FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

VIA FAX (202-728-4044) AND FIRST CLASS MAIL

Bradley Litchfield, Esq.
Oldaker, Biden & Belair, LLP
818 Connecticut Ave, NW
Suite 1100
Washington, DC 20006

MAR - 9 2007

RE: MURs 5401, 5422 and 5680
Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer

Dear Mr. Litchfield:

On March 6, 2007, the Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf concerning MURs 5422 and 5680 in settlement of a violation of 2 U.S.C. § 434(b)(4), a provision of the Act, and 11 C.F.R. § 104.3(d). Accordingly, the files have been closed in these matters.

On November 24, 2004, the Federal Election Commission ("the Commission") found reason to believe that your clients, Texans for Henry Cuellar Congressional Campaign and Rosendo Carranco, in his official capacity as treasurer ("the Committee"), violated 2 U.S.C. § 441d(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act") concerning MUR 5401. However, after considering the circumstances of this matter, the Commission determined to take no further action as to the Committee and closed its file in this matter on March 6, 2007. A copy of the dispositive Factual and Legal Analysis, which more fully explains the Commission's findings in MUR 5401, is enclosed for your information.

Documents related to these cases will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 45 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Peter G. Blumberg
Attorney

Enclosures
Conciliation Agreement
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

Matter Under Review 5401

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

This matter was initiated by a complaint filed with the Federal Election Commission. The complaint alleged that certain automated telephone broadcast advertisements made by the Respondents on or around December 19, 2003, failed to contain a required disclaimer stating who paid for or authorized the communication.[1] The Committee's response to the initial complaint contended that it was not required to use a disclaimer since, in its belief, automated telephone call programs are exempt from the general disclaimer requirements for "electioneering communication" that only apply to broadcast, cable or satellite communication. *See* 2 U.S.C. § 434(f)(3). The Committee's response ignored the fact that there is a disclaimer requirement for all general public political advertising funded by a political committee, and failed to provide information that would establish that the automated call did not require a disclaimer.

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

[1] A recording of the pre-recorded message used in the calls was submitted in the complaint The message, which is approximately 45 seconds long, criticizes Ciro Rodriguez, the primary election opponent of Henry Cuellar, alleging that Rodriguez used "tax dollars" to support his campaign, and urges the listener to call Rodriguez to voice disapproval The advertisement concludes, "we can't afford any more of Ciro Rodriguez " It contains no disclaimer

authorized by such authorized political committee. 2 U.S.C. § 441d(a)(1).[2] 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.

Although the regulations do not specifically describe automated telephone broadcast advertisements as a communication requiring a disclaimer, the regulations for telephone banks, and for general public political advertising, appeared applicable. An

---

[2] Disclaimers are also required when any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public political advertising or makes a disbursement for an electioneering communication (as defined by 2 U S C § 434(f)(3)). 2 U.S.C. § 441d(a). If the communication is paid for by other persons, but authorized by an authorized committee, its agents, or the candidate, it shall state so in the disclaimer 2 U.S.C. § 441d(a)(2). If the candidate or the candidate's committee did not authorize the disbursement, the communication must state identifying information of the person who paid for it and state that the communication was not authorized by the candidate or the candidate's committee. 2 U S.C § 441d(a)(3) If an authorized political committee's communication is broadcast through television or radio it must include a statement from the candidate that identifies the candidate and states that the candidate approved the communication 2 U.S.C § 441d(d).

automated telephone voice broadcast program functions like a "telephone bank," even if there was no use of live operators. If automated telephone voice broadcasts were to be viewed as being somehow distinct from telephone banks, it would appear that these robocall programs nevertheless are a form of general public political advertising to which the disclaimer requirement would apply. In either case, a disclaimer would be required. 2 U.S.C. § 441d(a). On this basis, the Commission initially found reason to believe that the Respondents had violated 2 U.S.C. § 441d(a), and initiated an investigation.

