



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

MAY 04 2009

Brian G. Svoboda
Kate Sawyer Keane
607 Fourteenth Street, N.W.
Washington, D.C. 20005

**RE: MUR 6118
Bob Roggio for Congress
Alexander F. Smith, Treasurer**

Dear Mr. Svoboda and Ms. Keane:

On November 5, 2008, the Federal Election Commission notified your clients, Bob Roggio for Congress ("Committee") and Alexander F. Smith, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On April 9, 2009, based upon the information contained in the complaint, and information provided by your clients, the Commission decided to dismiss the complaint and closed its file in this matter.

Based on the information before the Commission, it appears that the Committee's failure to include the requisite disclaimers on their campaign billboards was a potential violation of 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(b). The Commission cautions the Committee and its treasurer to take steps to ensure that its conduct is in compliance with the Act and Commission regulations.

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). A copy of the dispositive General Counsel's Report is enclosed for your information.

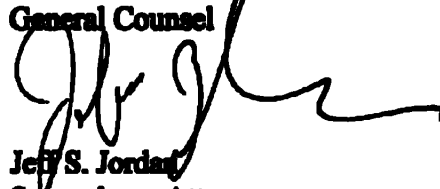
For further information on policies and procedures involving the regulation of the Federal Election Campaign Act please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

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If you have any questions, please contact Frankie D. Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel



BY: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and
Legal Administration

Enclosure
General Counsel's Report

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6118

BOB ROGGIO FOR CONGRESS AND

ALEXANDER SMITH,

AS TREASURER

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)CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEMGENERAL 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 6118 as a low-rated matter.

In this matter, the complainants, Jim Gerlach and Jim Gerlach for Congress allege that Bob Roggio for Congress and Alexander F. Smith, in his official capacity as treasurer (the "Committee"), violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(b) by failing to include appropriate disclaimers on three types of purported campaign communications. Specifically, complainants supplied photocopied samples of the following:

- a billboard stating, in part, "Bob Roggio. Democrats for Congress. Business Leader;"
- a lawn sign asserting that "Gerlach Sold Us Out. Time to Vote Him Out;" and
- a bumper sticker, which complainants claim was part of a mass production by the respondents, stating "FireGerlach.com. Bob Roggio for Congress."

In its response, the Committee acknowledges that its campaign billboards lacked the requisite disclaimers, albeit for a short period of time. According to the Committee, it submitted a design for its campaign billboard to its vendor on October 14, 2008, which included the disclaimer "paid for and authorized by Bob Roggio for Congress." However, the

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1 Committee asserts that, due to a production error, the billboard manufactured by the vendor
2 left the disclaimer covered by other material. When the Committee became aware of the error,
3 on October 24, 2008, it states that it contacted the vendor, took down the billboards a few days
4 later, and replaced them with billboards containing the appropriate disclaimers. In response to
5 the allegation concerning the Committee's lawn sign, it stated that it did not pay for or
6 authorize the sign, nor did it have any knowledge of the sign prior to receiving the complaint.

7 Finally, the Committee points out that bumper stickers, such as those described in the
8 complaint, are exempt from the Commission's general disclaimer requirements as items upon
9 which disclaimers cannot conveniently be printed. See 11 C.F.R. § 110.11(f)(1)(i). Therefore,
10 the Committee claims that its bumper stickers did not violate the Commission's disclaimer
11 regulations.

12 Accordingly, in light of the Committee's response to the allegations and the timely
13 corrective action taken on its billboards, and in furtherance of the Commission's priorities and
14 resources, relative to other matters pending on the Enforcement docket, the Office of General
15 Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss
16 this matter. See *Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, this Office
17 recommends that the Committee and its treasurer, in his official capacity, be cautioned that
18 their failure to include the requisite disclaimers on their campaign billboards was a potential
19 violation of 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11(b).

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RECOMMENDATION

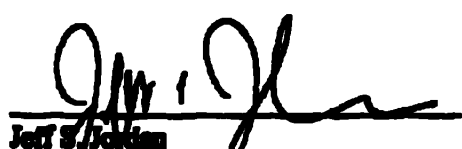
The Office of General Counsel recommends that the Commission disbar
MUR 6118, send a cautionary notification to Bob Reggio for Congress and Alexander P.
Smith, in his official capacity as treasurer, close the file, and approve the appropriate letters.

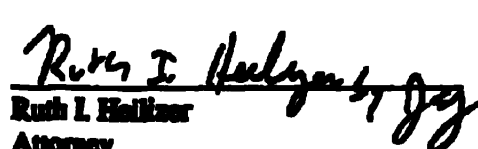
Thomasena P. Duncan
General Counsel

3/24/09
Date

BY:


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