



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

William B. Canfield, Esq.
Williams & Jensen, PLLC
1155 21st Street, NW
Suite 300
Washington, DC 20036

SEP - 4 2007

RE: MUR 5853

Dear Mr. Canfield:

On August 8, 2007, the Federal Election Commission reviewed the allegations in your complaint dated October 18, 2006, and found that on the basis of the information provided in your complaint, and information provided by the Respondents, there is no reason to believe that Michael L. Grace violated 2 U.S.C. §§ 434(c) and 441a(a)(1)(A) and no reason to believe that Michael L. Grace knowingly and willfully violated 2 U.S.C. § 441h(a). The Commission also found no reason to believe that Roth for Congress and Shaun Shenassa, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441h(a). Accordingly, on August 8, 2007, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analyses, which more fully explain the Commission's findings, are enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 2 U.S.C. § 437g(a)(8).

Sincerely,

Kathleen Guith
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENT: Roth for Congress and Shaun Shenassa, MUR: 5853
5 in his official capacity as treasurer
6

7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 William B. Canfield, counsel to Congresswoman Mary Bono. See 2 U.S.C. § 437g(a)(1). The
10 complaint alleges that Michael L. Grace made expenditures by leasing space on a computer
11 server to create a "blog" which advocated the defeat of Bono in the November 2006 election.
12 The complaint further alleges that Michael Grace coordinated these expenditures with Bono's
13 opponent in the race, David Roth, such that the expenditures constituted unreported in-kind
14 contributions to the Roth campaign in violation of the Federal Election Campaign Act of 1971, as
15 amended ("the Act"). Finally, the complaint alleges that Grace knowingly and willfully violated
16 2 U.S.C. § 441h ("Fraudulent Misrepresentation of Campaign Authority") by posing as Bono on
17 his blog and giving readers the false impression that Bono was the author of the text appearing on
18 the blog.

19 **II. FACTUAL SUMMARY**

20 Congresswoman Mary Bono was the incumbent candidate in the 2006 election for
21 California's 45th congressional district seat. David Roth was Bono's challenger in the general
22 election and Roth for Congress and Shaun Shenassa, in his official capacity as treasurer, ("Roth
23 Committee") was his principal campaign committee.

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1 In late 2005 or early 2006, Michael L. Grace, an author, playwright and producer, created
2 “commentaries and websites satirizing both Democrats and Republicans,” including an Internet
3 blog focusing on Congresswoman Bono (“Bono blog”).¹ See Grace Response dated November
4 13, 2006 at 2; www.michaellgrace.com (last accessed July 31, 2007). Grace’s Bono blog was
5 hosted on the free, publicly available social networking website Myspace, as well as the free,
6 publicly available blog-hosting website Blogspot.² The content of the Bono blog included, *inter*
7 *alia*, images of Bono outfitted as a Playboy bunny, “news” about Bono’s relationships with
8 Connie Mack, Mark Foley, Randy ‘Duke’ Cunningham, and Jack Abramoff, and commentary
9 about Bono’s alleged control of the local media. Many of the blog posts were written as if they
10 were first-person accounts from Mary Bono herself.³ At some point in October or November
11 2006, Bono apparently contacted the website administrators of Myspace and Blogspot and had
12 Grace’s Bono blog “shut down.” See Grace Response dated November 13, 2006 at 2,
13

14 In addition to the Bono blog, Michael Grace purchased the marybono.net domain name
15 after the Committee let their registration of the domain lapse.⁴ According to Grace, however, he

¹ Grace also created and maintains an active blog, www.thedesertpun.com, which he describes as “a satirical website run by heckling left-wingers examining all the ‘culture’ of living in Palm Springs.” See www.michaellgrace.com, then click on “links” (last accessed July 31, 2007).

² The web addresses for the Bono blogs were: www.myspace.com/marybono and <http://marybono.blogspot.com>. It is unclear from the available information whether the Bono blog content was exactly the same on each of these two websites.

