



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

March 31, 1999

Judith L. Corley, Esq.  
Perkins Coie, LLP  
607 Fourteenth Street, N.W.  
Washington, D.C. 20005-2011

RE: MUR 4759  
Phillip J. Maloof  
Friends of Phil Maloof and Dolores  
González, as treasurer  
Supporters of Phil Maloof and Theresa  
Keaveny, as treasurer

Dear Ms. Corley:

On June 22, 1998, the Federal Election Commission notified your clients, Friends of Phil Maloof and Dolores González, as treasurer, and Supporters of Phil Maloof and Theresa Keaveny, as treasurer, of a complaint alleging violations of certain sections 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.

On October 22, 1998, the Federal Election Commission notified your client, Phillip J. Maloof, of a complaint alleging violations of certain sections of 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, the Commission, on March 23, 1999, found that there is reason to believe that Phillip J. Maloof violated 2 U.S.C. § 432(e)(1); and that there is reason to believe that Friends of Phil Maloof and Dolores González, as treasurer, and Supporters of Phil Maloof and Theresa Keaveny, as treasurer, violated 2 U.S.C. § 441d(a). The Factual and Legal Analyses, each of which formed a basis for the Commission's findings, are attached for your information.

The Commission found that there is no reason to believe that Friends of Phil Maloof and Dolores González, as treasurer, violated 2 U.S.C. § 434(a)(2)(B). In addition, the Commission found that there is no reason to believe that Friends of Phil Maloof and Dolores González, as treasurer, and Supporters of Phil Maloof and Theresa Keaveny, as treasurer, violated 2 U.S.C. § 433(b)(2).

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 along with answers to the enclosed questions within 30 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 violations have occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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 Michael Lehmann, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas  
Chairman

Enclosures  
Questions  
Factual and Legal Analyses

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In furtherance of its investigation in the above-captioned matter, the Federal Election Commission ("Commission") hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

**QUESTIONS AND DOCUMENT REQUESTS**

1. Concerning the fliers that accompanied the absentee ballot requests sent to potential voters in May 1998—Complainant's Attachment #2:
  - (a) state the total cost, if any, to Friends of Phil Maloof to produce and distribute the fliers;
  - (b) state the total number of fliers mailed to potential voters; and
  - (c) produce all documents evidencing the total cost and distribution of the fliers.
2. Concerning the four-by-eight foot billboards and yard signs—Complainant's Attachment #3:
  - (a) state the total cost, if any, to Friends of Phil Maloof to produce and post the billboards and yard signs;
  - (b) state the total number of billboards and yard signs created;
  - (c) state the total number of billboards and yard signs distributed; and
  - (d) produce all documents evidencing the total cost and posting of the billboards and yard signs.
3. Concerning the invitations to the June 17, 1998 fund-raiser—Complainant's Attachment #5:
  - (a) state the total cost, if any, to Friends of Phil Maloof to produce and distribute the fund-raiser invitations;
  - (b) state the total number of fund-raiser invitations mailed; and
  - (c) produce all documents evidencing the total cost and distribution of the fund-raiser invitations.

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**QUESTIONS AND DOCUMENT REQUESTS**

1. Concerning the fliers that accompanied the absentee ballot requests sent to potential voters in May 1998—Complainant's Attachment #2:
  - (a) state the total cost, if any, to Supporters of Phil Maloof to produce and distribute the fliers;
  - (b) state the total number of fliers mailed to potential voters; and
  - (c) produce all documents evidencing the total cost and distribution of the fliers.
2. Concerning the four-by-eight foot billboards and yard signs—Complainant's Attachment #3:
  - (a) state the total cost, if any, to Supporters of Phil Maloof to produce and post the billboards and yard signs;
  - (b) state the total number of billboards and yard signs created;
  - (c) state the total number of billboards and yard signs distributed; and
  - (d) produce all documents evidencing the total cost and posting of the billboards and yard signs.
3. Concerning the invitations to the June 17, 1998 fund-raiser—Complainant's Attachment #5:
  - (a) state the total cost, if any, to Supporters of Phil Maloof to produce and distribute the fund-raiser invitations;
  - (b) state the total number of fund-raiser invitations mailed; and
  - (c) produce all documents evidencing the total cost and distribution of the fund-raiser invitations.

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT:      Phillip J. Maloof

MUR: 4759

This matter was generated by a complaint filed with the Federal Election Commission by the Republican Party of New Mexico.

A candidate is required to designate a principal campaign committee "no later than 15 days after becoming a candidate." 2 U.S.C. § 432(e)(1). *See also* 11 C.F.R. § 110.1(a) ("A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or by filing a letter containing the same information . . .")

On January 14, 1998, Maloof formally announced his candidacy for the Congressional seat in New Mexico's First Congressional District. On February 11, Maloof filed a Statement of Candidacy with the Commission indicating that he would be a candidate for the Congressional seat, and identifying his principal campaign committee as Friends of Phil Maloof.

