

RECEIVED
FEDERAL ELECTION
COMMISSION
BEFORE THE
FEDERAL ELECTION COMMISSION

2013 NOV -3 PM 1:24

Homar G. Hernandez

San Antonio, Texas 78264

Complainant,

v.

Rep. William Hurd
P.O. Box 761029
San Antonio, TX 78245

Hurd for Congress and Bradley Crate, Treasurer
P.O. Box 761029
San Antonio, TX 78245

Respondents.

Supplement
MUR # 7156

SENSITIVE

2017 MAY 24 PM 4:44

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Rep. Hurd, Hurd for Congress (the "Committee") and Bradley Crate, in his official capacity as Treasurer (collectively "Respondents") for violating the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission (the "FEC" or "Commission") regulations, as described below. For the second time in a week, Respondents appear to have failed to comply with the Commission's disclaimer requirements for a television advertisement that they have approved and sponsored. As a result, the FEC should immediately investigate and levy appropriate sanctions against Respondents for their failure to comply with basic requirements the Act and Commission regulations.

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FACTS

Rep. Hurd is a candidate for Congress in the twenty-third district in Texas.¹ His principal campaign committee is Hurd for Congress.² The treasurer of Hurd for Congress is Bradley Crate.³ Rep. Hurd's Committee has paid for and is airing a television advertisement titled "HOUSE/TX23 HURD GREATEST HONOR" in support of his reelection to Congress.⁴ The advertisement appears to contain a written disclaimer but it is not clearly readable so it is unclear who is actually sponsoring the advertisement.

LEGAL DISCUSSION

Under the Act, whenever a political committee makes a disbursement for the purpose of financing any television advertisement or public communication, there are several disclaimers required.⁵ If the communication is paid for and authorized by a candidate, an authorized committee of a candidate, or agent of either, the communication must contain a disclaimer that clearly states that the communication has been paid for by the authorized political committee.⁶ Such a disclaimer must be presented in a clear and conspicuous manner to give the reader or observer adequate notice of the identity of the person or political committee that paid for the advertisement.⁷

¹ William Hurd, FEC Form 2, Statement of Candidacy, (amended Aug. 26, 2016) <http://docquery.fec.gov/pdf/151/201608269023752151/201608269023752151.pdf>.

² *Id.*; see also Hurd for Congress, FEC Form 1, Statement of Organization (amended Aug. 26, 2016), available at <http://docquery.fec.gov/pdf/145/201608269023752145/201608269023752145.pdf>.

³ Hurd for Congress, FEC Form 1, Statement of Organization (amended Aug. 26, 2016), available at <http://docquery.fec.gov/pdf/145/201608269023752145/201608269023752145.pdf>.

⁴ The advertisement can be viewed here:

http://mycmag.kantannediana.com/KMlcmagvidbin2/HOUSE_TX23_HURD_GREATEST_HONOR.html.

⁵ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); see *id.* § 100.26 (defining public communication).

⁶ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

⁷ 11 C.F.R. § 110.11(c)(1), (3).

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There are additional disclaimers required for television advertisements. Specifically, a television advertisement that is authorized or paid for by a candidate or the authorized committee of a candidate "must include a statement that identifies the candidate and states that he or she has approved the communication."⁸ The candidate must convey this audio statement either (1) through an unobscured, fullscreen view of the candidate making the statement or (2) through a voice-over by the candidate accompanied by a clearly identifiable photograph or similar image of the candidate.⁹ The communication "must also include a similar statement that must appear in clearly readable writing at the end of" it.¹⁰ The regulations explain that a statement is clearly readable if it (1) appears in letters equal to or greater than four percent of the vertical picture height; (2) is visible for a period of at least four seconds; and (3) appears with a reasonable degree of color contrast between the background and the text of the statement.¹¹ A statement satisfies the color contrast requirement "if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication."¹²

Here, Respondents have failed to comply with these basic requirements under the law. The disclaimer regulations are designed precisely to ensure the American people are aware of who is sponsoring political advertisements. However, Respondents have ignored basic facets of their disclaimer obligations completely.

Respondents included a written disclaimer in their advertisement, but it is completely unreadable on the screen. As a result, it is unclear if the written disclaimer even contains the

⁸ *Id.* § 110.11(c)(3)(ii).

