



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 27 2003

Anthony "Todd" Banasack
4101 East Baseline Rd. #1114
Gilbert, Arizona 85234

RE: MUR 5103

Dear Mr. Banasack:

On March 27, 2000, the Federal Election Commission notified you of an amended complaint alleging that you may have violated the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the amended complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information provided by you, the Commission, on October 15, 2003, found that there is reason to believe you violated 2 U.S.C. § 441d(a), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order To Submit Written Answers and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to the order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Kamau Philbert, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub
Chair

Enclosures
Order and Subpoena
Designation of Counsel Form
Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)
) MUR 5103
)

**SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS**


TO: Anthony "Todd" Banasack
Serena Shores Apartments
4101 E. Baseline Road, Apt. #1114
Gilbert, AZ 85234

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies, which, where applicable, show both sides of the documents, may be substituted for originals.


Such answers must be submitted under oath and together with the requested documents must be submitted to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, within 30 days of receipt of the Subpoena and Order.

WHEREFORE, the Chair of the Federal Election Commission has hereunto set her hand in Washington, D.C., on this *27th* day of October, 2003.

For the Commission,


Ellen L. Weintraub
Chair

ATTEST:


Mary W. Dove
Secretary to the Commission

Attachments:

Interrogatories and Requests for Production
of Documents with Instructions and Definitions

INSTRUCTIONS

In answering this subpoena for production of documents, furnish all documents and other information, however obtained, including hearsay that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

The terms used in the document requests and interrogatories shall be deemed to include both singular and plural as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

Unless otherwise indicated, the discovery request shall refer to the time period from August 1, 2000 to the present.

This subpoena is continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of this discovery request, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named person or entity to which these discovery requests are addressed, including all agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and/or accurate and complete copies, and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, electronic communications, computer print-outs, and all other writings and other data compilations, including information contained on computer disks and hard drives, from which information can be obtained.

"Communications" shall be deemed to include both singular and plural, and to include written, oral and electronic communications.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the residential, business and cellular telephone numbers and servers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents, materials and information which may otherwise be construed to be out of their scope.

**SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS**

1. Set forth the following:

- a. Your full legal name, and any other name(s) by which you have ever been known;
- b. Your social security number;
- c. The mailing and street addresses for each currently owned or leased residence, including all residential telephone and facsimile numbers;
- d. The mailing and street addresses for each business or professional location at which you have been employed or have owned, including all business telephone and facsimile numbers, title or occupation, and dates during which each position was held.

2. State whether you have owned, leased, or used the telephone or facsimile number 815-364-0842. If so, set forth the time period and circumstances of such ownership, lease, or usage, and identify all authorized users.

3. Describe any relationship, affiliation, dealings, or transactions you have had with any or all of the following persons or entities between August 6, 2000 and September 12, 2000 concerning federal elections or political campaigns:

- a. TAB Enterprises or "TAB"
- b. Acacia National Mortgage Corporation
- c. Gerald Youhanaie
- d. Thomas Liddy
- e. Liddy to Congress
- f. Jeff Flake
- g. Jeff Flake for Congress
- h. Salvatore DiCiccio
- i. Friends of DiCiccio
- j. Susan Bitter Smith
- k. Friends of Susan Bitter Smith

4. State whether you have made any contribution(s), expenditure(s), or disbursement(s) to, or on behalf of, the following congressional candidates or campaign committees between August 1, 2000 and November 7, 2000:

- a. Thomas Liddy
- b. Liddy to Congress

- c. Jeff Flake
- d. Jeff Flake for Congress
- e. Salvatore DiCiccio
- f. Friends of DiCiccio
- g. Susan Bitter Smith
- h. Friends of Susan Bitter Smith

5. If any contribution(s), expenditure(s), or disbursement(s) were made to, or on behalf of the above congressional candidates or campaign committees, please set forth the amount, type, date and circumstances of the contribution(s), expenditure(s), or disbursement(s).

6. Did you create or cause to be created faxes containing the following statement:

Arizona already had Meecham & Symington. Do
we need Susan Bitter Smith too? STOP HER! Stop
Bitter Smith before it too late!

- a. If so, describe the purpose of and circumstances under which the faxes were created.
- b. State how many of the faxes were created.
- c. Identify all persons who participated in the conception, development, and production, of the faxes.
- d. Identify all persons with whom you communicated about the faxes.
- e. Set forth the cost of creating, developing, and producing the faxes.
- f. Set forth the date(s) the faxes were created, developed and produced.

7. Did you distribute or cause to be distributed faxes containing the following statement:

Arizona already had Meecham & Symington. Do
we need Susan Bitter Smith too? STOP HER! Stop
Bitter Smith before it too late!