The Commission's investigation into the Committee's automatic calling program included reviewing the Committee's call list and interviewing the campaign manager who was responsible for directing the program. The investigation revealed that while the Committee's automated calling program failed to include disclaimers, it also appears to never have used substantially the same script to call more than 500 telephone numbers. Accordingly, these calls did not meet the threshold amount of calls required for the disclaimer requirements.[3] *See* 2 U.S.C. § 431(24); 11 C.F.R. § 100.28. (disclaimer rules apply to "telephone banks," programs involving more than 500 telephone calls of an identical or substantially similar nature made within any 30-day period).

Therefore, the Commission determined to take no further action with respect to the allegations in MUR 5401.

---

[3] Campaign manager Colin Strother, who is now Congressman Cuellar's chief of staff, stated the campaign used an inexpensive, off-the-shelf autodialer purchased by the candidate over the Internet and used by him prior to the 2004 campaign to promote his private law practice and various charitable endeavors. Strother acknowledged that he was the author of several different scripts that the Committee used for the autodialer program and that he did not include disclaimers with the campaign messages. The calls were made to targeted areas of Laredo known to be strongholds of Cuellar's election opponent. The Committee obtained the phone numbers in these neighborhoods from Aristotle International, and the list of numbers, which was provided to this Office, amounted to 378 telephone numbers. Strother stated that the list of phone numbers submitted to this Office was complete and contained the only numbers ever called by the campaign

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

Respondents:

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

MURs: 5422 and 5680

CONCILIATION AGREEMENT

Matter Under Review 5422 was initiated by a signed, sworn, and notarized complaint filed by Debbie Martinez, on behalf of the Ciro D. Rodriguez for Congress Committee. Matter Under Review 5680 was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. §§ 437g(a)(l) and (2).

The Commission found probable cause to believe that Texans for Henry Cuellar Congressional Campaign, and Rosendo Carranco, in his official capacity as treasurer ("the Respondents"), violated provisions of the Federal Election Campaign Act, including 2 U.S.C. § 434(b) and 11 C.F.R. §104.3(d).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

Background

1. Texans for Henry Cuellar Congressional Campaign is a political committee within the meaning of 2 U.S.C. § 431(4). It was the authorized committee for Henry Cuellar's 2004 campaign for the House of Representative from the 28th Congressional District in Texas.

2. Rosendo Carranco is the treasurer of Texans for Henry Cuellar Congressional Campaign.

Failure to Report a Disbursement

3. The treasurer of a political committee must file reports of all receipts and disbursements in accordance with the Federal Election Campaign Act of 1971, as amended ("the Act"). 2 U.S.C. § 434(a)(l).

4. A committee is required to file a pre-election report no later than the 12th day before any election in which the candidate is seeking election, which shall be complete as of the 20th day before the election. 2 U.S.C. § 434(a)(2)(A)(i). The report shall disclose, *inter alia*, the total amount of disbursements, and an itemization of all disbursements, including expenditures made to meet the candidate's or committee's operating expenses incurred during the reporting period. 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(b)(2)(i).

5. On October 21, 2004, Respondents filed a 12 Day Pre-Election Report disclosing total disbursements of $78,570.11 for the period October 1, 2004 to October 13, 2004. Respondents omitted reporting from the original 12 Day Pre-Election Report a $100,000 operating expenditure to a vendor for media services made on October 7, 2004. This expenditure was reported for the first time in an amendment to the 12 Day Pre-Election Report filed on January

12, 2005, almost three months late. The omitted expenditure represented 56% of the Respondents' disbursements for the reporting period.

Reporting of Bank Loans

6. A loan to a political committee or to a candidate acting as an agent of the committee is a receipt which must be reported pursuant to section 434(b); accordingly a political committee must report the source of each loan it receives. A committee that obtains a bank loan must file a Schedule C with the first report due after the loan proceeds are paid, which discloses the bank name with address, the original loan amount, date incurred and date due, repayments made, balance outstanding, interest rate, secured/unsecured status, any endorsers/guarantors on the loan. 2 U.S.C. § 434(b)(3)(E); 11 C.F.R. § 104.3(a)(4)(iv).

