



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAR 13 2006

Thomas Linn, Treasurer
Graf for Congress
111 S. Langley Avenue
Tucson, Arizona 85710

RE: MUR 5526
Graf for Congress and
Thomas Linn, in his official
capacity as treasurer

Dear Mr. Linn:

On September 8, 2004, the Federal Election Commission notified Graf for Congress ("Committee") and you, in your official capacity 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, and information provided by the Committee, the Commission, on March 7, 2006 found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §§ 441d(a)(1) and 441d(c)(2), provisions 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.

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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 matter to be made public. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Designation of Counsel Form
Factual and Legal Analysis

cc: candidate

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Respondents: Graf for Congress and Thomas Linn in his official capacity as treasurer.

MUR: 5526

I. INTRODUCTION

The complaint in this matter alleged that Graf for Congress and Thomas Linn, in his official capacity as treasurer (the "Committee"), violated the disclaimer provisions of the Federal Election Campaign Act of 1971 (the "Act"), as amended, in four separate communications. For the reasons set forth below, the Commission finds reason to believe that the Committee violated 2 U.S.C. § 441d(c)(2) in connection with disclaimers on a mailer and vote-by-mail request form, and violated 2 U.S.C. § 441d(a)(1) by failing to provide a disclaimer on campaign signs.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The complaint alleged that the Committee, the authorized political committee for Randy Graf's 2004 Congressional race in Arizona, violated the disclaimer provisions of the Act by failing to place a disclaimer within a printed box in a mailer. Additionally, the complaint alleged that the Committee distributed a vote-by-mail request form with a disclaimer that not only was not within a printed box, but also was printed in a "miniscule" type size. Finally, the complaint alleges that the Committee distributed campaign signs that failed to include any disclaimer at all.

The Committee did not deny that it violated the Act as alleged in the complaint. It stated that it had no intention of violating any Commission rules or regulations, that Graf was

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unsuccessful in the election, that the alleged violations seem minor, and that they caused no harm to the opponent's campaign.

Both the mailer and the vote-by-mail forms appear to have been printed public communications financed by a political committee, and subject to the disclaimer requirements in 2 U.S.C. § 441(d)(c) and 11 C.F.R. § 110.11(c). The Commission's regulations define "public communication" as, among other things, a "mass mailing," which means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 11 C.F.R. §§ 100.26 and 100.27. From all appearances, each of these communications appears to have been mailed in bulk, postage pre-paid, with each communication presumably mailed at approximately the same time as all the others of the same communication, identical but for the recipient's name and address. *See* 11 C.F.R. § 100.27. Although there is no available information to establish whether the Committee's mailing included more than 500 pieces, the Committee appears to concede in its response to the complaint that the mailings in question were subject to the disclaimer requirements for printed communications.

In the mailer, the Committee affixed a properly worded disclaimer ("Paid for by Graf for Congress") in the return address location. The disclaimer was in a sufficient type size to be clearly readable and printed with a reasonable degree of color contrast between the disclaimer and its background. *See* 2 U.S.C. § 441d(a) and (c)(2) and 11 C.F.R. § 110.11(b)(1) and (c)(2)(i) and (iii). However, the disclaimer was not contained in "a printed box set apart from the other contents of the communication," in violation of 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii).

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Likewise, the vote-by-mail request form's properly worded disclaimer, which appears on the first page of a foldable document, was not contained in a printed box. *See id.* Although the contrast is sufficient, the type size used for the disclaimer, as alleged by the complaint, is quite small, but appears to meet the statute's and regulation's "clearly readable by the recipient" standard. *See* 2 U.S.C. § 441d(c)(1) and 11 C.F.R. § 110.11(c)(2)(i); *see also* Explanation and Justification, 67 Fed. Reg. 76962, 76965 (2002).

The Committee distributed campaign signs that do not contain a disclaimer at all. A picture of one of the signs attached to the complaint shows that it contains the words "Randy Graf U.S. Congress" and the Committee's website address. Accordingly, the signs fall within the scope of section 110.11(a), and should have included disclaimers.¹

Therefore, there is reason to believe that Graf for Congress and Thomas Linn, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c)(2) by disbursing funds for a mailer and a vote-by-mail request form containing disclaimers that were not placed in a printed box set apart from the other contents of the communication and 2 U.S.C. § 441d (a)(1) by failing to place disclaimers on campaign signs.

¹ Campaign signs are not specifically mentioned in the definition of public communications at 11 C.F.R. §§ 100.26 or 110.11 (a), but are included in "any other form of general public political advertising" referenced in section 100.26. There is also a specific reference to "signs" in a listing of printed public communications in section 110.11(c)(2)(i).

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