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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
MUR 6262) CASE CLOSURE UNDER THE
SUSAN BITTER SMITH FOR) ENFORCEMENT PRIORITY
CONGRESS AND KELLY LAWLER,) SYSTEM
IN HER OFFICIAL CAPACITY)
AS TREASURER)

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 with 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 6262 as a low-rated matter.

In this matter, the complaint, filed by Luis Heredia, Executive Director of the Arizona Democratic Party, alleges that Susan Bitter Smith for Congress and Kelly Lawler, in her official capacity as treasurer (collectively "the Committee"), violated 2 U.S.C. § 441b by failing to include proper disclaimers on what it alleges was the campaign's official website indicating that the website was paid for by the campaign, as required by 11 C.F.R. § 110.11(a)(1).

Susan Bitter Smith responded to the complaint, noting that she took down the campaign website for her 2008 Congressional primary race, www.Susan08.com, after her

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1 primary defeat.¹ She then put up a personal website paid for with her own funds,
2 www.bittersmith.com, which contained photos of community activities that Ms. Bitter
3 Smith participated in, and which "did not contain any information pertinent to any Federal
4 campaign, no speculation on any further race by me, no political opinion, no advocacy, and
5 no requests for fundraising." Ms. Bitter Smith states that this website was not a campaign
6 website and, therefore, did not require a disclaimer. In February 2010, when Ms. Bitter
7 Smith filed to be a candidate for the 2010 Arizona 5th District election, she established a
8 new campaign website, www.susan10.com, which contains the appropriate disclosures for a
9 campaign website. In her response she does state that "my personal site,
10 www.bittersmith.com, was linked to the campaign site [www.susan10.com] which again
11 contained the appropriate disclosure." Upon receiving the complaint in this matter, she
12 deleted www.bittersmith.com from the web.

13 It appears from the screenshots attached to the complaint of Ms. Bitter Smith's
14 personal website, www.bittersmith.com, that at least through March 5, 2010,
15 www.bittersmith.com did have a graphic that appears to be her campaign logo at the top of
16 the website stating "Susan Bitter Smith – Conservative Republican for Congress," and a
17 link stating "I'd appreciate your support in the 2010 campaign." This website has now been
18 taken down, as noted above, so it is not possible to determine whether this link led to the
19 candidate's official website, www.susan10.com, or elsewhere.

20 The Commission's regulations require disclaimers for "all Internet websites of
21 political committees available to the general public." 11 C.F.R. § 110.11 (a)(1). It appears
22 that, at least for a short period of time, www.bittersmith.com did include information

¹ The Committee, which was the named respondent, did not respond to the complaint. However, Susan Bitter Smith appears to be responding personally on behalf of the Committee.

1 supporting Susan Bitter Smith's 2010 candidacy. However, www.bittersmith.com does not
2 appear to have ever been the official website for either Susan Bitter Smith's 2008
3 Congressional primary campaign or her 2010 Congressional primary campaign. Based on
4 the statements made in the response, and the available information submitted by the
5 complainant, and in furtherance of the Commission's priorities and resources, relative to
6 other matters pending on the Enforcement docket, the Office of General Counsel believes
7 that the Commission should exercise its prosecutorial discretion and dismiss this matter.
8 *See Heckler v. Chaney*, 470 U.S. 821 (1985).


9 **RECOMMENDATIONS**


10 The Office of General Counsel recommends that the Commission dismiss
11
12 MUR 6262, close the file, and approve the appropriate letters.


13 Thomasenia P. Duncan
14 General Counsel

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16
17 4/30/10
18 Date

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