



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
United Ballot PAC and Karin D. Babineaux)	MUR 6698
in her official capacity as treasurer)	
Elroy Broussard)	
Charles Boustany Jr. MD for Congress)	
and Alan D. Hebert in his official)	
capacity as treasurer)	
John L. Porter)	
Campaign Counsel, LLC ¹)	

**STATEMENT OF REASONS OF
CHAIRMAN MATTHEW S. PETERSEN AND
COMMISSIONERS CAROLINE C. HUNTER AND LEE E. GOODMAN**

The principal allegation in this matter is that Charles Boustany Jr. MD for Congress and Alan D. Hebert in his official capacity as treasurer (the "Boustany Committee" or "Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), when it disclosed a \$35,000 payment to a vendor for get-out-the-vote ("GOTV") activity without disclosing that a portion of that amount went to a Louisiana state political committee for GOTV activity.²

The Office of the General Counsel ("OGC") concluded that the Boustany Committee's disclosure of its disbursement violated 52 U.S.C. § 30104(b)(5)(A) because the Committee did not report the state PAC as the "true, intended recipient of the disbursement."³ Because the Act does not require committees to disclose the "ultimate payees" (that is, final recipients) of the disbursements at issue here, we voted against finding reason to believe. Additionally, the

¹ In this matter, Karin D. Babineaux was named and notified as a respondent in her official capacity as treasurer of United Ballot PAC, a Louisiana state political committee. The Commission, as a matter of policy and routine practice, names and notifies treasurers of federal political committees in their official capacities when committees allegedly violate the Act or Commission regulations. See Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3 (Jan. 3, 2005). The reasons for doing so are grounded on the particular requirements of the Act and the duties that the Act imposes on federal committee treasurers. See *id.* Because we concluded that this matter should be closed in its entirety, we need not determine here whether the Commission may subject the personnel of non-federal committees acting in their official capacities to liability for violation of the Act's requirements or if liability must be limited in such cases to the non-federal entity, only.

² First General Counsel's Report at 4, 6, MUR 6698 (United Ballot PAC); Supp. Compl. at 2, Ex. 6; Boustany Comm. 2012 Pre-Run-off Rpt. at 203 (Nov. 26, 2012).

³ First General Counsel's Report at 4, 6, MUR 6698 (United Ballot PAC) at 15.

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Complaint included a related allegation that the GOTV communications did not include sufficient disclaimers, which we concluded did not warrant further expenditure of Commission resources. Accordingly, we voted to close the file in this matter.

I. BACKGROUND

Charles W. Boustany, Jr., represented Louisiana's Seventh Congressional District from 2005 to 2012 and won reelection in 2012 to represent Louisiana's Third Congressional District.⁴ The Boustany Committee is his principal campaign committee. Boustany's campaign manager, John Porter, owned Campaign Counsel, LLC.⁵ As of the date OGC submitted its First General Counsel's Report, the Boustany Committee had disclosed paying \$110,000 to Campaign Counsel.⁶ Of the \$110,000, the Boustany Committee disclosed paying Campaign Counsel \$75,000 for Porter's "strategic campaign consulting services."⁷

The gravamen of the Complaint is that the Boustany Committee violated the Act by disclosing a \$35,000 disbursement to Campaign Counsel for "Door to Door GOTV" because \$16,500 of that amount ultimately went to United Ballot PAC ("United Ballot"), a Louisiana state political committee,⁸ and was used for GOTV activities that were not limited to *door-to-door* efforts.⁹ Allegedly, Boustany structured this transaction as a series of payments (from the Boustany Committee to Campaign Counsel, which in turn paid a company called Southwest Solutions, LLC, which then paid United Ballot) to conceal his payment to support United Ballot's GOTV efforts.¹⁰ Additionally, the Complaint alleges that United Ballot's disclaimer on the mailer was deficient because it did not indicate whether the mailer was authorized by a candidate.¹¹ OGC also identified a United Ballot radio ad described in the attachments to the Complaint that may have violated the Act's disclaimer requirements.¹²

⁴ As a result of redistricting, in 2012 Boustany ran for reelection in Louisiana's redrawn Third Congressional District.

