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COMMARIAT

FEB 23 2007

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Texans for Henry Cuellar Congressional
Campaign and Rosendo Carranco in his
official capacity as treasurer

MURs 5401, 5422, 5680

SENSITIVE

MUR 5401: GENERAL COUNSEL'S REPORT # 3

MUR 5422: GENERAL COUNSEL'S REPORT # 4

MUR 5680: GENERAL COUNSEL'S REPORT # 3

I. ACTIONS RECOMMENDED

MUR 5401: Take no further action as to Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer, approve the attached factual and legal analysis, and close the file.

MURs 5422 and 5680: Accept the attached signed conciliation agreement with Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer, and close the file.

II. DISCUSSION

These three separate matters involving Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer, were investigated together.

A. MUR 5401

In MUR 5401, the Federal Election Commission ("the Commission") found reason to believe that Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer ("the Committee"), violated 2 U S C. § 441d(a) by failing to use disclaimers for an automated telephone program that appeared to qualify as "public

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1 communications" by an authorized political committee. The Committee did not dispute that its
2 telephone calls lacked disclaimers. Our investigation, however, which included a review of the
3 call list and an interview of the Cuellar campaign manager who directed this effort, revealed that
4 each substantially identical script was used for fewer than 500 telephone calls. Accordingly,
5 each set of automated calls was below the threshold required for communications to constitute a
6 telephone bank that would be considered a public communication subject to the disclaimer
7 requirement.¹ 2 U.S.C. § 431(22) and (24); 11 C.F.R. § 100.28. See General Counsel's Report
8 #2 in MUR 5401.

9 In General Counsel's Report #2, we indicated that the matter would be kept open pending
10 the resolution of the other two matters (discussed below) that were part of the same investigation.
11 Now that the other two MURs have been resolved, we are recommending that, in MUR 5401, the
12 Commission take no further action as to Texans for Henry Cuellar Congressional Campaign and
13 Rosendo Carranco, in his official capacity as treasurer, approve the attached Factual and Legal
14 Analysis, and close the file.
15

¹ Whenever a political committee authorized by a candidate makes a disbursement for the purpose of financing any communication through any type of general public political advertising, it shall clearly state that the communication has been paid for and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(1). The implementing regulations for section 441d specify that the disclaimer requirements apply to "public communications." 11 C.F.R. § 110.11; see Explanation and Justification for Regulations on Disclaimers, et al., 67 Fed. Reg. 76962, at 76963 (Dec. 13, 2002). "Public communications" are made by means of any broadcast, cable, or satellite communication, newspaper, magazine outdoor advertising facility, mass mailing, or telephone phone bank to the general public or any other form of general public political advertising. 2 U.S.C. § 431(22). "Telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(24); 11 C.F.R. § 100.28. Telephone calls are substantially similar when they "include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient's name, occupation, or geographic location." 11 C.F.R. § 100.28

1 B. MURs 5422 and 5680

2 The Commission found probable cause to believe that Texans for Henry Cuellar
3 Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer, (the
4 "Committee") violated various reporting requirements arising under the Federal Election
5 Campaign Act ("FECA" or "the Act") and its implementing regulations in MURs 5422 and
6 5680.² See General Counsel's Report in MURs 5422 and 5680, dated November 6, 2006.

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² In MUR 5422, the Commission found probable cause to believe that the Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d) by failing to timely and accurately file a Schedule C-1 as to a \$200,000 bank loan with its 12-Day Pre-Primary disclosure report. In MUR 5680, the Commission found probable cause to believe the Committee violated 2 U.S.C. § 434(b)(4) by failing to disclose a \$100,000 disbursement.

Based on the

foregoing, we recommend the Commission accept the attached proposed conciliation agreement and close the files in MURs 5422 and 5680.

III. RECOMMENDATIONS

MUR 5401

1. Take no further action against Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer;
2. Approve the attached Factual and Legal Analysis;
3. Close the file;
4. Approve the appropriate letter.


MURs 5422 and 5680

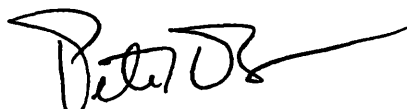
1. Accept the conciliation agreement with Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer;
2. Close the files;
3. Approve the appropriate letter.

Thomaseia P. Duncan
Acting General Counsel

Rhonda J. Vosdingh
Associate General Counsel for Enforcement

2/22/07
Date

BY: 
Mark D. Shonkwiler
Assistant General Counsel


Peter G. Blumberg
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Attachments

1. MUR 5401 Factual and Legal Analysis
2. MUR 5422/5680 Conciliation Agreement