



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

January 19, 1999

Charles H. Bell, Jr., Esquire
Bell, McAndrews & Hiltachk
455 Capitol Mall, Suite 801
Sacramento, CA 95814

RE: MUR 4741
Mary Bono for Congress and
Kathie L. Parrish, as treasurer

Dear Mr. Bell:

On May 12, 1998, the Federal Election Commission notified your clients, Mary Bono for Congress and Kathie L. Parrish, as treasurer, ("Committee") of a complaint alleging a violation of a certain section of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you on behalf of your clients, the Commission, on January 12, 1999, found that there is reason to believe the Committee violated 2 U.S.C. § 441d(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If your clients are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if they agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of

Mr. Bell, Esq.

Page 2

the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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 have any questions, please contact Tamara Kapper, the staff member assigned to this matter, at the toll-free number (800) 424-9530 or the local number (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

1. Factual and Legal Analysis
2. Procedures
3. Conciliation Agreement

2025 RELEASE UNDER E.O. 14176

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

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

MUR:4741

This matter was generated based on a complaint filed with the Federal Election Commission ("the Commission") by Ralph Waite ("complainant"). *See* 2 U.S.C. § 437g(a)(1).

I. The Facts

The 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

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

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

her election for office by stating "...cast your ballot for Mary Bono for Congress." The doorhanger advocates Ms. Bono's election to office by stating, *inter alia*, "Vote Tuesday April 7th United States Representative Mary Bono." 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

II. 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

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."

"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).

III. The 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. 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." 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 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).

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

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 concluded that the doorhanger was smaller than a standard size bumper sticker, so believed that an authorization notice was unnecessary. Lastly, 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, the Commission 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 candidate 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 they had received it 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, there is reason to believe that the Bono Committee and Kathie L. Parrish, as treasurer, violated 2 U.S.C. § 441d(a).