⁵ First General Counsel's Report at 6-7, MUR 6698 (United Ballot PAC).

⁶ *Id.* at 7, n.20; Porter Resp. at 1.

⁷ First General Counsel's Report at 6-7, MUR 6698 (United Ballot PAC).

⁸ *Id.*

⁹ *Id.* at 2-3; Suppl. Compl. at 2-3.

¹⁰ Suppl. Compl. at 3.

¹¹ *Id.*; Compl. at 1-2.

¹² First General Counsel's Report at 16-18, MUR 6698 (United Ballot PAC).

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II. LEGAL ANALYSIS

A. Disclosure of an "Ultimate Payee" Was Not Required

Political committees must disclose "the name and address of each . . . person to whom an expenditure in an aggregate amount of value in excess of \$200 within the calendar year is made[.]"¹³ But committees are required to disclose the ultimate payee only in certain, limited contexts.¹⁴ In 2013, the Commission issued a policy interpreting section 30104(b) to require committees to identify ultimate payees in three distinct factual situations: (1) when committees reimburse individuals who pay certain committee expenses; (2) when committees pay certain credit card bills; and (3) when candidates use personal funds to pay committee expenses.¹⁵

The 2013 policy does not address a vendor "purchas[ing] goods and services on the committee's behalf from subvendors."¹⁶ Indeed, "neither the Act nor Commission regulations require authorized committees to report expenditures or disbursements to their vendors' subvendors."¹⁷ As recently as last October, this appeared to be the unanimous position of the Commission. At that time, all current Commissioners found no reason to believe that a committee violated section 30104(b) by reporting disbursements to its media vendor but *not* reporting the vendor's subsequent payments to other entities.¹⁸ The Commission explained that "the alleged unreported disbursements were in fact reported. . . . The Committee disclosed payments it made directly to [its vendor] for media and advertising services."¹⁹

Here, the Boustany Committee contracted with Porter and Campaign Counsel to perform a variety of political services.²⁰ Campaign Counsel paid Southwest Solutions to conduct GOTV

¹³ 52 U.S.C. § 30104(b)(5)(A).

¹⁴ First General Counsel's Report at 3, n.9, MUR 6894 (Steve Russell for Congress).

¹⁵ Reporting Ultimate Payees of Political Committee Disbursements, 78 Fed. Reg. 40,625, 40,626 (July 8, 2013).

¹⁶ *Id.*

¹⁷ Factual and Legal Analysis at 11-12, MUR 6510 (Kirk for Senate).

¹⁸ See Factual and Legal Analysis, MUR 6894 (Steve Russell for Congress); Vote Cert., MUR 6894 (Steve Russell for Congress); see also Factual and Legal Analysis at 12, MUR 6510 (Kirk for Senate) (citing Advisory Opinion 1983-25 (Mondale for President)).

¹⁹ Factual and Legal Analysis at 2, MUR 6894 (Russell for Congress). In its report on this matter, OGC acknowledges that "[n]either the Act nor the Commission's relevant implementing regulations address the concepts of ultimate payees, vendors, agents, contractors, or subcontractors in this context." First General Counsel's Report at 9, MUR 6698 (United Ballot PAC). Accordingly, OGC relies, instead, on two MURs — MUR 3847 (Friends of Stockman) and MUR 4872 (Jenkins) — as support for its reason to believe recommendation. See *id.* at 9-12. But this reliance is misplaced, because of significant factual differences between those two MURs and the situation presented here.

²⁰ Porter Resp. at 1; see also Boustany Committee Resp. at 1 ("Mr. Porter, as campaign manager, was tasked with various duties, including get-out-the-vote, message management, and other duties.").

and grassroots activities.²¹ Porter correctly asserts that “the subcontract between Campaign Counsel LLC and Southwest Solutions LLC to provide GOTV and grassroots campaign activities is indistinguishable from countless other agreements negotiated during every election, which are both legal and routine.”²² For its part, United Ballot, through its Chair and Treasurer, denied that United Ballot received funds from the Boustany committee. On this record, we cannot conclude that there is reason to believe the Boustany Committee violated the Act by identifying Campaign Counsel, rather than Campaign Counsel’s subvendors, as the recipient of its disbursement.