7. A committee that obtains a loan from a bank must also file a Schedule C-1 with the first report due after a new loan or line of credit has been established. 11 C.F.R. § 104.3(d)(l). A new Schedule C-1 must be filed each time a loan is restructured. 11 C.F.R. § 104.3(d)(3). Schedule C-1 requires that the following information be disclosed: (1) the date and amount of the loan or line of credit; (2) the interest rate of the loan, or each draw on the line of credit; (3) the types and value of traditional collateral or other sources of repayment securing the loan or line of credit and whether that security interest is perfected; and (4) an explanation of the basis of the credit established if the bases in (3) are not applicable. 11 C.F.R. § 104.3(d)(l)(i)-(iv). The committee treasurer must sign the schedule on Line G and attach a copy of the loan agreement. 11 C.F.R. § 104.3(d)(2). The lending institution must sign the statement on Line I, attesting that: the terms of the loan and other information regarding the extension of the loan are accurate, the terms and condition of the loan are no more favorable than those extended to similarly situated borrowers, the lending institution is aware that the loan must be made on a basis which assures

repayment, and that in making the loan it has complied with the regulations set forth at 11 C.F.R. §§ 100.82 and 100.142.

8. The Respondents filed a Schedule C to its Pre-Primary Report of February 26, 2004, disclosing a $200,000 bank loan the candidate obtained for the committee from the International Bank of Commerce of Laredo, Texas on February 3, 2004. Respondents failed to file a Schedule C-1 to the Pre-Primary providing additional loan information that was not included on the Schedule C. The Reports Analysis Division sent a request for additional information ("RFAI") to the Respondents on March 16, 2004 inquiring about the missing Schedule C-1, requesting a response by April 15, 2004. An unsigned Schedule C-1 was filed electronically on April 27, 2004, two months late. The Respondents filed a signed paper copy of the Schedule C-1 on May 10, 2004.

9. The Respondents restructured the $200,000 bank loan on August 3, 2004, solely to extend the loan due date, and should have filed a Schedule C-1 with the 2004 October Quarterly Report on October 15, 2004, but filed the Schedule C-1 only on January 12, 2005.

10. Respondents contend, with respect to paragraph 5, that they exerted best efforts soon after the election to review previously filed reports and, upon their own discovery of the inadvertent omission of this single $100,000 expenditure from the 12 Day Report, Respondents voluntarily amended said report to fully and accurately disclose the transaction, as required by law. Respondents contend, with respect to paragraph 8, that they made best efforts to file the Schedule C-1 electronically on or before February 26, 2004, but that the Commission did not recognize the attempted filing because of a technical defect in its filer program that was subsequently corrected.

V. The Respondents violated 2 U.S.C.§ 434(b)(4) and 11 C.F.R. § 104.3(d) by failing to timely report a $100,000 disbursement on its 12 Day Pre-General Report and by failing to file a Schedule C-1 with its 12 Day Pre-Primary Report and its 2004 October Quarterly Report.

VI.1. In order to conclude this matter at this time and thereby avoid litigation, Respondents will pay a civil penalty to the Federal Election Commission in the amount of Twenty-eight thousand five hundred dollars ($28,500), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondents will cease and desist from violating 2 U.S.C. § 434(b)(4) and 11 C.F.R. § 104.3(d) by failing to timely report disbursements on disclosure reports and by failing to timely file Schedule C-1.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. §437g(a)(l) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than forty-five (45) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: _____ 3/8/07
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement
Date

FOR THE RESPONDENTS:

_____ Jan. 29, 2007
William C. Oldaker
Counsel for Respondents
Date

_____ Jan. 29, 2007
N. Bradley Litchfield
Counsel for Respondents
Date

27044163449