³ For example, one of the postings to the blog states, “I’m not an independent but a true George W. Bush Republican: always voting the Bush line and given the best ratings by the Christian right...” See Excerpt from marybono.blogspot.com dated October 17, 2006 (Attachment to Complaint).

⁴ The available evidence indicates that the Bono Committee registered the domain name www.marybono.net as a campaign website in 2003 and updated it through at least 2004. See http://web.archive.org/web/*/http://marybono.net (last accessed July 31, 2007). However, at some point thereafter, the Bono Committee “let marybono.net lapse,” presumably by failing to re-register the domain name and pay the associated fees.

1 never "activated" the site, and there does not appear to be any content whatsoever at that web
2 address. *See* Grace Response dated November 9, 2006 at 3.

3 **III. LEGAL ANALYSIS**

4 The complaint alleges that Michael Grace made expenditures, within the meaning of the
5 Act, when he leased space on a computer server in order to create a blog that "advocates the
6 defeat of Congresswoman Mary Bono" in the November 2006 election, and when he purchased
7 the marybono.net domain "in a further effort to advocate Ms. Bono's defeat in November." The
8 complaint also alleges that Grace coordinated the blog "expenditures" with Bono's opponent in
9 the race, David Roth, such that the expenditures were unreported in-kind contributions to the
10 Roth Committee.⁵ Finally, the complaint alleges that Grace fraudulently misrepresented
11 campaign authority by posing as Bono on his blog and giving readers the false impression that
12 Bono was the author of the text appearing on the blog.

13 **A. Expenditures**

14 Under the Act, the term "expenditure" includes any purchase, payment, distribution, loan,
15 advance, deposit, or gift of money or anything of value, made by any person for the purpose of
16 influencing any election for federal office. *See* 2 U.S.C. § 431(9)(A)(i). Expenditures made by
17 any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a
18 candidate, his authorized political committees, or their agents" are in-kind contributions to the

⁵ The information Complainant submits in support of the coordination allegation consists of two October 4, 2006 e-mails on which Michael Grace and David Roth were both copied, but which appear to be unrelated to the Bono blog.

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1 candidate and subject to the limits of the Act. *See* 2 U.S.C. §§ 441a(a)(1)(A) and (a)(7)(B)(i).
2 Committees are required to report contributions, including contributions in-kind, accurately. *See*
3 2 U.S.C. § 434(b)(2). Any individual who, without compensation, uses equipment and personal
4 services related to Internet activities (including blogging and creating, maintaining, or hosting a
5 website) for the purpose of influencing a Federal election does not make an expenditure under
6 the Commission's regulations. *See* 11 C.F.R. § 100.155.

7 It does not appear that Grace made any expenditures in connection with the Bono blog.
8 Although some of the blog content is clearly electoral in nature,⁶ the available information
9 indicates that Grace's blog was hosted on free, public-domain sites that do not involve leasing
10 space on a server or any similar costs to host them. As the Commission noted in the Explanation
11 and Justification to the *Internet Communications* regulations, the cost of placing information on a
12 website "is often only the time and energy that is devoted by an individual to share his or her
13 views and opinions with the rest of the Internet community." *See Internet Communications*, 71
14 Fed. Reg. 18,594 (April 12, 2006). Thus, it does not appear that Grace made any purchase,
15 payment, distribution, loan, advance, deposit, gift of money, or anything of value in connection
16 with the Bono blog. However, even if there were some costs or value associated with the Bono
17 blog, Grace's blogging is exactly the type of Internet activity that the Commission exempted
18 from the definition of "expenditure" in its recent rulemaking. *See id.*; *see also* 11 C.F.R.
19 § 100.155.

20 With respect to Grace's purchase of the www.marybono.net domain, Grace did not make
21 any expenditures within the meaning of the Act. Although Grace stated that he purchased the

⁶ The headline at the top of the blog is "Mary Bono – a George W. Bush supporting Republican for Congress" and Grace makes references to the election and Congresswoman Bono's campaign throughout the blog.

