

MAY 16 2007

BEFORE THE FEDERAL ELECTION COMMISSION

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FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of)
)
MUR 5855)
THE NEA FUND FOR CHILDREN)
AND PUBLIC EDUCATION)
)
)
)

2007 MAY 17 A 11:48
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

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

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The Office of General Counsel scored MUR 5855 as a low-rated matter. In this case, the complainant alleges that the respondent political committee, the National Education Association Fund for Children and Public Education ("The NEA Fund"), violated 2 U.S.C. § 434 and 11 C.F.R. §§ 104.3 and 104.4 by failing to report independent expenditures within 48 hours of making such expenditures. The complainant alleges that on or before October 18, 2006, the NEA Fund began airing television advertisements attacking Representative J.D. Hayworth and that as of October 20, 2006, the NEA Fund had not filed a report disclosing the independent expenditures.

The respondent submitted an affidavit from its advertising and broadcasting manager stating that the television advertisement in question began to air on October 18, 2006. The affidavit further states that the advertisement was placed through Media Strategies and Research, a media consulting firm. Respondent also submitted a copy of the Schedule E Independent Expenditures form that it filed on October 20, 2006, showing that the

Commission received it by 6:13 p.m. The report disclosed that \$308,433 was expended through Media Strategies and Research for a television ad on October 18, 2006 that opposed J.D. Hayworth.

Political committees must file reports of independent expenditures by 11:59 p.m. on the second day following the date on which the communication is publicly distributed.

11 C.F.R. § 104.4(b)(2). Thus, the NEA Fund had until 11:59 p.m. on October 20, 2006 to file its report.

It appears that the complaint was premature as it was received by the Commission at 12:36 p.m. on October 20, 2006, almost 12 hours before the NEA Fund's report was due. In furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).


RECOMMENDATION

The Office of General Counsel recommends that the Commission dismiss MUR 5855, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters. Closing the case as of this date will allow CELA and General Law and Advice the necessary time to prepare the closing letters and the case file for the public record.

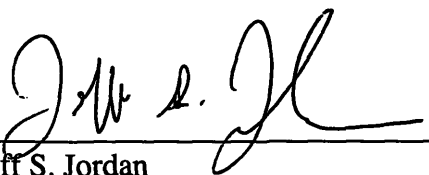
Thomasenia P. Duncan
General Counsel

5/16/07
Date

BY:



Gregory R. Baker
Special Counsel
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Elena Paoli

Attorney

Attachment:
Narrative in MUR 5855

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3
4 **MUR 5855**

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6 **Complainant:** J.D. Hayworth for Congress

7
8 **Respondent:** The NEA Fund for Children and Public Education
9

10
11 **Allegations:** Complainant alleges that the NEA Fund failed to file an independent
12 expenditure report within 48 hours of making the expenditure, in violation of 2 U.S.C.
13 § 434 and 11 C.F.R. §§ 104.3 and 104.4. The expenditure at issue was a television
14 advertisement that aired on October 18, 2006 attacking J.D. Hayworth.
15

16 **Response:** The NEA Fund states that it filed the independent expenditure report
17 disclosing the television advertisement with the Commission on October 20, 2006 at
18 around 6 p.m. It notes that the complaint was filed on October 20 shortly after noon,
19 almost 12 hours before the NEA Fund's deadline for filing the report. The NEA Fund
20 calls the complaint frivolous and part of an overall effort by the Hayworth committee to
21 try to "bully" local TV stations from running anti-Hayworth advertisements.
22

23 **Date complaint filed:** October 20, 2006

24
25 **Response filed:** November 14, 2006

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