



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

SEP 19 2006

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Charles Morse  
Morse for Congress 2004  
258 Harvard Street #240  
Suite 614  
Brookline, MA 02446

RE: MUR 5527R  
Morse for Congress 2004  
Scott B. Mackenzie,  
in his official capacity as treasurer

Dear Mr. Morse:

On September 8, 2004, the Federal Election Commission (the "Commission") notified Morse for Congress 2004 (the "Committee") and Scott B. Mackenzie, 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 at that time. On April 6, 2006, the Commission notified the Committee and Mr. Mackenzie that the Commission had found reason to believe that they violated the Act.

In the normal course of carrying out its supervisory responsibilities, the Commission became aware of further information suggesting the Committee and Mr. Mackenzie, in his official capacity as treasurer, may have violated the Act. On September 7, 2006, the Commission found reason to believe that the Committee violated 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c), provisions of the Act and the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, 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.


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If you have any questions, please contact the attorney assigned to this matter, Zachary Mahshie, at (202) 694-1650 or (800) 424-9530.

We look forward to your response.

Sincerely,



Michael E. Toner  
Chairman

Enclosures  
Factual and Legal Analysis

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

**FACTUAL AND LEGAL ANALYSIS**

Respondents:

Morse for Congress 2004  
Scott B. Mackenzie, as treasurer

MUR: 5527R

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by the Barney Frank for Congress Committee, *see* 2 U.S.C. § 437g(a)(1). As more fully set forth below, the Commission finds reason to believe Morse for Congress 2004 and Scott B. Mackenzie, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c) by failing to include the required disclaimer in an advertisement.

**II. FACTUAL AND LEGAL ANALYSIS**

Because Mr. Morse was a candidate at the time of the advertisement and Morse for Congress was his authorized committee, any communication for which he or the committee makes a disbursement is required to contain a disclaimer.<sup>1</sup> The disclaimer on the October 16, 2003, advertisement states "Paid for by [www.morseforcongress.com](http://www.morseforcongress.com)," is located below the main content, and is in approximately 10 point, bold-faced, black font on a white background.

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<sup>1</sup> All public communications for which a candidate or an authorized committee makes a disbursement must contain a disclaimer that clearly states the authorized committee paid for the communication. 11 C.F.R. §§ 110.11(a)(1) and 110.11(b)(1). The disclaimer must be presented in a clear and conspicuous manner and, for printed communications, must be of a sufficient type size to be clearly readable, must be contained in a printed box set apart from the other contents of the communication, and must be printed with a reasonable degree of color contrast between the background and the printed statement. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c).

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The disclaimer satisfies the safe harbor provision of 11 C.F.R. § 110.11(c)(2)(iii) by using black text on a white background. Also, although it does not avail itself of the safe harbor provision of 11 C.F.R. § 110.11(c)(2)(i) by using 12 point type size, the disclaimer appears, on its face, to be “clearly readable.” However, while the disclaimer is set apart from the main content of the communication, it is *not* contained inside a printed box. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c)(2)(ii).<sup>2</sup>

Thus, because the advertisement is not contained in a printed box, the Commission finds reason to believe Morse for Congress 2004 and Scott B. Mackenzie, as treasurer, violated 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c).

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<sup>2</sup> The disclaimer only needed to state that it was paid for by Morse for Congress. The Commission treats a disbursement made by a sole proprietorship owned by a candidate as if the disbursement was made by the candidate himself. *See* Advisory Opinion 1990-9 (Music Street Publishing) (funds expended from candidate’s sole proprietorship are treated as personal funds of the candidate); MUR 5611 (Missouri Dems), GCR #2 (contributions from sole proprietorship not prohibited by the Act). Because CME is a sole proprietorship owned by Mr. Morse, a disbursement made by CME for the advertisement is treated as a disbursement by Mr. Morse. Accordingly, as it was paid for by the candidate and his authorized committee, the Commission’s regulations require only that the advertisement contain a disclaimer stating that the it was paid for by Morse for Congress. *See* 11 C.F.R. § 110.11(b)(1).

As a technical matter, the regulations require Morse for Congress to use the name it registered with the Commission in the disclaimer. *See* 11 C.F.R. § 110.11(b)(1). Although the disclaimer references the website of the committee (“www.morseforcongress.com”) instead of the literal name of the Committee (“Morse for Congress 2004”), the name of the committee was effectively subsumed within the URL of the committee’s web site and pursuing this point is not worth the Commission’s limited resources.

RECEIVED MAR 16 2007  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

2007 MAR 16 A 11:07

In the Matter of  
Morse for Congress and  
Charles A. Morse, in his  
official capacity as treasurer

MUR 5527R

**SENSITIVE**

GENERAL COUNSEL'S REPORT # 3

**I. ACTIONS RECOMMENDED**

Accept the attached proposed conciliation agreement with Morse for Congress and Charles A. Morse, in his official capacity as treasurer, (the "Committee" or the "Respondents"), and close the file.

**II. BACKGROUND**

On March 29, 2006 and September 9, 2006, the Commission found reason to believe that the Respondents violated multiple provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").<sup>1</sup> The Commission found reason to believe that the Committee violated:

1) 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3 and 104.13 by failing to disclose an in-kind contribution and failing to accurately disclose an expenditure related to an advertisement run in The Boston Globe; 2) 2 U.S.C. § 434(a) and 11 C.F.R. §§ 104.1, 104.5, and 104.18(a) by failing either to file or to timely file five required reports; and 3) 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c) by failing to include the required disclaimer on an advertisement paid for by the committee and the candidate.

<sup>1</sup> At the time the Commission made its reason to believe findings, the name of the committee was "Morse for Congress 2004," and Scott B Mackenzie was treasurer. Subsequent to those findings, the committee changed its name to "Morse for Congress," and Mr. Morse replaced Mr. Mackenzie as treasurer. We have modified the name of the Committee throughout, and, because no findings were made against the treasurer in his personal capacity, we have inserted the name of the new treasurer in keeping with the Commission's treasurer policy.

**III. CONCILIATION AGREEMENT**

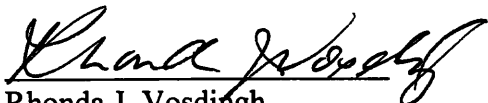
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IV. RECOMMENDATIONS

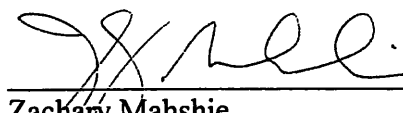
1. Accept the attached conciliation agreement with Morse for Congress and Charles A. Morse, in his official capacity as treasurer.
2. Approve the appropriate letters.
3. Close the file.

Thomasenia P. Duncan  
Acting General Counsel

3/15/07  
Date

BY:   
Rhonda J. Vosdigh  
Associate General Counsel for Enforcement

  
Ann Marie Terzaken  
Assistant General Counsel

  
Zachary Mahshie  
Attorney

Attachment

1. Conciliation Agreement