⁹ *Id.* § 110.11(c)(3)(ii)(A), (B).

¹⁰ *Id.* § 110.11(c)(3)(iii).

¹¹ *Id.*

¹² *Id.* § 110.11(c)(3)(iii)(C).

required language stating who paid for the advertisement and that Rep. Hurd approved the message. Assuming that the Respondents included the proper paid for by language in this written disclaimer, because a viewer cannot read the disclaimer on the screen, it is not presented in a "clear and conspicuous manner" as required under the law. Thus, Respondents have violated the law by not providing the observer any written notice of the identity of the Committee that paid for the advertisement.

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Additionally, even if the written disclaimer contains the proper language that Rep. Hurd approved the message, given that the written disclaimer is so illegible, Respondents have failed to comply with the requirement that this notice be "clearly readable." The regulations specifically explain that to be "clearly readable" the written statement must, among other things appear with a reasonable degree of color contrast between the background and the text of the statement. By including very light, white text on the screen here without enough contrast to the background to make the disclaimer readable, Respondents have failed to include a "clearly readable" written disclaimer as required under the law. This is a violation of the law.

Congress and this Commission required the written disclosure requirements for television advertisements to provide important notice to viewers. Respondents knew that these disclaimers were required, yet included a written disclaimer that is unreadable to any observer to actually read the writing on the screen. The regulations do not permit Respondents to select with which disclaimer requirements they will comply when sponsoring their television advertisements. The Act and regulations are clear: Respondents were required to include certain written disclaimers that met simple requirements to ensure that the American public has notice of the sponsor, and they failed to do so. This is the second time in a week that Respondents have failed to include

the proper disclaimer in a campaign advertisement, and a copy of my complaint dated October 19, 2016 is attached as Exhibit A for your reference.

REQUESTED ACTION

As we have shown, Respondents appear to have violated the Act and Commission regulations by failing to comply with basic disclaimer requirements. As such, we respectfully request that the Commission immediately investigate these violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,

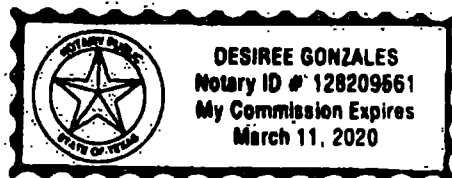


SUBSCRIBED AND SWORN to before me this 31st day of October, 2016.



Notary Public

My Commission Expires:



3 11 2020

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14-00000-1

EXHIBIT A

**BEFORE THE
FEDERAL ELECTION COMMISSION**

Homar G. Hernandez

San Antonio, Texas 78264

Complainant,

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Rep. William Hurd
P.O. Box 761029
San Antonio, TX 78245

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COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Rep. Hurd, Hurd for Congress (the "Committee") and Bradley Crate, in his official capacity as Treasurer (collectively "Respondents") for violating the Federal Election Campaign Act of 1971, as amended (the "Act") and Federal Election Commission (the "FEC" or "Commission") regulations, as described below. Respondents appear to have failed to comply with the Commission's disclaimer requirements for a television advertisement that they have approved and sponsored. As a result, the FEC should immediately investigate and levy appropriate sanctions against Respondents for their failure to comply with basic requirements the Act and Commission regulations.

FACTS

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Rep. Hurd is a candidate for Congress in the twenty-third district in Texas.¹ His principal campaign committee is Hurd for Congress.² The treasurer of Hurd for Congress is Bradley Crate.³ Rep. Hurd's Committee has paid for and is airing a television advertisement titled "HOUSE/TX23 HURD DARKEST CORNERS" in support of his reelection to Congress.⁴ The advertisement appears to contain a written disclaimer but it is not clearly readable so it is unclear who is actually sponsoring the advertisement. The advertisement also contains the following audio disclaimer: "I am Will Hurd and I approve this message." When this audio disclaimer is spoken by Rep. Hurd, the visual on the screen is a black screen.

LEGAL DISCUSSION

Under the Act, whenever a political committee makes a disbursement for the purpose of financing any television advertisement or public communication, there are several disclaimers required.⁵ If the communication is paid for and authorized by a candidate, an authorized committee of a candidate, or agent of either, the communication must contain a disclaimer that clearly states that the communication has been paid for by the authorized political committee.⁶ Such a disclaimer must be presented in a clear and conspicuous manner to give the reader or observer adequate notice of the identity of the person or political committee that paid for the advertisement.⁷

¹ William Hurd, FEC Form 2, Statement of Candidacy, (amended Aug. 26, 2016) <http://docquery.fec.gov/pdf/151/201608269023752151/201608269023752151.pdf>.