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1 domain name www.marybono.net and refused to sell it to Bono, he never actually “activated” the
2 site. Even though he presumably made a payment to purchase the domain name, the inactive site
3 did not contain any content whatsoever. Therefore, the available information does not support a
4 determination that Grace’s purchase of www.marybono.net was “for the purpose of influencing
5 an election for Federal office.” *See* 2 U.S.C. § 431(9)(A)(i). As such, Grace did not make a
6 coordinated communication with the Roth Committee resulting in an in-kind contribution in
7 connection with the Bono blog or his purchase of the domain name.⁷ Therefore, there is no
8 reason to believe that Roth for Congress and Shaun Shenassa, in his official capacity as treasurer,
9 violated 2 U.S.C. §§ 434(b) and 441a(f) by accepting and failing to report a coordinated in-kind
10 contribution in excess of the contribution limits imposed by the Act.

11 **B. Fraudulent Misrepresentation**

12 Section 441h(a) of the Act provides that no person who is a candidate for federal office,
13 or employee or agent of such candidate, shall fraudulently misrepresent any candidate, committee
14 or organization under his/her control as speaking or writing for or on behalf of any other

⁷ Even if Grace’s activities had resulted in his making an “expenditure,” the available information does not support a finding that there was any coordination with the Roth Committee. In his response to the complaint, Grace avers that in all respects, he acted independently and is not an agent of David Roth or the Roth Committee. According to Grace, he met David Roth briefly at two fundraisers, but never met his campaign manager or staff, never did any volunteer work for the Roth Committee, and never attended any other campaign events, *see* Grace Response dated November 9, 2006 at 2, although the Roth Committee’s disclosure reports show that Grace made contributions totaling \$2,500 to the Roth Committee during the 2005-2006 election cycle. *See* 2006 April Quarterly Report; 2006 October Quarterly Report; 2006 Year-End Report. Further, neither e-mail cited by Complainant as supporting coordination, *see* note 5 *supra*, tends to show that Grace was acting as an agent of, or was closely affiliated with, the Roth Committee or David Roth. Thus, the tenuous connections relied upon by the Complainants do not appear to support the conclusion that the Bono blog was a coordinated communication under the Commission’s three-part test. *See* 11 C.F.R. § 109.21. First, as discussed on pages 4-6 *supra*, Grace did not make any payments in connection with the Bono blog. *See* 11 C.F.R. § 109.21(a)(1). Second, the Bono blog does not appear to satisfy any of the four content standards because it is not a broadcast, cable, or satellite communication (and thus not an electioneering communication under 11 C.F.R. § 100.29), and it was not placed on another person’s website for a fee (thus not a public communication under 11 C.F.R. § 100.26). *See* 109.21(c)(1)-(4). Finally, the two emails cited by Complainants as the basis for the coordination allegation do not give rise to an inference that the Bono blog meets any of the six conduct standards. *See* 11 C.F.R. § 109.21(d)(1)-(6).

1 candidate or political party or employee or agent thereof on a matter which is damaging to such
2 other candidate or political party.

3 The activity at issue in this matter consists of a satirical Internet blog created by an
4 individual with no apparent involvement of any federal candidate in the creation of the site or
5 content of the material. Thus, the Act's threshold requirement that a candidate for federal office
6 or the candidate's employee or agent be involved in the misrepresentation is not satisfied. In
7 addition, as Grace states in his response to the complaint, the blog postings are "sardonic
8 lampoons" and, given the content of the sites – including videos of Bono in drag, photos of her
9 outfitted in a Playboy bunny suit, and references to her as "Congress' #2 hottie" – it is
10 inconceivable that visitors to these blog sites would believe that Bono was the author.

