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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

PRE-MUR: 380  
DATE SUA SPONTE SUBMISSION  
FILED: September 13, 1999  
DATE ACTIVATED: November 29, 1999

EXPIRATION OF STATUTE OF  
LIMITATIONS: September 13, 2004  
STAFF MEMBER: Tracey Robinson

SOURCE: SUA SPONTE SUBMISSION

RESPONDENT: Marta Macias Brown for Congress and  
M.S. Stan Tomlinson, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

This matter was initiated by a *sua sponte* submission filed on September 13, 1999, by Bobi Johnson, Campaign Manager for Marta Macias Brown for Congress ("Committee"). The submission advises the Commission that Marta Macias Brown for Congress campaign literature was distributed without the proper disclaimer.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. The 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

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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). Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of the persons who paid for and authorized the communication. 11 C.F.R. § 110.11(a)(5). Each communication, if mailed separately, or included in a package of materials, must contain the required disclaimer. 11 C.F.R. § 110.11(a)(5)(ii).

**B. The Facts**

Marta Macias Brown was a 1999 candidate for the U.S. House of Representatives from California's 42<sup>nd</sup> Congressional District, where she attempted to fill the seat of her late husband, Congressman George Brown.<sup>1</sup> During the campaign, the Committee authorized and paid for the printing and distribution of campaign literature which expressly advocated the election of Marta Macias Brown for Congress. In the *sua sponte* submission Bobi Johnson, Campaign Manager for the Committee, states that she failed to notice the omission of the required language on the mailers prepared by the campaign's mail designer. Johnson admits that the literature was authorized and paid for by "the campaign."

A subsequent telephone conversation with Johnson revealed that two mailings, at 52,000 copies each, were distributed without the language required by § 441d. Johnson stated that the proofs received from the mail consultant were partly shaded causing her not to notice the error. Johnson also stated that the approximate cost for printing the literature was \$15,000 for each mailing. The Committee's 1999, 12 Day Pre-General Report discloses a disbursement in the amount of \$608.67 paid to A to Z Printing and disbursements totaling \$10,600 to ADMS for

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<sup>1</sup> Marta Macias Brown lost the 1999 Special Election with 45 percent of the vote.

postage. The Committee has yet to file its 1999 Year End Report due January 31, 2000, pursuant to section 434a(4)(A)(iii) and it is therefore impossible to confirm the information relayed by Johnson over the telephone.<sup>2</sup>

### C. Discussion

The literature at issue expressly advocated the election of Marta Macias Brown for Congress and should have contained a disclaimer, stating that the Committee authorized and paid for the communication. 11 C.F.R. § 110.11(a)(1).

It is clear from the submission that the mailer lacked the appropriate disclaimer. Moreover, the Committee had the opportunity to correct the mistake when it reviewed the proofs, notwithstanding that the copies were "partly shaded." Accordingly, this Office recommends that the Commission find reason to believe that Marta Macias Brown for Congress and M.S. Stan Tomlinson, as treasurer violated 2 U.S.C. § 441d(a).

### III. INVESTIGATION

Since this Office has no written documentation of the actual expenditures made by the Committee in connection with the mailers, this Office plans to engage in informal discovery to verify the information provided by Bobi Johnson via telephone. The informal discovery will be limited, at least in the first instance, to a request for documentation supporting the total cost, numbers and distribution in connection with the campaign literature at issue. Should the Commission find reason to believe in this matter, we plan to request this information in the notification letter sent to the Committee. Assuming the Committee's full cooperation, it will then

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<sup>2</sup> A reminder notice has not been sent to the Committee regarding the late Year End Report and this Office is not making any recommendation regarding this issue at this time.

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be possible to recommend that the Commission offer pre-probable cause conciliation in the near future.

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Marta Macias Brown for Congress and M.S. Stan Tomlinson, as treasurer, violated 2 U.S.C. § 441d(a).
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

2/8/00  
Date

BY:   
Lois G. Ierner  
Associate General Counsel

Attachments:

1. Factual and Legal Analysis

21.04.403.2662



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *Red*

DATE: February 9, 2000

SUBJECT: Pre-MUR 380- First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

### DISTRIBUTION

COMPLIANCE

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Open/Closed Letters

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MUR

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DSP

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STATUS SHEETS

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Enforcement

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Litigation

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PFESP

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RATING SHEETS

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AUDIT MATTERS

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LITIGATION

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ADVISORY OPINIONS

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REGULATIONS

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OTHER

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FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble  
General Counsel

FROM: Mary W. Dove/Lisa R. Davis  
Acting Commission Secretary 

DATE: February 11, 2000

SUBJECT: Pre-MUR 380 - First General Counsel's Report  
dated February 8, 2000.

The above-captioned document was circulated to the Commission  
on Wednesday, February 9, 2000.

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

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