



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 4508

DATE FILMED 11-7-96 CAMERA NO. 4

CAMERAMAN JMIH

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RECEIVED
COMMISSION
OFFICE OF GENERAL
COUNSEL

RECEIVED
FEDERAL ELECTION
COMMISSION
MAIL ROOM

APR 8 3 36 PM '96 APR 8 2 25 PM '96

TO: Erica McMaman
Office of General Council
Federal Election Commission
Washington, D.C. 20463

ATN: Lawrence Noble

FM: Hambsch for Congress Committee
FED ID # (to be assigned)
P.O. Box 23204, San Diego, CA 92193-3204
RE: Error on mailer

Pre-MUR 327

Dear General Council,

On or about March 21, 1996, the "Hambsch for Congress Committee" did purchase and mail a letter to approximately 7,000 voters in CA-49.

This mailer did not comply with the FEC rules on a "clear request" for itemized contributor information. It did not include the specific word-for-word standards required by the FEC. This was done in error and lack of knowledge and was not done intentionally.

I have enclosed a copy of the mailer for your records in case this oversight on the Committee's part is ever questioned.

I ask that you waive any fines or penalties that might be levied on this oversight.

Thank You.



Paul Lammers, Treasurer

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BULK RATE
U.S. POSTAGE
PAID
PERMIT #2325
SAN DIEGO, CA

P.O. Box 23204
San Diego, CA 92193-3204

**VOTE
REFORM**
ELECTION DAY
TUESDAY,
MARCH 26

SAVE ★ IMPORTANT REFORM PARTY ELECTION INFORMATION ★ SAVE

DEAR REFORM PARTY FOUNDING MEMBER:

My name is Kevin Hamsch, and I'm asking for your vote and support. Our first election is just a few days off, and it's now time to marshal our forces and permanently change the culture of Washington. As your candidate for Congress, I pledge to tenaciously pursue these Reform Party top-priority issues.



Kevin Hamsch has been creating real change for four years, with the Perot '92 Campaign, United We Stand America, and the Reform Party. He will not back down to lobbyists or party bosses! He has the tenacity and unbending will to fight, lead, and win real reform. We know little of the other candidate or her agenda, except that the media reports that she is a professional "dominatrix." Enough said.

Reform Party members MUST VOTE, so that politicians know we are a force to be reckoned with! We invite your comments or questions. For more details, please call our automated information system at 566-9979.

*No monies will be accepted from special interests or anyone outside the district. **We need YOUR contributions to get the job done.***

★ CAMPAIGN FINANCE REFORM

Remove big money from the political process.
Make our representatives accountable to constituents, not contributors.

★ LOBBYING REFORM

End influence-buying by foreign and domestic interests.
Some call it legal bribery. Requires zero tolerance law.

★ BALANCED BUDGET

\$5,017,741,000,000 of American debt. Pass a balanced budget, whatever it takes. Leave no hard choices to future Congresses.

★ FAIR TRADE

Record breaking trade deficits and loss of jobs under NAFTA and GATT. Fair trade will benefit all trading partners without sacrificing sovereignty or pitting business, workers, consumers, investors, and the environment against each other.

★ GOVERNMENT REORGANIZATION

Downsize and consolidate the self-serving bureaucracies. Increase effectiveness with sound business practices.



VOTE FOR KEVIN HAMBSCH, A TRUSTED LEADER

Hamsch for Congress Committee • P.O. Box 23204 • San Diego, CA 92193-3204 • (619) 505-9999



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 9, 1996

Paul Lammers, Treasurer
Hamsch for Congress Committee
P.O. Box 23204
San Diego, CA 92193-3204

RE: Pre-MUR 327

Dear Mr Lammers:

This is to acknowledge receipt of your letter on April 8, 1996, advising us of a possible violation of the Federal Election Campaign Act of 1971, as amended, by the Hamsch for Congress Committee and you, as treasurer. We will review the matter and notify you as soon as the Federal Election Commission takes action on your submission.

If you have any questions, please contact the Central Enforcement Docket at (202) 219-3400. For your information, we have attached a brief description of the Commission's procedures for handling matters such as this.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. G. Lerner", is written over the typed name.

Lois G. Lerner
Associate General Counsel

Enclosure
Procedures

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

OCT 8 11 11 AM '96

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

PRE-MUR: 327

DATE ACTIVATED: April 30, 1996

STAFF MEMBER: Jeffrey D. Long

SOURCE:

Sua Sponte

RESPONDENTS:

Hambsch for Congress Committee
Paul Lammers, Treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)(3)
2 U.S.C. § 432(i)
2 U.S.C. § 441d

INTERNAL REPORTS CHECKED:

Financial Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. GENERATION OF MATTER

This matter came to the Commission as a *sua sponte* submission from Paul Lammers, treasurer of the Hambsch for Congress Committee. Kevin Hambsch is the Reform Party candidate in California's 49th Congressional District. Mr. Hambsch won the March 26th Primary Election and, according to the California Secretary of State's Office, will be on the general election ballot in November. The basis for the Committee's submission is their concern that a mailer they recently sent did not include a request for contributor identification.