B. The Purpose Description Was Adequate

The only remaining reporting issue is whether the Boustany Committee provided an adequate purpose description for the \$35,000 disbursement to Campaign Counsel. In addition to requiring political committees to identify the recipient of expenditures aggregating more than \$200 in a calendar year, section 30104(b) requires political committees to disclose “the date, amount, and purpose of such operating expenditure.”²³ This means that committees must include “an adequate description of the purpose of each expenditure to [vendors]” when reporting disbursements.²⁴ The Commission’s regulations define the “purpose” as “a brief statement or description of why the disbursement was made”²⁵ or “as to the reasons for the expenditure.”²⁶ The purpose of a disbursement, “when considered along with the identity of the disbursement recipient, must be sufficiently specific to make the purpose of the disbursement clear.”²⁷ However, “the Commission [will] not automatically take any particular action” if a

²¹ Porter Resp. at 1; Boustany Resp. at 2 (“... Campaign Counsel LLC hired Southwest Solutions LLC as a sub-vendor to conduct outreach, grassroots, and GOTV services on behalf of the campaign.”).

²² *Id.* at 1-2.

²³ 52 U.S.C. § 30104(b)(5)(A).

²⁴ Advisory Opinion 1983-25 at 2 (Mondale for President).

²⁵ 11 C.F.R. § 104.3(b)(4)(i)(A).

²⁶ *Id.* § 104.9(a). The Commission’s regulations provide examples of purpose descriptions that satisfy or fail to satisfy this requirement. Acceptable descriptions include “media,” “polling,” and “party fees,” while unacceptable descriptions include “other expenses,” “miscellaneous,” and “get out the vote and voter registration.” *Id.* § 104.3(b)(4)(i)(A).

²⁷ “Purpose of Disbursement” Entries for Filings With the Commission, 72 Fed. Reg. 887 (Jan. 9, 2007). In the same notice, the Commission provided additional examples of generally sufficient descriptions, including “Consulting-Get-Out-The-Vote.” *Id.* From 1985 through 1997, the Commission submitted the issue of disclosure of ultimate payees for Congressional consideration in its annual legislative recommendations. *See, e.g.*, 1997 Legislative Recommendations, available at <http://www.fec.gov/law/feca/feca.shtml#legrec>. No clarification was provided.

committee fails to describe sufficiently the purpose of a disclosed disbursement.²⁸ Pursuing further action for such a violation is a "rare circumstance."²⁹

"Door-to-door get-out-the-vote (GOTV)," the description used by the Boustany Committee for its \$35,000 disbursement, is an adequate purpose description,³⁰ and OGC acknowledged that the Boustany Committee's funds were indeed used for GOTV. Although a portion of the disbursement was ultimately used for another kind of GOTV activity, we concluded this minor discrepancy did not render the description inadequate and, moreover, investigating it would not be a prudent use of Commission resources.

C. United Ballot Mailer and Radio Advertisement Disclaimers

The Act and Commission regulations require a disclaimer when any person makes a disbursement for the purpose of financing public communications expressly advocating the election or defeat of a clearly identified candidate.³¹ Disclaimers "must be presented in a clear and conspicuous manner" to give the recipient "adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication."³² A "public communication" is defined as a "communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising."³³ "Expressly advocating" is defined to include phrases in communications that explicitly urge the election or defeat of a specific candidate.³⁴

1. *The United Ballot Mailer*

The United Ballot mailer expressly advocated the reelection of Obama and Boustany by including the phrase, "Re-elect President Barack Obama [and] U.S. Rep Charles W. Boustany[.]"³⁵ Based on the record before the Commission, the mailer was likely a mass mailing and thus a public communication. The Act and Commission regulations define "mass mailing" as a mailing by United States mail of more than 500 pieces of mail of an identical or substantially similar nature within any 30-day period.³⁶ The Complaint alleges that the mailer

²⁸ 72 Fed. Reg. at 888.