- a. If so, describe the purpose of and circumstances under which the faxes were distributed.
- b. State how many of the faxes were distributed.
- c. List and identify the persons and telephone numbers to whom the faxes were distributed.
- d. Identify all persons who participated in the distribution of the faxes.

- e. Identify all persons with whom you communicated about the faxes.
- f. Set forth the cost of distributing the faxes.
- g. Set forth the date(s) the faxes were distributed.

8. Did you transmit or cause to be transmitted faxes containing the following statement:

Arizona already had Meecham & Symington. Do
we need Susan Bitter Smith too? STOP HER! Stop
Bitter Smith before it too late!

- a. If so, describe the purpose of and circumstances under which the faxes were transmitted.
- b. State how many of the faxes were transmitted.
- c. List and identify the persons and telephone numbers to whom the faxes were transmitted.
- d. Identify all persons who participated in the transmittal of the faxes.
- e. Identify all persons with whom you communicated about the faxes.
- f. Set forth the cost of transmitting the faxes.
- g. Set forth the date(s) the faxes were transmitted.

9. If you did not create or cause to be created the faxes described in Question 6, do you know who did? If so, identify the person(s) who did.

10. If you did not distribute or cause to be distributed the faxes described in Question 7, do you know who did? If so, identify the person(s) who did.

11. If you did not transmit or cause to be transmitted the faxes described in Question 8, do you know who did? If so, identify the person(s) who did.

12. Did you create or cause to be created faxes containing the following statement:

Arizona already had Meecham & Symington. Do we need Susan Bitter Smith too? STOP HER! Stop her before she embarrasses Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune or Thursday's AZ Republic.)

- a. If so, describe the purpose of and circumstances under which the faxes were created.
- b. State how many of the faxes were created.
- c. Identify all persons who participated in the conception, development, and production of the faxes.
- d. Identify all persons with whom you communicated about the faxes.
- e. Set forth the cost of creating, developing, and producing the faxes.
- f. Set forth the date(s) the faxes were created, developed, and produced.

13. Did you distribute or cause to be distributed faxes containing the following statement:

Arizona already had Meecham & Symington. Do we need Susan Bitter Smith too? STOP HER! Stop her before she embarrasses Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune or Thursday's AZ Republic.)

- a. If so, describe the purpose of and circumstances under which the faxes were distributed.
- b. State how many of the faxes were distributed.
- c. List and identify the persons and telephone numbers to whom the faxes were distributed.
- d. Identify all persons who participated in the distribution of the faxes.
- e. Identify all persons with whom you communicated about the faxes.
- f. Set forth the cost of distributing the faxes.
- g. Set forth the date(s) the faxes were distributed.

14. Did you transmit or cause to be transmitted faxes containing the following statement:

Arizona already had Meecham & Symington. Do we need Susan Bitter Smith too? STOP HER! Stop her before she embarrasses Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune or Thursday's AZ Republic.)

- a. If so, describe the purpose of and circumstances under which the faxes were transmitted.
- b. State how many of the faxes were transmitted.
- c. List and identify the persons and telephone numbers to whom the faxes were transmitted.
- d. Identify all persons who participated in the transmittal of the faxes.
- e. Identify all persons with whom you communicated about the faxes.
- f. Set forth the cost of transmitting the faxes.
- g. Set forth the date(s) the faxes were transmitted.

15. If you did not create or cause to be created the faxes described in Question 12, do you know who did? If so, identify the person(s) who did.

16. If you did not distribute or cause to be distributed the faxes described in Question 13, do you know who did? If so, identify the person(s) who did.

17. If you did not transmit or cause to be transmitted the faxes described in Question 14, do you know who did? If so, identify the person(s) who did.

18. Did you create or cause to be created faxes containing the following statement:

Arizona already had Meecham & Symington. Do we need Susan Bitter Smith too? STOP HER! Stop her before she embarrasses Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune.)

- a. If so, describe the purpose of and circumstances under which the faxes were created.
- b. State how many of the faxes were created.

- c. Identify all persons who participated in the conception, development, and production of the faxes.
- d. Identify all persons with whom you communicated about the faxes.
- e. Set forth the cost of creating, developing, and producing the faxes.
- f. Set forth the date(s) the faxes were created, developed, and produced.

19. Did you distribute or cause to be distributed faxes containing the following statement:

Arizona already had Meecham & Symington. Do we need Susan Bitter Smith too? STOP HER! Stop her before she embarrasses Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune.)

