

FEDERAL ELECTION
COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

2011 FEB -8 P 12:00

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FEDERAL ELECTION
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2011 FEB -8 AM 10:08

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In the matter of

MUR 6335

MOAK FOR CONGRESS AND

SALLY LATTIMER, AS TREASURER

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

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

and are deemed inappropriate for review by the Alternative Dispute Resolution Office are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other high-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6335 as a low-rated matter.

In this matter, the complainant, Todd Bradford, alleges that Steve Moak's principal campaign committee, Moak for Congress and Sally Lattimer, in her official capacity as treasurer ("the Committee"),¹ failed to include the required disclaimers on five printed public communications. *See* 2 U.S.C. §§ 441d(a) and (c); 11 C.F.R. §§ 110.11(a)-(c). Specifically, the complainant asserts that: (1) three mailings ("Mailer 1," "Mailer 2," and "Mailer 5") entirely lack disclaimers; (2) the disclaimer on one mailing ("Mailer 3") lacks a printed box set apart from the contents of the communication and does not meet size and placement requirements; and (3) the disclaimer on another mailing ("Mailer 4") also lacks a printed box. The complainant includes copies of these five mailers in the complaint.

¹ Steve Moak was a candidate for the U.S. House of Representatives from Arizona's Third Congressional District, but lost in the primary election on August 24, 2010.

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1 Mailer 1 appears to be a large postcard inviting recipients to a campaign event; it includes
2 the “Moak for Congress” logo and website on both sides of the card, but does not include a
3 disclaimer. Mailer 2 consists of a three-page letter from the candidate’s wife, Debbie Moak, and
4 an enclosed response card addressed to “Moak for Congress.” Both the envelope and the
5 letterhead prominently state, “From the Desk of Debbie Moak,” and the response card includes
6 the “Moak for Congress” logo and website, but none of the documents contain a disclaimer.
7 Mailer 3 is a large postcard with the phrase, “Got Moak?” printed on one side, and the Moak for
8 Congress logo and website (as well as a picture of Steve Moak) on the other side. The postcard
9 also contains the statement, “Paid for by Moak for Congress” in white lettering inside a white
10 box on a black background underneath the “Got Moak?” phrase. Mailer 4 features a large
11 photograph of the candidate on one side of the full-page mailer, and a letter “From the Desk of
12 Steve Moak” on the other side. Both sides display the “Moak for Congress” logo and website,
13 and the latter side displays the phrase “Paid for by Moak for Congress” in white lettering against
14 a dark background, but not contained within a box. Finally, Mailer 5 is a two-page fold-out flier
15 featuring several photographs of the candidate, as well as the “Moak for Congress” logo and
16 website on each page. Furthermore, the flier also displays the phrase, “Paid for by Moak for
17 Congress” in white lettering against a dark background, but not contained within a box.

18 In response, the Committee does not dispute that the mailings required disclaimers.² In
19 fact, the Committee acknowledges that Mailers 1 and 2 both lack the required disclaimer, but it
20 asserts that, due to the prominent placement of the “Moak for Congress” logo and the use of the

² Under Commission regulations, disclaimers are required on all public communications distributed by a political committee, including mass mailings. 11 C.F.R. §§ 100.26 and 110.11(a). The Commission defines “mass mailing” as more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 11 C.F.R. § 100.27. Although Respondents do not dispute that the mailings required disclaimers, there is no information to establish whether any of the mailings constituted a “mass mailing.” There is also no information as to when the mailers were sent, aside from Mailer 1 inviting recipients to a July 14, 2010 event. A review of the Committee’s disclosure reports covering June and July, 2010, reveals over \$200,000 in disbursements for “voter communications,” but does not itemize these disbursements any further.

1 first person voice, the source of the mailers is clear and it is not likely that recipients would be
2 confused. The Committee disputes the complainant's assertion that Mailer 3 does not meet the
3 sizing, placement, or printed box requirements. The Committee insists that the disclaimer on
4 Mailer 3 is "clearly readable" in terms of both type size and degree of color contrast and is
5 presented in a "clear and conspicuous manner." The Committee acknowledges that the
6 disclaimer on Mailer 4 is not contained within a printed box. Finally, the Committee disputes the
7 complainant's assertion that Mailer 5 does not contain a disclaimer, and asserts that the
8 disclaimer is present, but not contained in a printed box.

9 The Commission requires disclaimers to be of a clearly-readable size, printed with a
10 reasonable degree of color contrast, and contained in a printed box set apart from the other
11 contents of the communication. *See* 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c). As
12 acknowledged in the response, Mailers 1 and 2 lack the required disclaimer, but contain
13 identifying information such as the campaign logo and website. Mailers 4 and 5 include
14 disclaimers that are not contained within a printed box. The disclaimer on Mailer 3 appears to
15 meet the Commission's requirements: it is clearly readable in white lettering on a black
16 background and is contained within a printed box. Accordingly, Mailers 1, 2, 4, and 5, all
17 include identifying information of the Committee, but fall short of meeting the regulatory
18 requirements for appropriate disclaimers.

19 In light of the fact that the mailings contained sufficient identifying information, so that
20 the public would not have been misled as to who paid for the advertisements, and in furtherance
21 of the Commission's priorities and resources, relative to other matters pending on the
22 Enforcement docket, the Office of General Counsel believes that the Commission should
23 exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S.

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821 (1985). Additionally, this Office recommends that the Commission remind Moak for Congress and Sally Lattimer, in her official capacity as treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11 concerning the use of appropriate disclaimers on public communications.

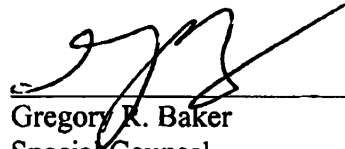
RECOMMENDATIONS

The Office of General Counsel recommends that the Commission dismiss MUR 6335, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind Moak for Congress and Sally Lattimer, in her official capacity as treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11 concerning the use of appropriate disclaimers on public communications.

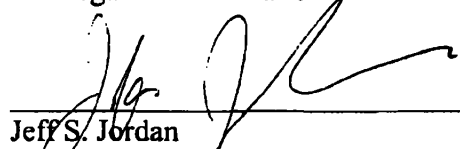
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2/3/11
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