

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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4 In the Matter of )  
5 )  
6 MUR 6251 ) CASE CLOSURE UNDER THE  
7 WALT MINNICK ) ENFORCEMENT PRIORITY  
8 MINNICK FOR CONGRESS ) SYSTEM  
9 AND VERN BISTERFELDT, )  
10 IN HIS OFFICIAL CAPACITY )  
11 AS TREASURER<sup>1</sup> )  
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14 **GENERAL COUNSEL'S REPORT**

15 Under the Enforcement Priority System, matters that are low-rated

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17 are forwarded to the Commission with a recommendation for dismissal, or in certain  
18 cases where the complaint does not provide sufficient facts upon which a violation of the  
19 Federal Election Campaign Act of 1971, as amended ("the Act"), may have occurred, a no  
20 reason to believe finding is recommended. The Office of General Counsel scored  
21 MUR 6251 as a low-rated matter.

22 In this matter, the complaint, filed by David E. Olson, alleges that Congressman Walt  
23 Minnick misused his congressional mailing privileges by sending a campaign flyer that  
24 contained personal endorsements by four constituents and alleges that the cost of the mailer  
25 resulted in a contribution to Minnick for Congress ("the Committee").<sup>2</sup> The complaint also  
26 alleges that the flyer failed to include the required disclaimers. A copy of a flyer was  
27 attached to the complaint. The flyer was a two-sided mailing sent out under Congressman  
28 Minnick's franked mail privileges summarizing some of the Congressman's

<sup>1</sup> Former treasurer Susan Eastlake was notified of the complaint in this matter. However, the Committee filed an Amended Statement of Organization with the Commission on March 1, 2010, replacing Ms. Eastlake with Mr. Bisterfeldt.

<sup>2</sup> Congressman Minnick represents Idaho's First Congressional District. He started his first term in Congress in 2009 and will be participating in Idaho's primary election on May 25, 2010.

1 accomplishments. Part of the text of the mailing states that "Walt Minnick Is Delivering  
2 Results for His Constituents," "My Number One Priority is to Serve My Constituents," "My  
3 Office is Here to Serve You," and includes narratives from four constituents regarding how  
4 the Congressman helped them with Medicare and veterans' issues. One section of the  
5 mailing consisted of a tear-off card that listed contact information for the Congressman's  
6 district and Washington, D.C. offices.<sup>3</sup> The return address on the mailing indicates it was  
7 sent out as "Official Business" by the "Congress of the United States." Although there is no  
8 date on the mailing, based on the date of the complaint, the mailing would have been  
9 received on or before February 2, 2010.

10 The Committee acknowledges that the Congressman's office sent out the mailing, but  
11 asserts that it did not constitute a contribution or expenditure because it was paid for by the  
12 federal government, did not contain express advocacy, and was not distributed 90 days or  
13 fewer before Congressman Minnick's election. For the same reasons, the Committee argues  
14 that the mailing did not have to comply with the Commission's disclaimer requirements. In  
15 particular, the Committee explains that the mailing "was not sponsored by a political  
16 committee," "does not contain express advocacy," "does not solicit contributions," and "is  
17 not an electioneering communication." In addition, the response states that the mailing was  
18 "reviewed and approved in advance by the House Commission on Congressional Mailing  
19 Standards" pursuant to 2 U.S.C. § 59c, and "would not have been approved had it solicited  
20 political support for Congressman Minnick."

21 On March 29, 2010, the complainant supplemented his complaint with copies of  
22 additional flyers sent out by Congressman Minnick's office. Those flyers also concerned

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<sup>3</sup> The complaint also questions whether the mailing should be seen as a single document or two separate documents because of the tear off portion.

1 some of the Congressman's accomplishments, including his work in "Bringing Jobs to  
2 Idaho," "Secur[ing] Overdue Medals for [a] War Hero," among others. There is no date on  
3 these mailings and the complainant does not indicate when they were received. However, it  
4 is evident from the face of the mailings that these flyers were also sent out under the  
5 Congressman's franked mailing privileges. This Office notified the respondents of the  
6 supplement to the complaint, but did not receive a response to that notification. Thus, we  
7 have no information that the fliers were received fewer than 90 days prior to Idaho's primary  
8 election, which is scheduled for May 25, 2010.

9       Congressman Minnick's flyer was sent as franked mail pursuant to 39 U.S.C. § 3210,  
10 which prohibits mass mailings postmarked fewer than 90 days immediately before a primary  
11 or general election for Members of the House. Under the Act, only a "person" may make a  
12 contribution or expenditure, 2 U.S.C. §§ 431(8)(A) and (9)(A), and "person" is specifically  
13 defined in the Act to exclude "the Federal Government or any authority of the Federal  
14 Government." 2 U.S.C. § 431(11). As such, under the Act, Congressman Minnick's  
15 mailing, which was paid for by the federal government, would not constitute a contribution  
16 or expenditure by the federal government or the Congressman acting in his official capacity.  
17 Likewise, because the mailings were not paid for by a political committee, do not appear to  
18 expressly advocate the election of Minnick, do not solicit a contribution, and do not  
19 constitute electioneering communications under 2 U.S.C. § 434(f)(3)<sup>4</sup>, they do not require  
20 disclaimers under the Act. See 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a). Therefore, the  
21 Office of General Counsel recommends that the Commission find no reason to believe that

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<sup>4</sup> The Act defines electioneering communications as certain broadcast, cable, or satellite communications; the definition does not include mailings. 2 U.S.C. § 434(f)(3)(A)(i)

the Committee or Walt Minnick violated 2 U.S.C. §§ 434(b), 441a or 441d(a) in connection with the mailings sent by Congressman Minnick's office.


**RECOMMENDATIONS**

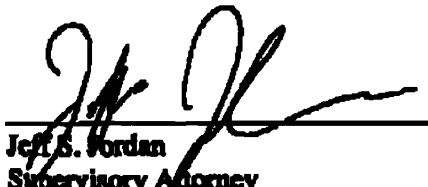
1. Find no reason to believe that Walt Minnick, Minnick for Congress and Vern Bisterfeldt, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a or 441d(a).
2. Close the file and approve the appropriate letters.

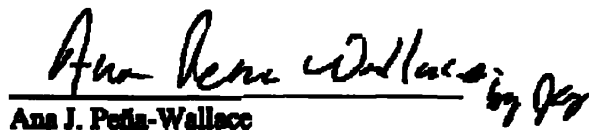
Thomasenia P. Duncan  
General Counsel

5/5/10  
Date

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