



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 6, 1999

Jennifer R. Cannon, Treasurer
Boyd for Congress
P. O. Box 15703
Tallahassee, FL 32317

RE: MUR 4837
Boyd for Congress and
Jennifer R. Cannon, as treasurer

Dear Ms. Cannon:

On October 29, 1998, the Federal Election Commission notified Boyd for Congress ("Committee") and you, 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 you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on April 27, 1999, found that there is reason to believe the Committee and you, as treasurer, 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 you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you 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 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.

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.

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 investigation to be made public.

If you have any questions or suggestions for changes in the agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Eric Brown, the staff member assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Designation of Counsel Form
Factual and Legal Analysis
Conciliation Agreement

cc:

The Honorable F. Allen Boyd, Jr.
U.S. House of Representatives
107 Cannon House Office Building
Washington, DC 20515

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Boyd for Congress and
Jennifer R. Cannon, as treasurer

MUR: 4837

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

I. BACKGROUND

The complaint, filed October 26, 1998, alleged that Boyd for Congress's (the "Committee's") campaign signs failed to include a proper disclaimer. Jennifer R. Cannon, treasurer of Boyd for Congress, responded on November 10, 1998.

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 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 statement "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' disclaimer read "PPA Friends of Boyd for Congress." The response states that the disclaimer was "handled" by Robert Williams, the individual who donated the signs to the campaign as an in-kind contribution. The response further states that if the disclaimer was improper, "it was done so unknowingly" by Robert Williams.

The Committee reported the receipt of the signs as in-kind contributions on the Committee's 1996 12 Day Pre-Primary Report,¹ 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

¹ The in-kind contributions are reported as expenditures, as well, on Schedule B supporting Line 17 of the same report.

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. 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.

The disclaimer's inadequacy and the Committee's acceptance of the in-kind contribution provides sufficient basis for holding the Committee liable. Therefore, there is reason to believe that Boyd for Congress and Jennifer R. Cannon, as treasurer, violated 2 U.S.C. § 441d(a).