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

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

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MUR: 5526
Date Complaint Filed: August 30, 2004
Date of Notification: September 8, 2004
Last Response Received: October 4, 2004
Date Activated: July 6, 2005

Expiration of Statute
of Limitations: August 30, 2009

COMPLAINANT:

Toni Hellon

RESPONDENTS:

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

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441d
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

MUR: 5547
Date Complaint Filed: September 29, 2004
Date of Notification: October 5, 2004
Last Response Received: None
Date Activated: July 6, 2005

Expiration of Statute
of Limitations: September 28, 2009

COMPLAINANT:

Chris Homan

RESPONDENTS:

Martin Frost Campaign Committee and
Bonnie Breazeale in her official capacity
as treasurer

- 1 **RELEVANT STATUTES**
- 2 **AND REGULATIONS:** 2 U.S.C. § 441d
- 3 11 C.F.R. § 110.11
- 4
- 5 **INTERNAL REPORTS CHECKED:** Disclosure Reports
- 6
- 7 **FEDERAL AGENCIES CHECKED:** None
- 8

9 **I. INTRODUCTION**

10 These matters both involve issues relating to disclaimers in printed communications.

11 Pursuant to new disclaimer requirements set forth in the Bipartisan Campaign Reform Act of

12 2002 (“BCRA”), adding section 441d(c) to the Federal Election Campaign Act of 1971, as

13 amended (“the Act”), the Commission adopted concomitant disclaimer regulations effective

14 January 13, 2003, which set forth new requirements for disclaimers involving printed

15 communications. The new requirements are that the disclaimer must be of sufficient type size to

16 be clearly readable by the recipient of the communication, contained in a printed box set apart

17 from the other contents of the communication, and printed with a reasonable degree of color

18 contrast between the background and the printed statement. *See* 11 C.F.R. § 110.11(c)(2)(i)-(iii).

19 These matters are the first to be considered by the Commission concerning these disclaimer

20 requirements since the new rules have been in effect. Therefore, although they are otherwise

21 unrelated, this Office is discussing both of these matters in the same First General Counsel’s

22 Report.

23 **II. MUR 5526 (GRAF FOR CONGRESS)**

24 The complaint alleges that Graf for Congress, the authorized political committee for

25 Randy Graf’s 2004 Congressional race in Arizona (“Graf Committee”), violated the disclaimer

26 provisions of the Act in four separate communications. According to the complaint, the Graf

27 Committee failed to place disclaimers within a printed box in both a mailer, which is attached,

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1 and on the Graf Committee's website. Attachment 1. Additionally, the complaint alleges that
2 the Graf Committee distributed a vote-by-mail request form with a disclaimer that not only was
3 not within a printed box, but also was printed in a "miniscule" type size. *Id.* Finally, the
4 complaint alleges that the Graf Committee distributed campaign signs that failed to include any
5 disclaimer at all.

6 The Graf Committee did not deny that it violated the Act as alleged in the complaint. It
7 stated that it had no intention of violating any Commission rules or regulations, that Graf was
8 unsuccessful in the election, that the alleged violations seem minor, and that they caused no harm
9 to the opponent's campaign.

10 Both the mailer and the vote-by-mail forms appear to have been printed public
11 communications financed by a political committee, and subject to the disclaimer requirements in
12 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c). The Commission's regulations define "public
13 communication" as, among other things, a "mass mailing," which means a mailing by United
14 States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially
15 similar nature within any 30-day period. 11 C.F.R. §§ 100.26 and 100.27. From all appearances,
16 each of these two communications appears to have been mailed in bulk, postage pre-paid, with
17 each communication presumably mailed at approximately the same time as all the others of the
18 same communication, identical but for the recipient's name and address. *See* 11 C.F.R. § 100.27.
19 Although there is no available information to establish whether the Committee's mailing
20 included more than 500 pieces, the Committee appears to concede in its response to the
21 complaint that the mailings in question were subject to the disclaimer requirements for printed
22 communications.

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1 In the mailer, the Committee affixed a properly worded disclaimer (“Paid for by Graf for
2 Congress”) in the return address location. The disclaimer was in a sufficient type size to be
3 clearly readable and printed with a reasonable degree of color contrast between the disclaimer
4 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)
5 and (iii). However, the disclaimer was not contained in “a printed box set apart from the
6 other contents of the communication,” in violation of 2 U.S.C. § 441d(c)(2) and 11 C.F.R.
7 § 110.11(c)(2)(ii).

