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FIRST GENERAL COUNSEL'S REPORT

MUR 6625
COMPLAINT RECEIVED: 08/10/2012
NOTIFICATION DATE: 08/15/2012
RESPONSE RECEIVED: 11/29/12
DATE ACTIVATED: 01/04/2013

EXPIRATION OF SOL: (earliest) 05/22/2017
(latest) 07/22/2017

COMPLAINANT: Holly C. Takach

RESPONDENTS: Steve Stockman
Friends of Congressman Steve Stockman and
Donald Ferguson in his official capacity as
treasurer¹

**RELEVANT STATUTES
AND REGULATIONS:** 2 U.S.C. § 431(a)
2 U.S.C. § 441d
11 C.F.R. § 100.26
11 C.F.R. § 100.27
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Complaint alleges that Representative Steve Stockman and his 2012 principal campaign committee, Friends of Congressman Steve Stockman and Donald Ferguson in his official capacity as treasurer (the "Committee"), failed to place sufficient disclaimers on ten printed communications. We recommend that the Commission find reason to believe that the

¹ The Response to the Complaint does not include a signature. The return address of the accompanying envelope, however, is the Committee's, so we have attributed the Response to it. We reached out to the Respondents for further clarification as to whether this Response also reflects the candidate's position, but have received no response to date.

1 Committee violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 with respect to three of those
2 communications and enter into pre-probable cause conciliation. We also recommend that the
3 Commission dismiss, as a matter of prosecutorial discretion, the allegations as to the remaining
4 seven communications pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). Finally, we
5 recommend that the Commission find no reason to believe that Steve Stockman violated
6 2 U.S.C. § 441d and 11 C.F.R. § 110.11 and close the file as to him.

7 **II. FACTUAL SUMMARY**

8 Stockman finished second in a field of twelve candidates in the 2012 Republican primary
9 for Texas's 36th Congressional District. Because Stephen Takach received less than the required
10 percentage of votes needed to win, a runoff took place on July 31, 2012. In connection with
11 these elections, the Committee distributed the ten communications referenced in the Complaint.
12 Four of these communications were designed to resemble newspapers.² Compl., Exs. 1-4. The
13 other six were letters from Stockman and his wife. Compl., Exs. 5-10.

14 **A. The "Newspapers"**

15 Four communications were produced on newsprint. All bear names similar to those used
16 by newspapers, and all contain headlines, articles, and photographs. Three of these
17 communications, which were apparently distributed in connection with the runoff election,
18 contain content supporting Stockman and attacking Takach; the fourth, which appeared before
19 the first primary, exclusively supports Stockman.

20 **1. Southeast Texas Courier**

21 The Southeast Texas Courier ("Courier") is dated Sunday, July 22, 2012. It is 16 pages.
22 On the front page, it includes a mailing name and address and a return address of P.O. Box

² Photocopies of these newspapers are available in the Voting Ballot Matters file, and the originals are available for inspection in the Office of General Counsel ("OGC") upon request.

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1 57135, Webster, TX 77539, which the Complaint states is the Committee's address. Compl., Ex.

2 1. Its cover page reads "Stephen Takach drove family friend into bankruptcy." *Id.* Other
3 articles contain headings such as "Plunging in polls, Takach breaks promise to pastor and Texas
4 law with smear campaign, vandalism" and "Pro-illegal alien lobbyists endorse Stephen Takach."

5 *Id.*³ By contrast, several Courier articles support Stockman. For example, one contains this
6 quotation: "Christian leaders encourage you to re-elect⁴ Congressman Steve Stockman on
7 Tuesday July 31." *Id.* The bottom of the last page states:

8 On Tuesday, July 31 re-elect Congressman
9 SAVE TIME! VOTE EARLY! JULY 23-27
10 Steve Stockman

11 *Id.* The Courier contains no disclaimer.

12 2. Two Times Free Press Newspapers

13 Two of the communications are entitled "Times Free Press" and are identified as volumes
14 six and seven.⁵ Each of these publications is 12 pages long and contains Stockman biographies,
15 primary voting information, photographs, endorsements of Stockman, criticisms of Takach, and
16 on their front pages, the same return address as Courier. Compl., Exs. 2-3. Volume six is
17 subtitled "Special Election Edition." Volume six also includes an exhortation to "Vote
18 Stockman July 31!" and a solicitation to volunteer and contribute. On the bottom of the last page

³ Additionally, Courier makes multiple references to a complaint filed with the Commission against Takach, one with the heading "Feds investigating Takach endorsement cash scheme." *Id.* Below the heading and subheading are two pictures of Takach — one front-view profile and one side-view profile — that resemble mug shots, with the caption "Stephen Vincent Takach FEC No. C00509364" directly underneath. *Id.* The numbers correspond to Takach's campaign committee identification number with the Commission. *Id.* OGC received two complaints against Takach filed on July 24, 2012 and July 27, 2012, respectively. These complaints were deemed improper for failing to state a claim under the Act and returned to the sender. No proper complaints were filed.