11 Furthermore, the information posted on the blog does not rise to the level of "fraudulent
12 misrepresentation." In MUR 4919 (Ball), the Commission determined that the Respondents
13 violated 2 U.S.C. § 441h based in part upon the actions they took to make a mailer look like it
14 came from the local Democratic Party when in fact it came from a Republican campaign
15 committee. In this matter, unlike in MUR 4919, Grace did not make an effort to make it appear
16 that Mary Bono was the blogger. To the contrary, the content of the blog sites would lead a
17 reasonable person to believe that Grace's blog was *not* actually the creation of Mary Bono.
18 Instead, this is, as Grace contends, political satire that does not violate the Act. Therefore, there
19 is no reason to believe that Roth for Congress and Shaun Shenassa, in his official capacity as
20 treasurer, violated 2 U.S.C. § 441h(a).

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 RESPONDENT: Michael L. Grace

MUR: 5853

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7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 William B. Canfield, counsel to Congresswoman Mary Bono. *See* 2 U.S.C. § 437g(a)(1). The
10 complaint alleges that Michael L. Grace made expenditures by leasing space on a computer
11 server to create a “blog” which advocated the defeat of Bono in the November 2006 election.
12 The complaint further alleges that Michael Grace coordinated these expenditures with Bono’s
13 opponent in the race, David Roth, such that the expenditures constituted unreported in-kind
14 contributions to the Roth campaign in violation of the Federal Election Campaign Act of 1971, as
15 amended (“the Act”). Finally, the complaint alleges that Grace knowingly and willfully violated
16 2 U.S.C. § 441h (“Fraudulent Misrepresentation of Campaign Authority”) by posing as Bono on
17 his blog and giving readers the false impression that Bono was the author of the text appearing on
18 the blog.

19 **II. FACTUAL SUMMARY**

20 Congresswoman Mary Bono was the incumbent candidate in the 2006 election for
21 California’s 45th congressional district seat. David Roth was Bono’s challenger in the general
22 election.

23 In late 2005 or early 2006, Michael L. Grace, an author, playwright and producer, created
24 “commentaries and websites satirizing both Democrats and Republicans,” including an Internet

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1 blog focusing on Congresswoman Bono ("Bono blog").¹ See Grace Response dated November
2 13, 2006 at 2; www.michaellgrace.com (last accessed July 31, 2007). Grace's Bono blog was
3 hosted on the free, publicly available social networking website Myspace, as well as the free,
4 publicly available blog-hosting website Blogspot.² The content of the Bono blog included, *inter*
5 *alia*, images of Bono outfitted as a Playboy bunny, "news" about Bono's relationships with
6 Connie Mack, Mark Foley, Randy 'Duke' Cunningham, and Jack Abramoff, and commentary
7 about Bono's alleged control of the local media. Many of the blog posts were written as if they
8 were first-person accounts from Mary Bono herself.³ At some point in October or November
9 2006, Bono apparently contacted the website administrators of Myspace and Blogspot and had
10 Grace's Bono blog "shut down." See Grace Response dated November 13, 2006 at 2;
11

12 In addition to the Bono blog, Michael Grace purchased the marybono.net domain name
13 after the Committee let their registration of the domain lapse.⁴ According to Grace, however, he
14 never "activated" the site, and there does not appear to be any content whatsoever at that web
15 address. See Grace Response dated November 9, 2006 at 3.

¹ Grace also created and maintains an active blog, www.thedesertpun.com, which he describes as "a satirical website run by heckling left-wingers examining all the 'culture' of living in Palm Springs." See www.michaellgrace.com, then click on "links" (last accessed July 31, 2007).

² The web addresses for the Bono blogs were: www.myspace.com/marybono and <http://marybono.blogspot.com>. It is unclear from the available information whether the Bono blog content was exactly the same on each of these two websites.

³ For example, one of the postings to the blog states, "I'm not an independent but a true George W. Bush Republican: always voting the Bush line and given the best ratings by the Christian right..." See Excerpt from marybono.blogspot.com dated October 17, 2006 (Attachment to Complaint).

⁴ The available evidence indicates that the Bono Committee registered the domain name www.marybono.net as a campaign website in 2003 and updated it through at least 2004. See http://web.archive.org/web/*/http://marybono.net (last accessed July 31, 2007). However, at some point thereafter, the Bono Committee "let marybono.net lapse," presumably by failing to re-register the domain name and pay the associated fees.

