

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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FEDERAL ELECTION
COMMISSION
SECRETARIAT
FEB 2 2007

2
3 In the Matter of)

4)
5 MUR 5723)

6 EWERT FOR CONGRESS)

2007 FEB -2 P 12: 28
CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY SYSTEM

7)
8)
9)
10)
11)
12 **SENSITIVE**

GENERAL COUNSEL'S REPORT

13 Under the Enforcement Priority System, matters that are low-rated

14
15 are forwarded to the Commission with a recommendation for dismissal.¹ The

16 Commission has determined that pursuing low-rated matters compared to other higher rated
17 matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to
18 dismiss these cases.

19 The Office of General Counsel scored MUR 5723 as a low-rated matter. In this case,
20 the complainant alleges that Henry Ewert, a candidate for the Fifth Congressional District of
21 Virginia, failed to timely register his authorized political committee, Ewert for Congress
22 ("Committee"), with the Commission. The complainant contends that beginning in the
23 Summer of 2005, Mr. Ewert began talking about running for Congress with the Chairman of
24 the Virginia State Democratic Committee. Moreover, the complaint contends that on several
25 occasions Mr. Ewert announced his candidacy for Congress. According to the complainant,
26 on or before November 15, 2005, Mr. Ewert announced his candidacy and again announced
27 his candidacy on December 3, 2005. The complainant asserts that based on Mr. Ewert's
28 statements he should have filed his statement of candidacy prior to February 2006

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1 Mr. Ewert filed his statement of candidacy, along with his paperwork for his
2 authorized committee, sometime before March 7, 2006. The postmark on his filing was
3 illegible, but the date Mr. Ewert wrote on his statement of candidacy was February 24, 2006.
4 Additionally, the Committee reported, on its 2006 April Quarterly Report, only receiving
5 \$15,500 in contributions between January 1, 2006 and February 24, 2006.²

6 Although it is possible that the Committee may have been obligated to file its
7 statement of candidacy and organization a month or so earlier than it did, it appears that the
8 public record accurately reflected the total financial activity for the Committee at the first
9 opportunity the contributions could be reported. Thus, in reviewing the start-up activity of
10 the Committee and the merits of MUR 5723, in furtherance of the Commission's priorities
11 and resources, relative to other matters pending on the Enforcement docket, the Office of
12 General Counsel believes that the Commission should exercise its prosecutorial discretion
13 and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

14 **RECOMMENDATION**

15 The Office of General Counsel recommends that the Commission dismiss MUR
16 5723, close the file effective two weeks from the date of the Commission vote, and approve
17 the appropriate letters. Closing the case as of this date will allow CELA and General Law
18 and Advice the necessary time to prepare the closing letters and the case file for the public
19 record.

20

² There were candidate loans to the Committee on January 3, 2006 totaling \$10,000

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James A. Kahl
Deputy General Counsel

2/2/07
Date

BY:

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Attachment:
Narrative in MUR 5723

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5 **MUR 5723**

6
7 **Complainant:** Lisa H. Blanton

8
9 **Respondents:** Ewert for Congress and
10 Janet Ewert, as Treasurer
11 Henry Bernhard Ewert, II
12
13

14 **Allegations:** The complainant alleges that Henry Ewert, a candidate for the Fifth
15 Congressional District of Virginia, failed to timely register his authorized political
16 committee, Ewert for Congress, with the Commission. The complainant contends that in
17 the Summer of 2005, Mr. Ewert began talking about running for Congress with the
18 Chairman of the Virginia State Democratic Committee. Moreover, the complaint
19 contends that on several occasions Mr. Ewert announced his candidacy for Congress.
20 Specifically, on or before November 15, 2005, Mr. Ewert had announced his candidacy
21 and again announced his candidacy on December 3, 2005. The complainant asserts that
22 based on Mr. Ewert's statements he should have filed his statement of candidacy prior to
23 February 2006. Instead, Mr. Ewert filed his statement of candidacy, along with his
24 paperwork for his authorized committee, sometime before March 7, 2006. The postmark
25 on his filing was illegible, but the date Mr. Ewert wrote on his statement of candidacy
26 was February 24, 2006. The complaint notes that by February 24, 2006,
27 Mr. Ewert already received between \$20,000 to \$30,000 in contributions.
28

29 **Responses:** The Committee's treasurer questioned whether the Commission had
30 jurisdiction over what she believed to be a political matter. The treasurer added that the
31 Committee did not begin to raise funds until after January 1, 2006.
32

33 **General Counsel's Note:** It should be noted that the Committee's 2006 April Quarterly
34 Report reflects that the Committee only received \$15,500 in contributions between
35 January 1, 2006 and February 24, 2006. Additionally, there were candidate loans to the
36 Committee on January 3, 2006 totaling \$10,000. Thus, notwithstanding the issue as to
37 whether a statement of candidacy should have been filed at an earlier point in time, the
38 public record accurately reflected the total financial activity for the Committee at the first
39 opportunity the contributions could be reported.
40

41 **Date complaint filed:** March 27, 2006

42
43 **Response filed:** April 17, 2006

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