

JAN 31 2001

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)

Marta Macias Brown for Congress and)
M.S. Stan Tomlinson, as treasurer)

MUR 4973

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
2001 JAN 31 A 11:30

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED: Enter into conciliation with Respondents prior to findings of probable cause to believe and approve the attached proposed conciliation agreement.

II. BACKGROUND:

On February 18, 2000, the Federal Election Commission found that there was reason to believe that Marta Macias Brown for Congress and M.S. Stan Tomlinson, as treasurer, ("Committee" or "Respondents") violated 2 U.S.C. § 441d(a).¹ This finding was based on information provided by Respondents in their *sua sponte* submission, in which they admitted distributing campaign literature that failed to include a proper disclaimer. Respondents were notified of the Commission's findings on February 25, 2000, and were requested to provide information regarding the quantities and costs of the mailers at issue. Respondents failed to file a timely response.

Following failed attempts to contact the Committee by mail, this Office made verbal contact with Respondent M.S. Stan Tomlinson, the treasurer. Mr. Tomlinson advised this Office that he had not spoken with the candidate since the election and no longer had access to the campaign post office box. This Office forwarded a duplicate notification of the Commission's findings to Mr. Tomlinson. Mr. Tomlinson, on behalf of the Committee and himself, asked for

¹Marta Macias Brown was a 1999 candidate for the U.S. House of Representatives from California's 42nd Congressional District. She attempted to fill the seat of her late husband Congressman George Brown. Brown, although unsuccessful in winning the congressional race, earned 45 percent of the vote.

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and received a 20 day extension to respond. This Office received a response on May 18, 2000, in which Respondents requested pre-probable cause conciliation.

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

1. Responses to the Commission's Reason to Believe Findings

Consistent with their *sua sponte* submission, Respondents state that they distributed two different mailers in connection with the campaign that did not contain a proper disclaimer. One of these mailers is titled "Tradition," and the other is titled "Gun Comparison." Respondents claim that there are several mitigating factors as to the apparent violation of 2 U.S.C. § 441d(a). First, Respondents claim that although the first run of these mailers lacked a sufficient disclaimer, the second and all subsequent runs contained the disclaimer. Second, Respondents state that the disclaimer was supposed to have been added by their mail consultant, who mistakenly used the California disclaimer instead of the federal one.² Finally, Respondents maintain that although the campaign manager approved proofs of the mailings, the campaign manager did not discover the error in the disclaimer due to the poor quality of the proofs, which were faxed. See Attachment 1.

As requested, Respondents provided documentation of the actual expenditures made by the Committee in connection with the two mailers. Invoices and documentation provided by Respondents indicate that the Committee spent approximately \$39,000 on the mailers without a federal disclaimer. Additionally, materials submitted by Respondents indicate that a total of 104,324 mailings were distributed: 56,622 mailings of "Tradition" and 47,702 mailings of "Gun Comparison." Of these, Respondents state that 99,324 did not contain a federal disclaimer.

² California law requires that mass mailings by a single candidate committee contain the name, address, and city of the committee on the outside of each piece of mail. See Cal. Government Code Ann. § 84305 (West 1993).

21-04-403-2693

From September 2, 1999 through December 31, 1999, the Committee reported operating expenditures in the amount of \$502,604.80. Thus, the Committee spent approximately eight percent of its total operating expenditures on the improper mailings for the reporting period that included the special election.

2. Proposed Terms of Agreement

This Office believes that the Commission now has sufficient information to enter into conciliation with Respondents prior to a finding of probable cause to believe. A proposed conciliation agreement is attached for the Commission's approval. See Attachment 2.

21-04-403-2694

Therefore, this Office recommends that the Commission approve the attached
conciliation agreement.

21-04-403-2695

IV. RECOMMENDATIONS

1. Enter into conciliation with Marta Macias Brown for Congress and M.S. Stan Tomlinson, as treasurer;
2. Approve the attached proposed conciliation agreement; and
3. Approve the appropriate letter.

Lois G. Lerner
Acting General Counsel

1/30/01
Date

BY: Abigail A. Shaine
Abigail A. Shaine
Acting Associate General Counsel

Attachments:

1. Response to the Commission's Reason to Believe Findings
2. Proposed Conciliation Agreement

Staff Assigned: Tracey Robinson
Brant Levine

21.04.403.2596



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: January 31, 2001

SUBJECT: MUR 4973- General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

DISTRIBUTION

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

COMPLIANCE

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

21-04-403-2697




FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Lois Lerner
Acting General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary 

DATE: February 1, 2001

SUBJECT: MUR 4973 - General Counsel's Report #2
dated January 30, 2001.

The above-captioned document was circulated to the Commission
on Wednesday, January 31, 2001.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	—
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for

Tuesday, February 6, 2001.

Please notify us who will represent your Division before the Commission on this matter.

21-04-403-2698