1 **III. LEGAL ANALYSIS**

2 The complaint alleges that Michael Grace made expenditures, within the meaning of the
3 Act, when he leased space on a computer server in order to create a blog that “advocates the
4 defeat of Congresswoman Mary Bono” in the November 2006 election, and when he purchased
5 the marybono.net domain “in a further effort to advocate Ms. Bono’s defeat in November.” The
6 complaint also alleges that Grace coordinated the blog “expenditures” with Bono’s opponent in
7 the race, David Roth, such that the expenditures were unreported in-kind contributions to the
8 Roth Committee.⁵ Finally, the complaint alleges that Grace fraudulently misrepresented
9 campaign authority by posing as Bono on his blog and giving readers the false impression that
10 Bono was the author of the text appearing on the blog.

11 **A. Expenditures**

12 Under the Act, the term “expenditure” includes any purchase, payment, distribution, loan,
13 advance, deposit, or gift of money or anything of value, made by any person for the purpose of
14 influencing any election for federal office. *See* 2 U.S.C. § 431(9)(A)(i). Expenditures made by
15 any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a
16 candidate, his authorized political committees, or their agents” are in-kind contributions to the
17 candidate and subject to the limits of the Act. *See* 2 U.S.C. §§ 441a(a)(1)(A) and (a)(7)(B)(i).
18 Expenditures that expressly advocate the election or defeat of a clearly identified candidate but
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⁵ The information Complainant submits in support of the coordination allegation consists of two October 4, 2006 e-mails on which Michael Grace and David Roth were both copied, but which appear to be unrelated to the Bono blog.

1 that are not made in concert or cooperation with, or at the request or suggestion of such
2 candidate, the candidate's authorized political committee, political party committee, or its agents
3 are independent expenditures and must be disclosed in accordance with the Act. *See* 2 U.S.C.
4 §§ 431(17) and 434(c). Any individual who, without compensation, uses equipment and
5 personal services related to Internet activities (including blogging and creating, maintaining, or
6 hosting a website) for the purpose of influencing a Federal election does not make an expenditure
7 under the Commission's regulations. *See* 11 C.F.R. § 100.155.

8 It does not appear that Grace made any expenditures in connection with the Bono blog.
9 Although some of the blog content is clearly electoral in nature,⁶ the available information
10 indicates that Grace's blog was hosted on free, public-domain sites that do not involve leasing
11 space on a server or any similar costs to host them. As the Commission noted in the Explanation
12 and Justification to the *Internet Communications* regulations, the cost of placing information on a
13 website "is often only the time and energy that is devoted by an individual to share his or her
14 views and opinions with the rest of the Internet community." *See Internet Communications*, 71
15 Fed. Reg. 18,594 (April 12, 2006). Thus, it does not appear that Grace made any purchase,
16 payment, distribution, loan, advance, deposit, gift of money, or anything of value in connection
17 with the Bono blog. However, even if there were some costs or value associated with the Bono
18 blog, Grace's blogging is exactly the type of Internet activity that the Commission exempted
19 from the definition of "expenditure" in its recent rulemaking. *See id.*; *see also* 11 C.F.R. §
20 100.155.

⁶ The headline at the top of the blog is "Mary Bono – a George W. Bush supporting Republican for Congress" and Grace makes references to the election and Congresswoman Bono's campaign throughout the blog.

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1 With respect to Grace's purchase of the www.marybono.net domain, Grace did not make
2 any expenditures within the meaning of the Act. Although Grace stated that he purchased the
3 domain name www.marybono.net and refused to sell it to Bono, he never actually "activated" the
4 site. Even though he presumably made a payment to purchase the domain name, the inactive site
5 did not contain any content whatsoever. Therefore, the available information does not support a
6 determination that Grace's purchase of www.marybono.net was "for the purpose of influencing
7 an election for Federal office." See 2 U.S.C. § 431(9)(A)(i).