⁴ Stockman had previously served for one term as the U.S. Representative for Texas's 9th congressional District from 1995 to 1997.

⁵ We have not located any information indicating that previous volumes were ever created or distributed.

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1 is the same exhortation as at the end of Courier, followed by a disclaimer, in tiny print and not
2 within a printed box, stating "Paid for by friends of Congressman Steve Stockman." Compl., Ex.
3 2. Volume seven is subtitled "Special Runoff Edition," and includes articles attacking Takach,
4 such as "Takach Insults Rural Residents" and "Takach Firm Fined \$75 Million." Compl., Ex. 3.
5 The last page is headed "Join these conservative leaders in backing Congressman Steve
6 Stockman on July 31." The disclaimer, "Paid for by Friends of Congressman Steve Stockman,"
7 is at the bottom of that page; it is in miniscule print. It is neither included in a printed box nor
8 otherwise set apart. *Id.*

9 **3. Texas Republican News**

10 The fourth communication, entitled "Texas Republican News," is subtitled "May 29 GOP
11 Primary Edition." On its cover page, it reads "Fair and Balanced. The most trusted political
12 news in Texas."⁶ Compl., Ex. 4. Above the fold on the front page, there is a name and mailing
13 address and a return address with no name, which corresponds to Stockman's home address.
14 Between the two addresses is a disclaimer, without a box surrounding it, stating "Paid for By
15 Friends of Congressman Steve Stockman."

16 **B. The Letters**

17 The Complaint also refers to six letters that allegedly failed to include a proper
18 disclaimer. Compl., Exs. 5-10. According to the Complaint, the Committee printed and mailed
19 these letters. Compl. at 2-3. Given the timeframe and content of the dated letters, it appears that
20 they were distributed in connection with the July 31, 2012, runoff primary election. The
21 Response to the Complaint does not deny that the letters were mailed. Resp. at 1-2

⁶ The publication is designated as "Volume 64, Issue 80." We have located no information indicating that previous volumes were ever created or distributed.

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1 Of the six letters, Stockman signed five and each was dated either July 26, 2012 or
2 July 27, 2012. Compl., Exs. 5-9. Stockman addresses the recipients as "Patriot," "fellow
3 Republican," "fellow pro-lifer," or "conservative" and describes his positions on various issues.
4 *Id.* Stockman refers to his candidacy in all of the letters. *Id.* In three of the letters, he closes
5 with "I hope I can count on your vote Tuesday, July 31." Compl., Exs. 7-9. Patti Stockman, the
6 candidate's wife, handwrote the last letter, dated July 2012, which also focuses on the July 31,
7 runoff election. Compl., Ex. 10. In the letter, Ms. Stockman identifies Stockman as a "true
8 conservative" and asks that the reader vote for Stockman on July 31. *Id.* The Committee placed
9 a disclaimer, not contained in a printed box, at the bottom of the last page of each of the letters
10 stating "Paid for by Friends of Congressman Steve Stockman." Compl., Exs. 5-10.

11 The Response maintains that "all campaign literature by Mr. Stockman included the
12 proper disclaimers, 'Paid for by Friends of Steve Stockman.'" Resp. at 1.⁷ It states that "[w]hile
13 the complaint makes references to 'not enclosed in a printed box as required,'" since no specific
14 citation is included, the Complaint fails to comply with 11 C.F.R. § 111.4(d)(3), and "we are not
15 able to determine whether we have complied with the law or regulation." *Id.* Nonetheless, in
16 describing the disclaimer on each communication, the Response ends each with "[t]he disclaimer
17 is not in a box." *Id.* at 1-2. Respondents also contend that "[i]n each case the disclaimer is 'clear
18 and conspicuous,'" and "[t]he font is the same size and type of other text on the same page." *Id.*
19 at 1. The Response concludes that "the charge should be dismissed as trivial." *Id.* at 2.

⁷ In our request for clarification, *see supra*, n. 1, we also asked for the location of the disclaimer on the Courier since we could not locate it.

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1 **III. LEGAL ANALYSIS**

2 All public communications made by a political committee must include disclaimers.

3 *See* 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(1). The term "public communication" includes a
4 "mass mailing" and any other form of general public political advertising. 11 C.F.R. § 100.26.
5 A "mass mailing" is defined as "a mailing by United States mail . . . of more than 500 pieces of
6 mail matter of an identical or substantially similar nature within any 30-day period." 2 U.S.C.
7 § 431(23); 11 C.F.R. § 110.27.