Given his January 14, 1998 public announcement of his candidacy, Maloof's Form 2 was untimely. *See* 2 U.S.C. § 432(e)(1), 11 C.F.R. § 110.1(a). Therefore, there is reason to believe that Phillip J. Maloof may have violated 2 U.S.C. § 432(e)(1).

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Friends of Phil Maloof and  
Dolores Gonzáles, as treasurer

MUR: 4759

This matter was generated by a complaint filed with the Federal Election Commission by the Republican Party of New Mexico.

**A. Law**

All expenditures expressly advocating the election or defeat of a clearly identified candidate or soliciting contributions must clearly identify who has paid for the communication and whether the communication was authorized by a candidate or authorized political committee. 2 U.S.C. § 441d(a).

**B. Complaint and Responses**

The complaint alleges that "Maloof's campaign committees"<sup>1</sup> violated Section 441d(a) by failing to include the necessary disclaimers for several of its communications which expressly advocated Maloof's election. First, complainant alleges that in May 1998, "the Maloof committees" mailed 110,000 absentee ballot requests, along with advocacy pieces which failed to identify the source of the mailings. Second, during the course of the elections, "numerous"<sup>2</sup>

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<sup>1</sup> During the relevant period, Maloof was a candidate for two elections – his party's nomination for a seat in the House of Representatives and a special election to fill a vacancy in that seat – and chose to maintain separate principal campaign committees for these elections. Throughout the complaint, complainant refers to "the Maloof committees" or "the Maloof campaign," failing to identify which committee allegedly violated the Act.

<sup>2</sup> A newspaper account attached to the complaint indicates that "Maloof mailed out about 100,000 forms for absentee ballots in the 1st District, . . ." *Maloof Application Processing Halted*, ALBUQUERQUE JOURNAL, Jan. 13, 1998 (Complaint, Attachment #4). Complainant submits no other document that would indicate how many direct mail pieces/absentee ballots were sent out.



four-by-eight foot outdoor signs advocating Maloof's election – without the requisite disclaimers – were posted at various locations around the district. Third, invitations for a June 17, 1998 fund-raiser (i.e., shortly before the special election and shortly after Maloof's victory in the primary assured him a place on the November ballot) failed to indicate who paid for their printing and mailing.

Respondent does not deny its failure to include the required disclaimer on the mailers, fundraising invitations and billboards, but provides what it believes to be mitigating factors regarding the three items. It points out that most of the relevant material sponsored by the Maloof campaign contained the necessary disclaimers, and further argues that "there never was any doubt to the reader as to the sponsor of the communications" and that "[e]ach of the items displayed the Maloof campaign's distinctive logo and, in two of the three cases, the campaign's slogan: 'A New Generation of Leadership.'" (Response, p. 2.)

### C. Analysis

Friends of Phil Maloof does not dispute that the mailers, fundraising invitations and outdoor advertising lacked a disclaimer, but provides what it considers to be mitigating factors. To the extent that respondent argues that it sufficiently complied with 441d(a) or that the statute allows for some sort of a "disclaimer by inference," this argument has previously been tested and rejected. *See e.g., FEC v. National Conservative Political Action Committee*, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion) ("the Act and regulations do not provide for disclaimers by inference and the court is consequently of the view that these repeated references to NCPAC which appear within the materials do not satisfy section 441d's disclaimer requirement").

With two separate committees making expenditures for two elections three weeks apart, it is not clear which committee paid for the mailings, outdoor signs and fund-raiser invitations. Specifically, the mailer mentions both elections and, apparently, the application to vote absentee was applicable to both elections (Complaint, Attachment 2), the billboard merely says "Phil Maloof for Congress Democrat" (Complaint, Attachment 3), and the invitation merely refers to "Phil Maloof, candidate for Congress." After reviewing the disclosure reports from both Friends of Phil Maloof and Supporters of Phil Maloof it is not clear which committee is responsible for which expenditure; in fact, it appears that the committees may have shared expenditures. Therefore, there is reason to believe that Friends of Phil Maloof and Dolores Gonzáles, as treasurer, may have violated 2 U.S.C. § 441d(a).

**FEDERAL ELECTION COMMISSION**  
**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS:     Supporters of Phil Maloof and  
                         Theresa Keaveny, as treasurer

MUR: 4759

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**A.     Law**

All expenditures expressly advocating the election or defeat of a clearly identified candidate or soliciting contributions must clearly identify who has paid for the communication and whether the communication was authorized by a candidate or authorized political committee. 2 U.S.C. § 441d(a).

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### C. Analysis

Supporter of Phil Maloof does not dispute that the mailers, fundraising invitations and outdoor advertising lacked a disclaimer, but provides what it considers to be mitigating factors. To the extent that respondent argues that it sufficiently complied with 441d(a) or that the statute allows for some sort of a "disclaimer by inference," this argument has previously been tested and rejected. *See e.g., FEC v. National Conservative Political Action Committee*, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion) ("the Act and regulations do not provide for disclaimers by inference and the court is consequently of the view that these repeated references to NCPAC which appear within the materials do not satisfy section 441d's disclaimer requirement").

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