



FEDERAL ELECTION COMMISSION
 WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5089
 Matta Tuchman for Congress and)
 Daralyn E. Reed, as Treasurer, *et al.*)

Statement of Reasons

Vice Chair Ellen L. Weintraub
 Commissioner Danny L. McDonald
 Commissioner Scott E. Thomas

On February 24, 2004, the Commission failed in a 3-3 vote to pass a motion to find reason to believe Matta Tuchman for Congress and Daralyn E. Reed, as Treasurer, violated 2 U.S.C. § 441d(a) by failing to place a proper disclaimer on a communication expressly advocating the defeat of opponent Loretta Sanchez. Vice Chair Weintraub and Commissioners McDonald and Thomas supported the motion. Chairman Smith and Commissioners Mason and Toner dissented, agreeing with the Office of General Counsel that no disclaimer was required. We write to explain why we declined to support the Office of General Counsel's recommendation to find no reason to believe the Tuchman Committee violated § 441d(a).

The Tuchman Committee mailed a letter dated August 18, 2000 that ostensibly came from the "Orange County Democrats," and was signed by three individuals, Deborah Buelna, Linda Coley, and Ericka Belona. The letter described the senders as "shocked and outraged" by Sanchez's plan to host a fundraiser at the Playboy Mansion. The letter sharply criticized Sanchez, stating that Sanchez showed contempt for her constituents and asks the reader to remember this contempt when "Sanchez asks for our vote again in November." The letter then asked the recipient to take a look at Sanchez's opponent, Gloria Matta Tuchman. The mailing also contained a copy of a news article, which criticized Sanchez and spoke highly of Tuchman. The letter and the upper-left-hand corner of the envelope indicated the mailing was coming from the "Orange County DEMOCRATS." It is only in small print on the back of the envelope that a very careful reader is informed the mailing actually came from the Matta Tuchman campaign committee.

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FECA¹ required a disclaimer for communications whenever any person made an expenditure for the purpose of financing communications that expressly advocated the election or defeat of a clearly identified candidate. 2 U.S.C. § 441d(a). Then, as now, when a communication was paid for by a candidate, an authorized committee or its agents, the communication had to contain a disclaimer stating that the communication was paid for by that authorized committee.

The undersigned believe that the letter expressly advocated the defeat of Loretta Sanchez. The letter suggested a partisan context (being from "Democrats"), contrasted opposing candidates, made reference to the election and voting in November, criticized Sanchez, urged readers to "take a look at" Sanchez's opponent, and encouraged no other kind of action. 11 C.F.R. § 100.22(b). The regulations in effect at the time the letter was mailed required that the disclaimer:

shall be presented in a clear and conspicuous manner, to give the reader... adequate notice of the identity of the person or committee that paid for, and, where required, that authorized the communication. A disclaimer is not clear and conspicuous if the printing is difficult to read or if the placement is easily overlooked.

11 C.F.R. § 110.11(a)(5).

We do not believe that the fine print on the back flap of the envelope satisfied these disclaimer requirements. In this judgment, the General Counsel concurs. *See* General Counsel's Report at 7 n.9 ("If the letter did contain express advocacy, it would have needed a separate disclaimer"). A disclaimer solely on an envelope is insufficient if the letter on its own would require a disclaimer. *See* 11 C.F.R. § 110.11(a)(5)(ii) (requiring a disclaimer on any part of a package that would require a disclaimer if distributed separately). Further, the upper-left-hand corner of the envelope indicated the Orange County Democrats, not the Matta Tuchman Committee, sent the mailing. The disclaimer was only on the back flap in very small font, making it difficult to read and easily overlooked. 11 C.F.R. § 110.11(a)(5). We therefore believe the Matta Tuchman Committee violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on the letter.

¹ All references to FECA pertain to that statute as it existed prior to the November 6, 2002 effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Similarly, all references to the Commission's regulations pertain to the Title 11, C.F.R. published prior to the promulgation of any regulations under BCRA. The disclaimer requirements in effect today differ from the ones addressed in this matter.

2025 RELEASE UNDER E.O. 14176

For the above stated reasons, the undersigned voted to find reason to believe that
Matta Tuchman for Congress and Daralyn E. Reed, as Treasurer, violated 2 U.S.C. §
441d(a).

Ellen L. Weintraub
Ellen L. Weintraub

Vice Chair

4/2/04
Date

Danny L. McDonald
Danny L. McDonald *by FJD*
Commissioner

04/02/04
Date

Scott E. Thomas
Scott E. Thomas
Commissioner

4/2/04
Date

24.04.407.2915