8 As public communications by a political committee, the ten communications here
9 required disclaimers. The Committee appears to defend its disclaimers. Resp. at 1-2. And we
10 infer that each communication was sent as mass mailings sent in quantities exceeding 500 pieces.
11 Two of the newspaper-themed communications contained visible mailing addresses, and return
12 addresses are visible on all of the newspaper-themed communications. Stockman reportedly
13 stated that more than 400,000 copies of the newspaper-themed communications were mailed
14 within the district. *See* Terri Langford, *Stockman defeats Takach in Dist. 36*, HOUSTON
15 CHRONICLE (July 31, 2012). As to the letters, Respondents do not deny the Complaint's
16 contention that the letters were mailed. Further, the Committee's disclosure reports include
17 payments during the relevant time periods totaling more than \$128,000 for mass mailings,
18 postage, print advertisements, printing, paper/printing and a direct mailing list.

19 If a communication is paid for and authorized by a candidate, authorized committee, or
20 agent of either, it must state that it was paid for by the committee. 2 U.S.C. § 441d(a)(1);
21 11 C.F.R. § 110.11(b)(1). The Commission's regulations also specify that a disclaimer must be
22 "presented in a clear and conspicuous manner." 11 C.F.R. § 110.11(c)(1). A disclaimer is not
23 "clear and conspicuous" if the print is "difficult to read" or "if the placement is easily

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1 overlooked.” *Id.* Further, for printed communications, the disclaimer must appear within the
2 communication, though not necessarily on the front or cover page; be of sufficient type size to be
3 clearly readable; be contained in a printed box set apart from the other content of the
4 communication; and be printed with a reasonable degree of color contrast between the
5 background and the printed statement. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c)(1)-(2).

6 None of the newspaper-themed mailers satisfies the requirements of the Act and
7 Commission regulations. The Courier contains no disclaimer at all. *See supra*, n.7. While the
8 two Times Free Press newspapers contain disclaimers, they are at the bottom of the last page, not
9 contained in printed boxes or otherwise set apart, and are extremely small. Given the length of
10 the mailer and amount of content, the disclaimer is readily overlooked and is not “presented in a
11 clear and conspicuous manner.” The disclaimer on the Texas Republican News, while it appears
12 on the front page, is light, does not contrast to the background, and is not within a box.

13 Respondents insist that all of the disclaimers were clear and conspicuous. With respect to
14 volume seven of the Times Free Press, they note that “the font is the same size and type of other
15 text on the same page, in particular the slogan [accompanying the logo of the National Pro-Life
16 Alliance], ‘Abortion stops a beating heart,’ near the top of the page and as large or larger than the
17 text of the [Citizens Committee for the Right to Keep and Bear Arms] slogan, ‘The common
18 sense gun lobby.’”⁸ Resp; *see also* Compl., Ex. 3. Respondents refer to the last page of the
19 communication, which includes the names and logos of organizations that endorsed Stockman;
20 two of the logos include the slogans quoted by respondents. Respondents contend “[a]ny
21 reasonable person would know” the disclaimers were meant to be clear, conspicuous and easily

⁸ Both Times Free Press newspapers include this page with one key distinction: volume seven of the Times Free Press includes the aforementioned disclaimer at the bottom of the page. Further, this page appears in volume six of the Times Free Press on page 5, while volume seven includes this page on the last page of the newspaper. The disclaimer in volume six appears on the last page, with content on that page nearly identical to the content on the last page of the Courier newspaper. Compl., Ex. 2.

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1 readable by the material's publisher, presumably alluding to the organizations listed. Resp. at 2.
2 These slogans, however, as printed, are extremely small. The Committee also neglects to
3 mention that other text on the page is much bigger and bolder than the cited slogans, including
4 the text directly above the disclaimer. In any event, the requirement is that the disclaimer be
5 "clear and conspicuous," not that it match selected other text on the same page.⁹

6 Finally, Respondents argue that because the Complaint includes no specific citation, it
7 fails to comply with 11 C.F.R. § 111.4(d)(3), and thus they "are not able to determine whether
8 [they] have complied with the law or regulation." See Resp. at 1. Respondents misread
9 11 C.F.R. § 111.4(d)(3). The rule does not require complainants to cite specific statutory or
10 regulatory provisions. Rather, it states that a complaint should "contain a clear and concise
11 recitation of the facts which describe a violation of a statute or regulation over which the
12 Commission has jurisdiction." By alleging that the disclaimers in the Committee's
13 communications were "not enclosed in a printed box as required" — violations of
14 2 U.S.C. § 441d and 11 C.F.R. § 110.11 — the Complaint has done just that.

