

FEDERAL ELECTION COMMISSION  
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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

**SENSITIVE**

MUR: 4837

DATE COMPLAINT FILED: October 26, 1998

DATE OF NOTIFICATION: October 29, 1998

DATE ACTIVATED: January 26, 1999

STAFF MEMBERS: Ruth Heilizer  
Eric Brown

COMPLAINANT: Suzanne Stein

RESPONDENTS: Boyd for Congress and  
Jennifer R. Cannon, as treasurer  
F. Allen Boyd, Jr.  
David P. Windham

RELEVANT STATUTE: 2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

Suzanne Stein filed a complaint on October 26, 1998 alleging that Boyd for Congress's (the "Committee's") campaign signs failed to include a proper disclaimer.<sup>1</sup> On November 10, 1998, the Committee responded on behalf of itself, the candidate, and a campaign volunteer.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Law**

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that any person making an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate through any outdoor advertising facility or any other type of

<sup>1</sup> In 1996, Boyd won the Primary, Primary Run-off, and General elections. In the General election, he won with 59 percent of the vote. In 1998, Boyd won the General election with 95 percent of the vote.

general public political advertising shall clearly state that the communication has been paid for by such authorized political committee, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents. 2 U.S.C. § 441d(a). Yard signs advocating the election of a clearly identified candidate must clearly and conspicuously include a disclaimer meeting the requirements of 11 C.F.R. § 110.11(a)(1)(i), (ii), (iii), (iv) or (a)(2). 11 C.F.R. § 110.11(a)(1).

#### B. The Complaint

At issue in this matter are yard signs supporting Boyd's campaign used in his 1996 and 1998 campaign. Suzanne Stein filed the complaint, alleging that "BOYD for CONGRESS/Democrat" signs failed to include a proper disclaimer. The complaint alleges that the signs, printed with the disclaimer "PPA Friends of Boyd for Congress," were placed throughout Panama City, Florida. The complainant indicates that she contacted Federal Election Commission staff, apparently in October 1998, and was informed that "Friends of Boyd for Congress" is not a registered political committee. The complainant established a link between the signs and the Boyd for Congress campaign by calling the campaign and offering help to display the signs. A campaign worker referred her to Dr. Windham, a volunteer. The Committee, the candidate, and Dr. Windham were notified of the complaint on October 29, 1998.

#### C. The Response to the Complaint

The Committee's response, on behalf of itself, the candidate, and a campaign volunteer, states that the signs' statement read "PPA Friends of Boyd for Congress."<sup>2</sup> The response states that the statement was "handled" by Robert Williams, the individual who donated the signs to the campaign as

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<sup>2</sup> The response did not explain the meaning of "PPA", but it would appear to be an abbreviation for "Paid Political Advertisement." In fact, the Committee's response to the complaint includes was written on Committee letterhead with the statement, "Paid for by Boyd for Congress Committee Paid Pol. Adv. (Dem)" (emphasis added).

an in-kind contribution. The response further states that if the disclaimer was improper, "it was done so unknowingly" by Robert Williams.<sup>3</sup>

The Committee reported the receipt of the signs as in-kind contributions on the Committee's 1996 12 Day Pre-Primary Report,<sup>4</sup> attributing \$1,000 to the 1996 Primary election and \$1,000 attributed to the 1996 General election, with a receipt date of July 15, 1996. The response states that the campaign signs were used in 1996, stored after the election, and re-used during the 1998 campaign. The Committee reports no other contributions by Robert Williams during the 1996 or 1998 election cycles.

#### D. Analysis

The yard signs at issue undisputedly expressly advocated the election of candidate Boyd. The yard sign's "PPA Friends of Boyd for Congress" statement fails the requirements of the Act and Commission regulations for three reasons. First, the statement fails Section 441d(a)(2)'s requirement that a disclaimer include the name of the individual who paid for the communications. Here, the statement fails to state that Robert Williams paid for the yard signs.

