

JUL 13 2001

FEDERAL ELECTION COMMISSION
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Washington, D.C. 20463

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4983

DATE COMPLAINT FILED: March 7, 2000

DATE OF NOTIFICATION: March 10, 2000

DATE ACTIVATED: April 20, 2001

EXPIRATION OF STATUE OF

LIMITATIONS: February 18, 2005

STAFF MEMBERS: Margaret J. Toalson

Mary Beth deBeau

COMPLAINANT: Damon Elder

RESPONDENTS: Issa for Congress and Betty Presley, as treasurer
Darrell E. Issa

RELEVANT STATUTE: 2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: FEC Indices and Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter originated as a complaint submitted by Damon Elder ("Complainant"), who alleges that Darrell E. Issa, Issa for Congress and Betty Presley, as treasurer ("Issa Committee"), the principal campaign committee for U.S. Representative Darrell E. Issa from the 48th Congressional District of California of San Diego County, violated 2 U.S.C. § 441d(a) by failing to place a disclaimer on a mass-mailed piece of campaign literature. Respondents were notified of the complaint on March 10, 2000, and a response was received on March 31, 2000 from Dale Neugebauer, campaign manager for the Issa Committee.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. The Law**

3 The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that all
4 communications which expressly advocate the election or defeat of a clearly identified candidate, or
5 solicitations for any contribution through any broadcasting station, newspaper, magazine, outdoor
6 advertising facility, direct mailing, or any other type of general public political advertising, include a
7 disclaimer. 2 U.S.C. § 441d(a). "Expressly advocating" means that the communication includes
8 phrases or other words which in context can have no other reasonable meaning than to urge the
9 election or defeat of one or more clearly identified candidate(s) or, when taken as a whole and with
10 limited reference to external events can only be interpreted by a reasonable person as advocating the
11 election or defeat of one or more clearly identified candidate(s). 11 C.F.R. §§ 100.22(a) and
12 100.22(b).¹

13 **B. Complaint**

14 The complainant provided a copy of the mass-mailed letter. *See* Attachment 1. The
15 complainant alleges that the Issa Committee produced and distributed a mass-mailed piece of
16 campaign literature absent a disclaimer.

17 On April 5, 2000, this Office received a letter from the complainant asking the Commission
18 to "cease any investigation into this matter" due to the Issa Committee's quick response to correct
19 the alleged violation. *See* Attachment 2. The complainant further contends that the alleged

¹ Two appellate courts have determined that part (b) of this regulation is invalid. *Maine Right to Life v. FEC*, 98 F.3d 1 (1st Cir. 1996) and *FEC v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997). On September 22, 1999, the Commission unanimously adopted a statement formalizing a pre-existing policy of not enforcing subsection (b) in the First and Fourth Circuits. In January 2000, a district court in Virginia issued a nationwide injunction preventing the Commission from enforcing 11 C.F.R. 100.22(b) anywhere in the country. *Virginia Society for Human Life, Inc. v. FEC*, 83 F.Supp.2d 668 (E.D. Va. 2000). The FEC has filed an appeal of the injunction.

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1 violation was an "inconsequential action that resulted in no real damage to any of Mr. Issa's fellow
2 candidates, nor to the electorate." *Id.*

3 **C. Response to the Complaint**

4 Dale Neugebauer, campaign manager for the Issa Committee, submitted a response to the
5 complaint on March 29, 2000. *See* Attachment 3. In his response, Mr. Neugebauer acknowledges
6 the mailing was paid for by the Issa Committee. He further explains that approximately 7,000
7 pieces were mailed, most of which included a disclaimer on the envelope. However, Mr.
8 Neugebauer contends that a small portion of the mailing was sent without the disclaimer, "due to an
9 inadvertent printer's error." *Id.* He enclosed a copy of the envelope which he states contained the
10 appropriate disclaimer. *Id.* He further states that once the "error" was detected, the Committee
11 corrected it immediately.

12 **D. Analysis of Allegations and Response**

13 The Act requires that all communications which expressly advocate the election or defeat of
14 a clearly identified candidate, or solicitations for any contribution through any broadcasting station,
15 newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general
16 public political advertising, include a disclaimer. 2 U.S.C. § 441d(a).

17 The letter at issue was printed on the letterhead of the Republican Party of San Diego
18 County. Additionally, it contained the Party's address and phone number and was signed by Roxana
19 Foxx, chairman of the Republican Party. *See* Attachment 1. The letter describes Issa as a strong
20 supporter of the local Republican Party who has worked "tirelessly" to help elect Republican
21 candidates. The letter appears to be designed to counter an article that was distributed earlier. The
22 content of the letter suggests that the article contained personal attacks aimed at Mr. Issa and may
23 have been designed to look as if it came from the Republican Party of San Diego County. The letter

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states "[t]he Central Committee has not taken sides in the 48th Congressional Republican primary contest, and any efforts to convince voters otherwise are misleading and done without permission of the local party," and concludes with an exhortation to all candidates to avoid personal attacks. *Id.*

The letter at issue in this matter does not expressly advocate the election or defeat of a clearly identified candidate nor does it seek to solicit a contribution. Thus, the letter did not require a disclaimer. This Office therefore recommends that the Commission find no reason to believe that Issa for Congress and Betty Presley, as treasurer, or Darrell E. Issa violated 2 U.S.C. § 441d(a) in connection with the complaint in MUR 4983 and close the file.

III. RECOMMENDATIONS

1. Find no reason to believe Issa for Congress and Betty Presley, as treasurer, violated 2 U.S.C. § 441d(a) in connection with the complaint in this matter.
2. Find no reason to believe Darrell E. Issa violated 2 U.S.C. § 441d(a) in connection with the complaint in this matter.
3. Approve the appropriate letter.
4. Close the file.

Lois G. Lerner
Acting General Counsel

Date

7/13/01

BY:

Abigail A. Shaine
Acting Associate General Counsel

Attachments:

1. Copy of mass-mailed letter
2. Letter from Damon Elder dated March 25, 2000
3. Response from Dale Neugebauer



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *Red*

DATE: July 13 2001

SUBJECT: MUR 4983 – First General Counsel's Report

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

Open Session _____

Closed Session _____

CIRCULATIONS

DISTRIBUTION

SENSITIVE

☒

NON-SENSITIVE

☐

COMPLIANCE

☒

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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