² *Id.*; see also Hurd for Congress, FEC Form 1, Statement of Organization (amended Aug. 26, 2016), available at <http://docquery.fec.gov/pdf/145/201608269023752145/201608269023752145.pdf>.

³ Hurd for Congress, FEC Form 1, Statement of Organization (amended Aug. 26, 2016), available at <http://docquery.fec.gov/pdf/145/201608269023752145/201608269023752145.pdf>.

⁴ The advertisement can be viewed here: http://mycmag.kantarmediana.com/KM1cmagvidbin2/HOUSE_TX23_HURD_DARKEST_CORNERS.html.

⁵ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a); see *id.* § 100.26 (defining public communication).

⁶ 52 U.S.C. § 30120(a)(1); 11 C.F.R. § 110.11(b)(1).

⁷ 11 C.F.R. § 110.11(c)(1), (3).

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There are additional disclaimers required for television advertisements. Specifically, a television advertisement that is authorized or paid for by a candidate or the authorized committee of a candidate "must include a statement that identifies the candidate and states that he or she has approved the communication."⁸ The candidate must convey this audio statement either (1) through an unobscured, fullscreen view of the candidate making the statement or (2) through a voice-over by the candidate accompanied by a clearly identifiable photograph or similar image of the candidate.⁹ The communication "must also include a similar statement that must appear in clearly readable writing at the end of" it.¹⁰ The regulations explain that a statement is clearly readable if it (1) appears in letters equal to or greater than four percent of the vertical picture height; (2) is visible for a period of at least four seconds; and (3) appears with a reasonable degree of color contrast between the background and the text of the statement.¹¹ A statement satisfies the color contrast requirement "if it is printed in black text on a white background or if the degree of color contrast between the background and the text of the statement is no less than the color contrast between the background and the largest type size used in the communication."¹²

Here, Respondents have failed to comply with these basic requirements under the law. The disclaimer regulations are designed precisely to ensure the American people are aware of who is sponsoring political advertisements. However, Respondents have ignored basic facets of their disclaimer obligations completely.

⁸ 11 C.F.R. § 110.11(c)(3)(ii).

⁹ 11 C.F.R. § 110.11(c)(3)(ii)(A), (B).

¹⁰ 11 C.F.R. § 110.11(c)(3)(iii).

¹¹ 11 C.F.R. § 110.11(c)(30)(iii).

¹² 11 C.F.R. § 110.11(c)(30)(iii)(C).

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Congress and this Commission required the written and audio disclosure requirements for television advertisements to provide important notice to viewers. Respondents clearly knew that these disclaimers were required, yet included a written disclaimer that is unreadable to any observer to actually read the writing on the screen and failed to include any visual image to accompanying the audio disclaimer as required by law. The regulations do not permit Respondents to select with which disclaimer requirements they will comply when sponsoring their television advertisements. The Act and regulations are clear: Respondents were required to include certain written and audio disclaimers that met simple requirements to ensure that the American public has notice of the sponsor and failed to do so.

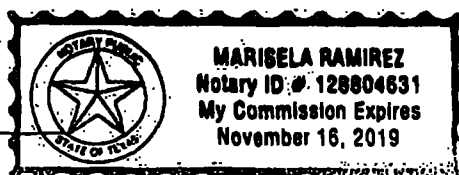
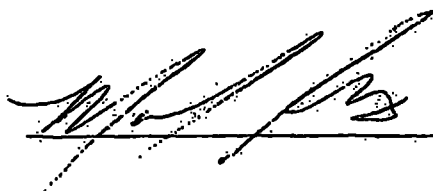
REQUESTED ACTION

As we have shown, Respondents appear to have violated the Act and Commission regulations by failing to comply with basic disclaimer requirements. As such, we respectfully request that the Commission immediately investigate these violations and that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



SUBSCRIBED AND SWORN to before me this 19 day of October, 2016.



Notary Public

My Commission Expires: November 16, 2019

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