²⁹ *Id.*

³⁰ See FEC, Examples of Adequate Purposes at 1, <http://www.fec.gov/rad/pacs/documents/ExamplesofAdequatePurposes.pdf>.

³¹ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

³² 11 C.F.R. § 110.11(c)(1).

³³ *Id.* § 100.26.

³⁴ *Id.* § 100.22(a).

³⁵ Compl. at Ex. 1.

³⁶ 52 U.S.C. § 30101(23); 11 C.F.R. § 100.27.

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was “sent to all mail addresses in the new Third Congressional District,”³⁷ and United Ballot disclosed in its 2012 10-Day Pre-General Report that on November 1, 2012, United Ballot made expenditures of \$3,453.74 for “Mailout” and \$1,264.80 for “Postcards,”³⁸ amounts that suggest that more than 500 mailers were paid for and mailed. Accordingly, a disclaimer was likely required.

The mailer did not have all of the information required in a disclaimer. Although the mailer identified itself as “A United Ballot Message to Voters,” was signed by “K. Babineaux, Treasurer United Ballot PAC,” and included United Ballot’s e-mail address, it did not state whether the communication was paid for or authorized by any candidate.³⁹ It appears that—at worst—the incomplete disclaimer pertained only to a mailer on which United Ballot spent less than \$5,000. In our view, this violation does not warrant launching a Commission investigation. First, the penalty, if any, would likely be insignificant. Second, the time and effort by Commission personnel would be better spent on other matters. Finally, the record in this matter and information in the public realm already provide the public ample information about the transaction involving the Boustany Committee and United Ballot.

2. *The United Ballot Radio Ad*

The Complaint did not allege any violations of the Act involving a United Ballot radio ad. But upon examining United Ballot’s Louisiana disclosure reports and archived radio material, OGC found evidence of a United Ballot radio ad broadcast on an AM radio station that OGC concluded failed to include an adequate disclaimer in violation of 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a)(2).⁴⁰ The radio advertisement expressly advocated the reelection of Boustany and Obama.⁴¹ The ad included the statement, “We’re definitely broadcasting live at the campaign headquarters of Dr. Charles Boustany, Jr.,” but it did not separately state whether it was authorized by a candidate or who paid for it.⁴² The record evidence demonstrates that United Ballot spent a total of only \$719.00 on all KCJB “Radio Ads,” including this one.⁴³ Based on Boustany’s apparent authorization of the ad—inferable from the ad being recorded at his campaign headquarters while advocating his election and United Ballot’s public disclosure of its payment for the ad, and the *de minimis* amount spent on the ad, we concluded that an

³⁷ Compl. at 1.

³⁸ United Ballot, 2012 LBE 10-Day Pre-Gen. Rpt. at 4.

³⁹ *Id.*

⁴⁰ First General Counsel’s Report at 4, n.8, MUR 6698 (United Ballot PAC) (citing United Ballot PAC disclosure reports and www.slickcharlie.com/media/RepublicanBoustanyCampaignsForObama.mp3).

⁴¹ *Id.* at 17 (the mailer included the phrase “Re-elect President Barack Obama [and] U.S. Rep. Charles W. Boustany”); Compl., Ex. 1 (mailer).

⁴² *Id.*; 11 C.F.R. § 110.11(c)(3)-(4).

⁴³ See First General Counsel’s Report at 4, n.8, MUR 6698 (United Ballot PAC).

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investigation was not warranted or a prudent use of the Commission's resources.⁴⁴

* * *

For these reasons, we voted against finding reason to believe and instead to close the file.


Matthew S. Petersen
Chair


Date


Lee E. Goodman
Commissioner


Date


Caroline C. Hunter
Commissioner


Date

⁴⁴ See, e.g., Factual and Legal Analysis at 20, MUR 6438 (Art Robinson) (dismissal of disclaimer violation where there was sufficient information to identify the communication as one authorized by the candidate); Factual and Legal Analysis at 10-12, MUR 6270 (Rand Paul) (dismissal of disclaimer violation due to de minimis amount involved and sufficient information).

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