- a. If so, describe the purpose of and circumstances under which the faxes were distributed.
- b. State how many of the faxes were distributed.
- c. List and identify the persons and telephone numbers to whom the faxes were distributed.
- d. Identify all persons who participated in the distribution of the faxes.
- e. Identify all persons with whom you communicated about the faxes.
- f. Set forth the cost of distributing the faxes.
- g. Set forth the date(s) the faxes were distributed.

20. Did you transmit or cause to be transmitted faxes containing the following statement:

Arizona already had Meecham & Symington. Do we need Susan Bitter Smith too? STOP HER! Stop her before she embarrasses Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune.)

- a. If so, describe the purpose of and circumstances under which the faxes were transmitted.
- b. State how many of the faxes were transmitted.

- c. List and identify the persons and telephone numbers to whom the faxes were transmitted.
- d. Identify all persons who participated in the transmittal of the faxes.
- e. Identify all persons with whom you communicated about the faxes.
- f. Set forth the cost of transmitting the faxes.
- g. Set forth the date(s) the faxes were transmitted.

- 21. If you did not create or cause to be created the faxes described in Question 18, do you know who did? If so, identify the person(s) who did.
- 22. If you did not distribute or cause to be distributed the faxes described in Question 19, do you know who did? If so, identify the person(s) who did.
- 23. If you did not transmit or cause to be transmitted the faxes described in Question 20, do you know who did? If so, identify the person(s) who did.
- 24. To the extent not already produced, produce copies of all documents referred to in your responses to the above interrogatories, and all documents used to prepare your responses to the above interrogatories.
- 25. Identify each individual who assisted in the preparation of these responses to interrogatories and requests for the production of documents.

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 RESPONDENT: Anthony "Todd" Banasack
6

7 **I. INTRODUCTION**

8 This matter was generated by an amended complaint dated March 6, 2001 from Jasen
9 Hutchinson on behalf of Friends of Susan Bitter Smith committee. The amended complaint
10 alleges that anonymous fraudulent communications were made to residents and businesses of the
11 1st Congressional District of Arizona attacking Susan Bitter Smith, a candidate in the Republican
12 primary election, and using Bitter Smith's name to attack another candidate, Jeff Flake, between
13 August 6, 2000 and the September 12, 2000 primary election. The communications contained no
14 disclaimers.

15 **II. FACTUAL AND LEGAL ANALYSIS¹**

16 **A. Facts**

17 Available information shows that several faxes transmitted between August 6 and
18 September 1, 2000 urged potential voters to "stop" Bitter Smith and compared her to two former
19 indicted governors of Arizona. In particular, those faxes stated:

20 Arizona already had Meecham & Symington. Do
21 we need Susan Bitter Smith too? STOP HER! Stop
22 Bitter Smith before it [*sic*] too late!
23

24 The faxes appear to be sent from a telephone number in Illinois (815-364-0842) and

¹ All of the events relevant to this matter occurred prior to November 6, 2002, the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all references or statements of law in this report regarding the Federal Election Campaign Act of 1971, as amended, pertain to that statute as it existed prior to the effective date of BCRA. Similarly, all references or statements of law regarding the Commission's regulations pertain to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

1 showed the sender as either "TAB Enterprises" or "TAB," a non-existent or unregistered entity.
2 The faxes also listed the same telephone number for those wishing to have their numbers
3 removed from the transmission list. Beginning August 31, 2000, additional faxes were
4 transmitted with similar language, but the last sentence read "Stop her before she embarrasses
5 Arizona! (Whoops Too Late !!! Read the front page of Wednesday's East Valley Tribune or
6 Thursday's AZ Republic").²

7 The amended complaint identified Anthony T. Banasack (a.k.a. Todd Banasack) as the
8 sender of the faxes based on information indicating that he is listed as the subscriber to the 815-
9 364-0842 number, and he has access to the account to change voice mail messages. In response
10 to the allegations in the amended complaint, Banasack refused to acknowledge making or being
11 involved with the communications; instead he expressed his belief that he could constitutionally
12 engage in the activity. Nevertheless, he implied involvement in the activity, stating for example,
13 **"any communications which may have been made by me were made solely in my capacity**
14 **as an individual citizen"** (emphasis added). In refusing to acknowledge responsibility for
15 the communications, Banasack states that he did not specifically address them because he
16 believes that the communications did not violate the Federal Election Campaign Act. Banasack
17 asserts his belief that he has a constitutional right to independently express his views about
18 political candidates and that the Federal Election Campaign Act only applies to paid
19 communications or communications by candidates, committees, corporations or entities other
20 than individuals.

21

² One of the faxes had identical language except for the last phrase "or Thursday's AZ Republic."