Second, an incorrect committee name appeared in the statement. The statement's use of a non-existent committee name is misleading because it implies that another group supported the campaign, when in fact the signs were donated to the campaign as an in-kind contribution. The Act requires that a committee include the full and official name of the committee, as registered with the Commission, in disclaimers. See First General Counsel's Report in MURs 3370 and 3439 (Massachusetts Democratic State Central Committee) dated April 7, 1992 at 6. The fact that the candidate's name appears in the wording of the statement on the yard signs is insufficient to meet the Act's requirement that a disclaimer state, when applicable, that an authorized political committee authorized the communication. In FEC v.

<sup>3</sup> The contributor's employer was listed as Jefferson Smurfit. According to a newspaper article, Jefferson Smurfit Corp. is a paper company with plants in Florida and "Bob Williams" is a manager and lobbyist for the company. Robert Johnson, Number of Jobs Shrinks in Manufacturing Sector, Wall St. J., January 10, 1996 at F4.

<sup>4</sup> The in-kind contributions are reported as expenditures, as well, on Schedule B supporting Line 17 of the same report.

National Conservative Political Action Committee, No. 85-2898 (D.D.C. April 29, 1987) (unpublished opinion), a political committee argued that its postal frank and references throughout written material made it clear who paid for the communication, and that a specific disclaimer was not necessary. In rejecting this argument, the court found that "disclaimers by inference" had no support in the Act or Commission regulations; therefore, repeated references to the political committee within the materials did not satisfy 2 U.S.C. § 441d(a).

Third, abbreviations for any part of the disclaimer required under the Act and Commission regulations are insufficient; the Act and Commission regulations require communications of this type to clearly state that the communication has been paid for by such authorized committee, if paid for and authorized by a candidate, an authorized political committee, or its agents. Abbreviations do not clearly convey the information required by the Act and Commission regulations.

The Committee's response to the complaint states that the contributor "handled" the disclaimer, thus attributing the error to the contributor. However, the Committee is responsible for providing the appropriate disclaimers; it cannot escape liability for the improper disclaimer on its campaign signs simply because the signs were produced by a contributor and provided to the committee as in-kind contributions.

In this matter, given the statement's inadequacy and the Committee's acceptance of the in-kind contribution, there is a sufficient basis for holding the Committee liable.<sup>5</sup> Therefore, this Office recommends that the Commission find reason to believe that Boyd for Congress and Jennifer R. Cannon, as treasurer, violated 2 U.S.C. § 441d(a) and enter into conciliation prior to a finding of probable cause to believe.

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<sup>5</sup> The complaint does not allege that the in-kind contribution of the yard signs resulted in an excessive contribution to the Committee. The attribution of the yard signs falls within the individual contribution limits of 2 U.S.C. § 441a(a)(1)(A) and there is no allegation that the signs' valuation was inaccurate. Therefore, this Office makes no recommendation with respect to this issue.

As there are no direct allegations involving the other respondents, this Office recommends that the Commission find no reason to believe that F. Allen Boyd, Jr. and David P. Windham violated the Act with regard to this matter and close the file as it pertains to them.

**III. CONCILIATION AND CIVIL PENALTY**

**IV. RECOMMENDATIONS**

1. Find reason to believe that Boyd for Congress and Jennifer R. Cannon, as treasurer, violated 2 U.S.C. § 441d(a).


2. Enter into negotiations prior to a finding of probable cause to believe with Boyd for Congress and Jennifer R. Cannon, as treasurer.
3. Find no reason to believe that F. Allen Boyd, Jr. violated the Act with regard to MUR 4837 and close the file as it pertains to him.
4. Find no reason to believe that David P. Windham violated the Act with regard to MUR 4837 and close the file as it pertains to him.
5. Approve the attached Factual and Legal Analysis, Conciliation Agreement, and the appropriate letters.

Lawrence M. Noble  
General Counsel

Date

4/13/99

BY:

  
Lois G. Lerner  
Associate General Counsel

Attachments

1. Factual and Legal Analyses (3)
2. Conciliation Agreement



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

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

DATE: APRIL 19, 1999

SUBJECT: MUR 4837 - First General Counsel's Report  
dated April 13, 1999.

V7V

The above-captioned document was circulated to the Commission on

Wednesday, April 14, 1999.

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

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

This matter will be placed on the meeting agenda for

Tuesday, April 27, 1999.

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