8 Likewise, the vote-by-mail request form’s properly worded disclaimer, which appears on
9 the first page of a foldable document, was not contained in a printed box. *See id.* Although the
10 contrast is sufficient, the type size used for the disclaimer, as alleged by the complaint, is quite
11 small, raising the issue of whether it meets the statute’s and regulation’s “clearly readable by the
12 recipient” standard. *See* 2 U.S.C. § 441d(c)(1) and 11 C.F.R. § 110.11(c)(2)(i). The regulation
13 provides some guidance by specifying that a twelve-point type size satisfies the size requirement
14 when it is used for printed materials that measure no more than 24 inches by 36 inches. *See*
15 11 C.F.R. § 110.11(c)(2)(i). The Explanation and Justification for this provision, however,
16 makes clear that the twelve-point type size for such materials provides a “safe harbor,” not a
17 specific requirement. *See* 67 Fed. Reg. 76962, 76965 (2002). The vote-by-mail form, which
18 when mailed is apparently folded twice, is 10 inches by 12 inches when completely unfolded.
19 Since it is smaller than 24 inches by 36 inches when completely unfolded, and smaller still when
20 folded, with the disclaimer on the front fold, a type size smaller than 12-point would appear
21 to be sufficient so long as it is “clearly readable to the recipient.” The type size of this
22 communication, while small, is “clearly readable.”

1 The Commission's regulation at 11 C.F.R. § 110.11 requires that "Internet websites of
2 political committees available to the general public" that meet any of the criteria in subsections
3 (a)(1)-(4) must include disclaimers. Subsection (b) of section 110.11 sets forth the general
4 content standards for the disclaimers required by subsection (a). According to the copy of a
5 website page and a separate disclaimer page provided by the complainant, the Graf Committee
6 website apparently contained the following disclaimer: "Paid for and authorized by Randy Graf
7 Campaign." <http://www.graf2004.com/> (no longer available). Since the Committee presumably
8 paid for the website and it contained express advocacy and a hyperlink entitled "contribute," the
9 website was required to "clearly state that the communication has been paid for by the authorized
10 political committee," and be "clear and conspicuous." *See* 11 C.F.R. § 110.11(a)(1)-(3), (b)(1),
11 and (c)(2). *See also* 2 U.S.C. § 441d(a)(1). Although the wording of the disclaimer does not
12 contain the precise name of the authorized committee, it appears to sufficiently meet the intent of
13 the statute and regulations. The complaint, however, alleges that the website disclaimer is
14 deficient because it is not in a printed box.

15 We agree. The specific requirements for printed communications in subsection (c)(2)—
16 which apply to "printed public communications"— apply to websites of political committees
17 available to the general public. Subsection (a) of the regulation brings such websites within the
18 disclaimer requirement, and subsections (b) (setting forth the required content) and (c)(1)
19 (requiring that all disclaimers be "clear and conspicuous") apply to all the "public
20 communications" covered by subsection (a). Subsection (c)(2) applies to disclaimers required by
21 paragraph (a) that appear on any "printed public communications." Because political committee
22 websites are included in the definition of "public communications" for purposes of section
23 110.11(a) and the information on websites is printed and can easily be printed out and

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1 disseminated electronically, manually or by mail, it appears such websites should be subject to
2 the specific requirements for printed communications. Thus, because the disclaimer on the Graf
3 Committee's website was not contained within a printed box, the Graf Committee violated
4 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii).

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

10 Based on the foregoing, the Office of General Counsel recommends that the Commission
11 find that there is reason to believe that Graf for Congress and Thomas Linn, in his official
12 capacity as treasurer, violated 2 U.S. C § 441d(c)(2) by disbursing funds for a mailer, vote-by-
13 mail request form and the Committee's website containing disclaimers that were not placed in a
14 printed box set apart from the other contents of the communication and 2 U.S.C. § 441d (a)(1) by
15 failing to place disclaimers on campaign signs.

16 **II. MUR 5547 (MARTIN FROST CAMPAIGN COMMITTEE)**

17 The complaint in MUR 5547 alleges that the Martin Frost Campaign Committee ("Frost
18 Committee"), Martin Frost's authorized political committee for his election race in Texas' 32nd
19 Congressional district, distributed three commercial mailings in which the disclaimers were
20 "small, hard to read and [] not in a printed box." Copies of the communications in issue were
21 attached to the complaint. The Frost Committee did not respond to the complaint.

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 appear to be included in "any other form of general public political advertising" referenced in section 100.26. This conclusion is reinforced by the Commission's specific reference to "signs" in a listing of printed public communications in section 110.11(c)(2)(i).