The Committee explains that prior to the primary election the Committee mailed 7,000 flyers to addresses within the 49th Congressional District. The absence of a request for

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contributor identification was unintentional, according to the Committee, and due to their lack of knowledge of the law.

An examination of the two-sided flyer enclosed with the *sua sponte* submission reveals on side one the committee's name and address, the date of the primary election, and the words "Vote Reform". Side two names the candidate several times and contains descriptions of his position on five election issues. No request for information to identify potential contributors is on this mailer. Further examination of the mailer also indicates that there is no disclaimer to identify who paid for this communication.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

According to 2 U.S.C. § 434(b)(3)(A), committees are required to identify each person who contributes an aggregate of \$200 in a calendar year. "Identification" is defined at Section 431(13) as the contributor's name, address, occupation, and employer. The treasurer of a committee is allowed by 2 U.S.C. § 432(i) to demonstrate that best efforts have been used to obtain, maintain, and submit the information required under Section 434(b)(3). The treasurer will be deemed to have exercised best efforts if, *inter alia*, all written solicitations for contributions included a clear request for the contributors' identification. 11 C.F.R. § 104.7(b).

The best efforts regulations are a "safe harbor" for committees to be employed when information that is required to be reported can not be reasonably obtained by the reporting committee. If a committee fails to meet the requirements for reporting contributor identification under Section 434(b)(3), the treasurer may demonstrate his best efforts at having obtained the information by first showing that the request for the information was included on the

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committee's written solicitations.¹ Hence, if a committee meets the requirements for reporting contributor identification, (i.e. does not need to demonstrate best efforts), the issue of whether or not the solicitation included a request for contributor identification information is not reached.

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a candidate, or solicits any contribution through direct mailing or any other type of general public political advertising...such communication shall clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C § 441d(a)(1). Commission regulations at 11 C.F.R. § 100.22(a) provide that "expressly advocating" means *inter alia*, any communication that uses phrases or individual words which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. The regulations include a list of examples, such as "vote for the President", "support the Democratic nominee" and "Smith for Congress".²

B. Discussion

1. Contributor Information

At the time that this *sua sponte* was filed the Hamsch for Congress Committee's FEC reports covering the period of January 1 through June 30, 1996, disclosed having received only

¹ *Cf. Republican National Committee v. FEC*, 76 F.3d 400 (D.D.C. Cir. 1996) (where the court, *inter alia*, upheld the portion of 104.7(b) requiring an initial request on the solicitation and a follow-up request in order to demonstrate "best efforts", but deemed as unreasonable the required mandatory statement that federal law requires committees to report certain donor information, in a request for contributor information).

² 11 C.F.R. § 100.22(b) provides that "expressly advocating" can mean any communication that, when taken as a whole and with limited reference to external events, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of a clearly identified candidate. *But see Maine Right to Life Committee, Inc., et al. v. FEC, et al.*, 914 F. Supp. 8 (D.Me. 1996), *motion for reconsideration denied*, 1996 WL 65143 (D.ME. Mar. 8, 1996), *appeal filed*, (1st Cir. May 3, 1996), wherein the court invalidates the portion of the definition of "expressly advocating" appearing at 11 C.F.R. § 100.22(b). However, the communication in the present matter meets the definition at subpart (a).

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\$75 in receipts from individual contributions.³ Because none of the contributions were at least \$200, there is no requirement on the Respondents to itemize and provide identifying information on the contributors. Hence the question whether the Committee can demonstrate it used best efforts to retrieve that information does not even arise, and the absence of a request for contributor information on the solicitation is not an issue. Therefore, this Office recommends that the Commission find no reason to believe the Committee violated 2 U.S.C. § 434(b)(3) for failing to report contributor identifying information.

2. Disclaimer

Although not addressed in the *sua sponte* letter, examination of the subject mailer reveals that it does not contain a disclaimer identifying who paid for the communication. The regulations are clear that a mailer which expressly advocates the election of a candidate or solicits contributions through advertising such as direct mail, must include a disclaimer which clearly states that the communication has been paid for by the authorized committee. 11 C.F.R. § 110.11(a)(1)(i). The only identifier on the mailing beyond the committee's name is its address at the bottom of side two, which does not clearly state who paid for the communication.

The subject communication expressly advocates the election of Kevin Hambsch by the use of words specifically cited in the Commission's regulations at 11 C.F.R. § 100.22(a); the banner on side two of the communication reads "Vote for Kevin Hambsch, a Trusted Leader". Additionally, the communication solicits contributions by using the printed phrases, "My name is Kevin Hambsch, and I am asking for your support" and "We need YOUR contributions to get the job done". Therefore, because the subject mailer expressly advocates the election of the

3 It is noted that the Respondents' 1996 July Quarterly Report was filed using the FEC identification number of its affiliated committee. At the time this report was prepared the Reports Analysis Division was working with the two committees to correct the public record.