8 As such, Grace made neither an independent expenditure, nor a coordinated
9 communication resulting in an in-kind contribution in connection with the Bono blog or his
10 purchase of the domain name.⁷ Therefore, there is no reason to believe that Michael Grace
11 violated 2 U.S.C. §§ 434(c) and 441a(a)(1)(A).

12 **B. Fraudulent Misrepresentation**

13 Section 441h(a) of the Act provides that no person who is a candidate for federal office,
14 or employee or agent of such candidate, shall fraudulently misrepresent any candidate, committee

⁷ Even if Grace's activities had resulted in his making an "expenditure," the available information does not support a finding that there was any coordination with the Roth Committee. In his response to the complaint, Grace avers that in all respects, he acted independently and is not an agent of David Roth or the Roth Committee. According to Grace, he met David Roth briefly at two fundraisers, but never met his campaign manager or staff, never did any volunteer work for the Roth Committee, and never attended any other campaign events, *see* Grace Response dated November 9, 2006 at 2, although the Roth Committee's disclosure reports show that Grace made contributions totaling \$2,500 to the Roth Committee during the 2005-2006 election cycle. *See* 2006 April Quarterly Report; 2006 October Quarterly Report; 2006 Year-End Report. Further, neither e-mail cited by Complainant as supporting coordination, *see* note 5 *supra*, tends to show that Grace was acting as an agent of, or was closely affiliated with, the Roth Committee or David Roth. Thus, the tenuous connections relied upon by the Complainants do not appear to support the conclusion that the Bono blog was a coordinated communication under the Commission's three-part test. *See* 11 C.F.R. § 109.21. First, as discussed on pages 4-6 *supra*, Grace did not make any payments in connection with the Bono blog. *See* 11 C.F.R. § 109.21(a)(1). Second, the Bono blog does not appear to satisfy any of the four content standards because it is not a broadcast, cable, or satellite communication (and thus not an electioneering communication under 11 C.F.R. § 100.29), and it was not placed on another person's website for a fee (thus not a public communication under 11 C.F.R. § 100.26). *See* 109.21(c)(1)-(4). Finally, the two emails cited by Complainants as the basis for the coordination allegation do not give rise to an inference that the Bono blog meets any of the six conduct standards. *See* 11 C.F.R. § 109.21(d)(1)-(6).

1 or organization under his/her control as speaking or writing for or on behalf of any other
2 candidate or political party or employee or agent thereof on a matter which is damaging to such
3 other candidate or political party.

4 The activity at issue in this matter consists of a satirical Internet blog created by an
5 individual with no apparent involvement of any federal candidate in the creation of the site or
6 content of the material. Thus, the Act's threshold requirement that a candidate for federal office
7 or the candidate's employee or agent be involved in the misrepresentation is not satisfied. In
8 addition, as Grace states in his response to the complaint, the blog postings are "sardonic
9 lampoons" and, given the content of the sites – including videos of Bono in drag, photos of her
10 outfitted in a Playboy bunny suit, and references to her as "Congress' #2 hottie" – it is
11 inconceivable that visitors to these blog sites would believe that Bono was the author.

12 Furthermore, the information posted on the blog does not rise to the level of "fraudulent
13 misrepresentation." In MUR 4919 (Ball), the Commission determined that the Respondents
14 violated 2 U.S.C. § 441h based in part upon the actions they took to make a mailer look like it
15 came from the local Democratic Party when in fact it came from a Republican campaign
16 committee. In this matter, unlike in MUR 4919, Grace did not make an effort to make it appear
17 that Mary Bono was the blogger. To the contrary, the content of the blog sites would lead a
18 reasonable person to believe that Grace's blog was *not* actually the creation of Mary Bono.
19 Instead, this is, as Grace contends, political satire that does not violate the Act. Therefore, there
20 is no reason to believe that Michael L. Grace knowingly and willfully violated 2 U.S.C.
21 § 441h(a).

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