner
Associate General Counsel

Attachments:

1. Kaplan Letter
2. Doorhanger
3. Copies of Schedule B from the Bono Committee's Report
4. Response to Complaint dated 6/22/98
5. Proposed Conciliation Agreement
6. Proposed Factual and Legal Analysis



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/VENESHE FEREBEE-VINES
COMMISSION SECRETARY

DATE: DECEMBER 22, 1998

SUBJECT: MUR 4741 - First General Counsel's Report
dated December 18, 1998.

VTV

The above-captioned document was circulated to the Commission
on Monday, December 21, 1998.

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

Commissioner Elliott	—
Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Tuesday, January 5, 1999.

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