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1 One of the mailings has a picture of an airplane on the front page. Printed at the bottom
2 of that page is text reading, "What could be more important than keeping America safe?" On the
3 front page of a second mailing is a picture of a box stamped "U.S. Jobs Malaysia," and on the
4 bottom of the page is the printed statement, "If Pete Sessions [Frost's opponent] has his way,
5 America's biggest export will be our jobs." The third mailing has a picture of Pete Sessions on
6 the front page with the words "Product of Malaysia" stamped on his forehead, accompanied by
7 text reading, "Do you really think Pete Sessions was working for you?" Each of the mailings
8 contained a properly worded disclaimer ("Paid for by the Martin Frost Campaign Committee")
9 on the front page in the return address position.

10 All three of these communications appear to have been printed public communications
11 financed by a political committee, and thus subject to the disclaimer requirements in 2 U.S.C.
12 § 441d(c) and 11 C.F.R. § 110.11(c). Although the complaint indicates that the mailings were
13 distributed to 100,000 individuals, it is unclear whether each mailing was sent to 100,000
14 individuals or the total circulation for all three mailings was 100,000. In any event, either
15 interpretation would likely mean that each of three mailings included more than 500 pieces, and
16 as the Committee did not respond, the allegation stands un rebutted.

17 On each of the three mailings, the disclaimer was printed with a reasonable degree of
18 color contrast between the disclaimer and its background. See 2 U.S.C. § 441d(a) and (c)(2)
19 and 11 C.F.R. § 110.11(b)(1) and (c)(2)(iii). Although the complaint alleges that the
20 "disclaimer[s] [are] small and hard to read," they are "clearly readable by the recipient." See
21 2 U.S.C. § 441d(c)(1) and 11 C.F.R. § 110.11(c)(2)(i). While each disclaimer is printed in
22 somewhat less than the "safe harbor" size applicable to printed materials that measure no more
23 than 24 inches by 36 inches, the mailings in issue are each only 8 1/2 inches by 11 inches and the

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1 disclaimers are not difficult to read. *See* 11 C.F.R. § 110.11(c)(2)(i); *see also* Explanation and
2 Justification, 67 Fed. Reg. 76962, 76965 (2002). None of the disclaimers, however, were
3 contained in "a printed box set apart from the other contents of the communication." *See*
4 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii). Accordingly, this Office recommends
5 that the Commission find reason to believe that the Martin Frost Campaign Committee and
6 Bonnie Breazeale, in her official capacity as treasurer, violated 2 U.S.C. § 441d(c)(2).

7 **III.**

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IV. RECOMMENDATIONS

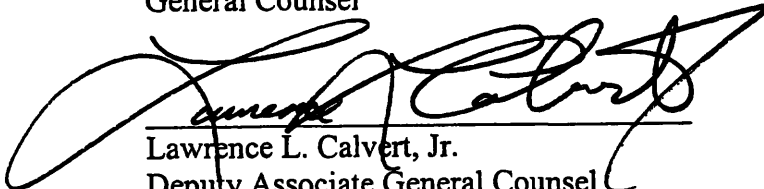
1. Find reason to believe in MUR 5526 that Graf for Congress and Thomas Linn, in his official capacity as treasurer, violated 2 U.S.C. § 441d(c)(2) by failing to place disclaimers in a printed box set apart from the contents of the communication on a mailer, a vote-by-mail request form and on their website.
2. Find reason to believe in MUR 5526 that Graf for Congress and Thomas Linn, in his official capacity as treasurer, violated 2 U.S.C. § 441d(a)(1) by failing to place a disclaimer on campaign signs.
3. Find reason to believe in MUR 5547 that Martin Frost Campaign Committee and Bonnie Breazeale, in her official capacity as treasurer, violated 2 U.S.C. § 441d (c)(2) by failing to place a disclaimer in a printed box set apart from the contents of the communication on three different mailers.
4. Approve the attached Factual and Legal Analysis in MUR 5526.
5. Approve the attached Factual and Legal Analysis in MUR 5547.
- 6.
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10. Approve the appropriate letter in MUR 5526.


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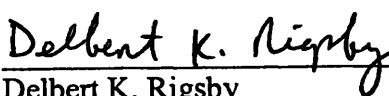
11. Approve the appropriate letter in MUR 5547.

Lawrence H. Norton
General Counsel

12/18/05
Date


Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement


Susan L. Lebeaux
Assistant General Counsel


Delbert K. Rigsby
Attorney

Attachments:

1. Graf Committee Mailer and Vote-By-Mail Request Form
- 2.
- 3.
4. Factual and Legal Analysis in MUR 5526
5. Factual and Legal Analysis in MUR 5547

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