B. Law

1. Disclaimer

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication shall clearly state who paid for the communication and whether the communication was authorized by a candidate or authorized committee. 2 U.S.C. § 441d(a). See 11 C.F.R. § 110.11(a)(1).

2. Express Advocacy

The Commission regulations at 11 C.F.R. § 100.22 define "expressly advocating" as any communication that--

- (a) Uses phrases such as "vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '94," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidate(s), "reject the incumbent," or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as posters, bumper stickers, advertisements, etc. which say "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!"³

In *FEC v. Furgatch*, 807 F.2d 857, 862-864 (9th Cir.), cert. denied, 484 U.S. 850 (1987), the Ninth Circuit Court of Appeals held that speech need not include any of the specific words

³ This provision was based on prior Supreme Court decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976) and *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). In *Buckley*, the Supreme Court gave examples of express advocacy, which included phrases such as "vote for," "elect," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject." 424 U.S. at 44 n.52.

1 listed in *Buckley* to constitute express advocacy. *Furgatch* concerned a negative advertisement
2 about President Carter placed three days before the 1980 general election. After criticizing
3 President Carter, the advertisement stated, "If he succeeds the country will be burdened with four
4 more years of incoherencies, ineptness and illusion, as he leaves a legacy of low-level
5 campaigning. DON'T LET HIM DO IT." *Id.* at 858. In holding the advertisement constituted
6 express advocacy, the Ninth Circuit concluded that for a communication to constitute express
7 advocacy it must, "when read as a whole, and with limited reference to external events, be
8 susceptible of no other reasonable interpretation but as an exhortation to vote for or against a
9 specific candidate."⁴ *Id.* at 864.

10 In *FEC v. Christian Coalition*, 52 F.Supp. 2d 45 (D.C.D.C. 1999) ("*Christian Coalition*")
11 the court declared that, to be express advocacy, a communication must "in effect contain an
12 explicit directive," which takes the form of an "action verb or its functional equivalent." *Id.* at 62.
13 According to the *Christian Coalition* court, once the identity of the speaker (i.e., the organization
14 paying for the communication) and the content of the communication are proven, a
15 communication will be considered express advocacy only when a reasonable person would
16 understand that the speech used, considered in the context of the entire communication,
17 contained an explicit directive to take electoral action in support of the election or defeat of a
18 clearly identified candidate. *Id.* at 62.

19

⁴ In an opinion concerning a challenge to a similar definition of express advocacy in a California state statute, the Ninth Circuit recently explained that while a communication may be considered "as a whole" in determining whether it contains express advocacy, "a close reading of *Furgatch* indicates that we presumed express advocacy must contain some explicit words of advocacy." *Calif. Pro-Life Council, Inc v. Getman*, 328 F.3d 1088, 1097 (9th Cir. 2003) (emphasis in original).

3. Clearly Identified

The term "clearly identified" means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia." 2 U.S.C. § 431(18); 11 C.F.R. § 100.17.

C. Analysis

The faxes at issue contain language that expressly advocates the election or defeat of a clearly identified candidate. The words in those faxes - "STOP HER! Stop Bitter Smith before it [*sic*] too late!" or "Stop her before she embarrasses Arizona!" - appear equivalent or synonymous to the phrases and language specified in the Commission's definition of "expressly advocating" in 11 C.F.R. § 100.22(a). The faxes clearly contain an explicit directive to take electoral action in defeat of a clearly identified candidate, namely, Bitter Smith. *Christian Coalition* at 62. The language in the faxes appear sufficiently explicit that it "in context can have no other reasonable meaning than to urge the election or defeat of" Bitter Smith. *See* 11 C.F.R. § 100.22(a). The language also appears similar to the "DON'T LET HIM DO IT" language in *Furgatch*.

As the communications at issue contain language that expressly advocates the defeat of Bitter Smith, they require a disclaimer statement. Such a disclaimer would have accurately revealed the person(s) paying for the communications and would have indicated whether a candidate or campaign committee authorized the communications. However, the communications lacked the requisite disclaimer. The available information implicates Banasack

1 and connects him to the 815-364-0842 number. That information indicates that Banasack is
2 listed as the subscriber of the 815-364-0842 number, and he has access to the account to change
3 voice mail messages. As noted above, in his response to the amended complaint, Banasack
4 implied making the communications, stating for example, "**any communications which may**
5 **have been made by me were made solely in my capacity as an individual citizen . . .**," and
6 asserting his constitutional right to make the communications. (emphasis added). Therefore,
7 there is reason to believe that Anthony "Todd" Banasack violated 2 U.S.C. § 441d(a).