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candidate, solicits contributions, and does not identify the committee as having paid for it, this Office recommends that the Commission find reason to believe the Hambsch for Congress Committee and Paul Lammers, as treasurer, violated 2 U.S.C. § 441d.

Examination of the Committee's FEC reports indicate the cost for the production and mailing of the communication to be approximately \$2,000. Available information indicates that the subject mailing generated approximately \$75 in contributions. Based upon the combination of the small amount of money spent and raised, this Office recommends that the Commission take no further action, send an admonishment letter to the Respondents, and close the file.

III. RECOMMENDATIONS


1. Open a MUR.
2. Find no reason to believe that Hambsch for Congress Committee and Paul Lammers, as treasurer, violated 2 U.S.C. § 434(b)(3).
3. Find reason to believe that Hambsch for Congress Committee and Paul Lammers, as treasurer, violated 2 U.S.C. § 441d, and take no further action.
4. Approve the attached Factual and Legal Analysis.
5. Approve the appropriate admonishment letter.
6. Close the file.

Lawrence M. Noble
General Counsel

Date

10/7/96

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Copy of the Mailer
2. Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Hamsch for Congress Committee and
Paul Lammers, Treasurer.

)
)
) Pre-MUR 327
)

MUR 4508

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on October 11, 1996, the Commission decided by a vote of 5-0 to take the following actions in Pre-MUR 327:

1. Open a MUR.
2. Find no reason to believe that Hamsch for Congress Committee and Paul Lammers, as treasurer, violated 2 U.S.C. § 434(b)(3).
3. Find reason to believe that Hamsch for Congress Committee and Paul Lammers, as treasurer, violated 2 U.S.C. § 441d, and take no further action.
4. Approve the Factual and Legal Analysis, as recommended in the General Counsel's Report dated October 7, 1996.

(continued)

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Federal Election Commission
Certification for Pre-MUR 327
October 11, 1996

Page 2

5. Approve the appropriate admonishment letter,
as recommended in the General Counsel's
Report dated October 7, 1996.
6. Close the file.

Commissioners Aikens, Elliott, McDonald, McGarry and
Thomas voted affirmatively for the decision.

Attest:

10-11-96
Date

for Delores Hardy
for Marjorie W. Emons,
Secretary of the Commission

Received in the Secretariat: Tues., Oct. 08, 1996 11:19 a.m.
Circulated to the Commission: Tues., Oct. 08, 1996 4:00 p.m.
Deadline for vote: Fri., Oct. 11, 1996 4:00 p.m.

1rd

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 18, 1996

Paul Lammers, Treasurer
Hambsch for Congress Committee
P.O. Box 23204
San Diego, California 9213-3204

RE: MUR 4508
Hambsch for Congress Committee and
Paul Lammers, as treasurer

Dear Mr. Lammers:

On October 11, 1996, the Federal Election Commission found no reason to believe that Hambsch for Congress Committee ("Committee") and you, as treasurer, violated 2 U.S.C. § 434(b)(3), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act.") On that same date, however, the Commission found reason to believe the Committee and you, as treasurer, violated 2 U.S.C. § 441d. After considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that failing to include the proper disclaimer to identify who paid for a communication which expressly advocates the election or defeat of a candidate, or solicits any contribution through direct mailing or any other type of general public political advertising, is a violation of 2 U.S.C. § 441d. You should take steps to ensure that this activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott
Chairman

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:

MUR: 4508

Hambsch for Congress Committee and
Paul Lammers, as treasurer

This matter was generated by a *sua sponte* submission with the Federal Election Commission by Paul Lammers, treasurer of the Hambsch for Congress Committee. See 2 U.S.C. § 437g(a)(1).

Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a candidate, or solicits any contribution through direct mailing or any other type of general public political advertising...such communication shall clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C § 441d(a)(1). Commission regulations at 11 C.F.R. § 100.22(a) provide that "expressly advocating" means *inter alia*, any communication that uses phrases or individual words which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. The regulations include a list of examples, such as "vote for the President", "support the Democratic nominee" and "Smith for Congress".

Prior to the 1996 California Primary Election, the Respondents mailed 7,000 flyers to addresses within the 49th Congressional District. An examination of the two-sided flyer enclosed with the *sua sponte* submission indicates that there is no disclaimer to identify who paid for this communication.

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The subject communication expressly advocates the election of Kevin Hambsch by the use of words specifically cited in the Commission's regulations at 11 C.F.R. § 100.22(a); the banner on side two of the communication reads "Vote for Kevin Hambsch, a Trusted Leader". Additionally, the communication solicits contributions by using the printed phrases, "My name is Kevin Hambsch, and I am asking for your support" and "We need YOUR contributions to get the job done".

The subject mailer expressly advocates the election of the candidate, solicits contributions, and does not identify the committee as having paid for it. Therefore, there is reason to believe Hambsch for Congress Committee and Paul Lammers, as treasurer, violated 2 U.S.C. § 441d.

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4508

DATE FILMED 11-7-96 CAMERA NO. 4

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