15 All six letters appear to meet the disclaimer requirements other than that the disclaimers
16 are not in printed boxes. The letters include disclaimers at the bottom of the page or the bottom
17 of the last page. In the five letters signed by Stockman, the disclaimers, while not large, are
18 printed in bolded black against white space and are clearly readable. At the bottom of

⁹ In MUR 3847 (Friends of Steve Stockman), Stockman's 1994 campaign committee distributed newspapers similar to those at issue here. OGC recommended that the Commission find reason to believe as to all of these communications based on lack of compliant disclaimers. See General Counsel's Report dated May 23, 1996. The motion to approve the recommendations that were based solely on the small size of the disclaimers failed 3-1. In her Statement of Reasons, the lone dissenter explained that "the old regulations in effect when this activity occurred did not specify where a disclaimer should be placed, nor did they specify size." Statement of Reasons, Comm'r Elliott at 1, MUR 3847 (Friends of Steve Stockman). While acknowledging that "the disclaimers are small," she maintained that enforcement action would not be proper as Respondents acted within the pre-1995 Commission disclaimer regulations. *Id.* The current regulations have been in place since 2003, several years before Stockman's 2012 campaign, and they clearly specify the requirements. Respondents, therefore, are clearly on notice of those requirements.

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1 Stockman's wife's letter, there is a clearly readable, handwritten disclaimer. Moreover, while
2 the disclaimers are not in a printed box, the letters are written on stationery with the respective
3 names of the Stockmans and contain the corresponding signatures, so readers would be
4 reasonably able to discern that Stockman's campaign paid for them.

5 We therefore recommend that the Commission find reason to believe that Friends of
6 Congressman Steve Stockman and Donald Ferguson in his official capacity as treasurer violated
7 2 U.S.C. § 441d and 11 C.F.R. § 110.11 with respect to the Courier and Times Free Press
8 communications and enter into pre-probable cause conciliation.¹⁰ We further recommend that
9 the Commission find no reason to believe that Steve Stockman violated 2 U.S.C. § 441d and
10 11 C.F.R. § 110.11 because it was the Committee, not the candidate, which produced,
11 distributed, and paid for these communications, and close the file as to him.

12 As to the Texas Republican News mailer and the six letters, we recommend that the
13 Commission exercise its prosecutorial discretion and dismiss the allegation. *See Heckler v.*
14 *Chaney* 470 U.S. 821 (1985). Like the letters, the Texas Republican News includes a disclaimer
15 that is readable without too much effort. Similar to prior matters in which the Commission
16 dismissed, the letters and the Texas Republican News included disclaimers that were not within a
17 printed box. *See* MUR 6274 (Miller) (EPS Dismissal) (dismissing where materials leaflets
18 lacked "printed box" but included the campaign's name and address, as well as the appropriate
19 "paid for" statement); MUR 6153 (EPS Dismissal) (NMDLCC) (dismissing allegations where
20 mailers lacked a printed box and whether candidate authorized materials, but indicated campaign

¹⁰ This matter differs from recent disclaimer matters involving vendor or inadvertent error followed by prompt remedial action. *See, e.g.,* MUR 6316 (Pridemore for Congress) (EPS Dismissal) (dismissing where a committee failed to include the required box and made inadvertent wording but took prompt remedial action); MUR 6329 (EPS Dismissal) (Michael Grimm for Congress) (dismissing where a committee failed to include the disclaimer but subsequently placed stickers containing the disclaimer on the lawn signs); *see also* MUR 6348 (David Schweikert for Congress) (splitting 3-3 on whether a disclaimer was "clear and conspicuous," where disclaimer was printed sideways in amber type on the upper right side of the mailer over a photograph of San Francisco).

committee paid for the materials); MUR 6260 (Rocky for Congress) (dismissing allegations that fundraising letters lacked "printed box" disclaimers where the content was sufficient to ensure the public from being misled as to who paid for them).

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V. RECOMMENDATIONS

1. Find reason to believe that Friends of Congressman Steve Stockman and Donald Ferguson in his official capacity as treasurer violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 with respect to the Southeast Texas Courier and two Times Free Press communications;
2. Dismiss the allegations that Congressman Steve Stockman and Donald Ferguson in his official capacity as treasurer violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 by failing to place proper disclaimers on the Texas Republican News communication and six letters in an exercise of prosecutorial discretion as outlined in *Heckler v. Chaney*, 470 U.S. 821 (1985);
3. Find no reason to believe that Steve Stockman violated 2 U.S.C. § 441d and 11 C.F.R. § 110.11 and close the file as to him;
4. Approve the attached Factual and Legal Analyses;
5. Authorize conciliation prior to a finding of probable cause to believe;

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7. Approve the appropriate letters.

Anthony Herman
General Counsel

Daniel Petalas
Associate General Counsel for Enforcement

Date

4-4-13

BY:

Kathleen Guith
Deputy Associate General Counsel for
Enforcement

Susan L. Lebeaux
Assistant General Counsel

Roy Q. Luckett
Staff Attorney

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