

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5) DISMISSAL AND CASE
6 MUR 6332) CLOSURE UNDER THE
7 COMMITTEE TO ELECT MICHAEL STOPA) ENFORCEMENT PRIORITY
8 AND HIROMI HOSHINO, AS TREASURER) SYSTEM
9 MICHAEL STOPA)
10

11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring
13 criteria to allocate its resources and decide which cases to pursue. These criteria include, but are
14 not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the
15 type of activity and the amount in violation, (2) the apparent impact the alleged violation may
16 have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent
17 trends in potential violations of the Act, and (5) development of the law with respect to certain
18 subject matters. It is the Commission's policy that pursuing low-rated matters, compared to
19 other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial
20 discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6332 as a
21 low-rated matter and has also determined that it should not be referred to the Alternative Dispute
22 Resolution Office. This Office therefore recommends that the Commission exercise its
23 prosecutorial discretion to dismiss MUR 6332.

24 In this matter, the complainant, Jodi L. Bair, alleges that the Committee to Elect Michael
25 Stopa and Hiromi Hoshino, in his official capacity as treasurer ("the Committee"), and candidate,
26 Michael Stopa,¹ violated the Federal Election Campaign Act of 1971, as amended ("the Act"),

¹ Michael Stopa was an unsuccessful candidate for Congress from Massachusetts's 3rd Congressional District.

1 and the Commission's regulations, by failing to include disclaimers on certain campaign
2 materials, and also by failing to file required disclosure reports.

3 More specifically, the complainant alleges that the Committee's website,
4 www.stopaforusrep.com, and a Committee handout inviting the public to "Meet and Greet Your
5 Next U.S. Congressman, Mike Stopa," failed to include disclaimer information stating that the
6 Committee had paid for them, as required by 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(a) and
7 (b)(1). Attached to the complaint are copies of the following documents: pages that appear to
8 have been printed from either the Committee's website or from an email; a flyer that announced
9 a July 10, 2010 "Meet and Greet" event; and an email, also publicizing the July 10th event and
10 requesting donations. None of these documents include a disclaimer.

11 Additionally, the complainant maintains that Mr. Stopa and his Committee had
12 "presumably" spent in excess of \$5,000 in connection with the campaign, including making
13 expenditures on campaign-related items and activities such as the Committee's website, various
14 political events, literature, lawn signs, bumper stickers, and other campaign paraphernalia.
15 Nonetheless, according to the complainant, Mr. Stopa failed to file a Form 2 Statement of
16 Candidacy which, among other things, designates a candidate's principal campaign committee
17 within 15 days of exceeding the \$5,000 threshold, as required by 2 U.S.C. § 432(e), and that the
18 Committee likewise failed to file its Form 1 Statement of Organization within 10 days thereafter,
19 as required by 2 U.S.C. § 433(a), as well as financial disclosure reports, pursuant to 2 U.S.C.
20 § 434(a).

21 In response, Mr. Stopa, on behalf of himself and his Committee, denies the complainant's
22 allegations. With respect to the "disclaimer" issue, Mr. Stopa, citing 11 C.F.R. § 110.11(a),
23 notes that electronic mailings ("emails") sent by political committees require disclaimers only if:

11044291459

1) the emails are substantially similar; and 2) they exceed 500 in number. Here, Mr. Stopa asserts that the "material in question"—presumably, the "Meet and Greet" email attached to the complaint—was sent to fewer than 225 "core supporters" and, therefore, did not require a disclaimer. Further, according to Mr. Stopa, neither he nor his Committee disseminated any public communications that would require a disclaimer, as set forth in the Act and the Commission's regulations. However, acknowledging the "possibility of confusion," Mr. Stopa states that he will ensure that all further "distributions" by the Committee include disclaimers. As for his Committee's website, Mr. Stopa asserts that it "is and has been compliant and . . . the complaint [does not] provide an example of such alleged error [omitted disclaimers]."

According to Mr. Stopa, the complainant's allegations that he and his Committee failed to file required disclosure reports are baseless. In fact, Mr. Stopa states that he reached the \$5,000 reporting threshold, as set forth in 2 U.S.C. § 431(2)(A), on or about July 18, 2010. At that time, Mr. Stopa states that he and the Committee filed the proper forms and began preparing the requisite financial disclosure reports. Accordingly, Mr. Stopa requests that the complaint against him and his Committee be dismissed.

With respect to the "Meet and Greet" email attached to the complaint and discussed in Mr. Stopa's response, there is no evidence in the record to contradict Mr. Stopa's assertion that fewer than 500 of these emails were disseminated. Therefore, disclaimers would not have been required for these communications. See 11 C.F.R. § 110.11(a)(1). We note, however, that Mr. Stopa's response, which focuses on campaign emails, apparently does not address the other two documents attached to the complaint—specifically, the "Meet and Greet" flyer and pages from what could be the Committee's website. While both of these documents include information suggesting that they are Committee-sponsored communications, including the

11044291460

1 Committee's name and website address, neither includes a disclaimer stating that the Committee
2 had paid for them, as required by 11 C.F.R. § 110.11(b)(1).² We also note that neither Mr. Stopa
3 nor his Committee provided samples of campaign literature containing appropriate disclaimer
4 information, and that the complainant asserted that she had "personally witnessed" the omission
5 of required disclaimer information on Stopa's campaign materials. As such, it appears that the
6 Committee may have violated 2 U.S.C. § 441d (a) and 11 C.F.R. §§ 110.11(a) and (b)(1).

7 Further, a review of the Committee's filings and the public record indicate that Mr. Stopa
8 and his Committee apparently filed their Form 2 Statement of Candidacy and Form 1 Statement
9 of Organization in an untimely manner. A review of the Committee's first financial disclosure
10 report (*i.e.*, its 2010 Pre-Primary Report) indicates that its receipts, including loans from the
11 candidate, crossed the \$5,000 threshold on June 10, 2010, not July 18, 2010, as Mr. Stopa has
12 asserted. Moreover, it appears from numerous news articles that Mr. Stopa had determined to
13 seek election to Congress prior to June 10, 2010.³ Thus, in looking at Mr. Stopa's activities,
14 along with the receipts reported by his Committee, it appears that he should have filed his
15 Statement of Candidacy no later than 15 days after June 10, 2010, or by June 25, 2010, pursuant
16 to 2 U.S.C. § 432(e); and the Committee should have filed its Statement of Organization no more
17 than 10 days thereafter, or by July 5, 2010, as required by 2 U.S.C. § 433(a). Instead,
18 Commission records indicate that the Committee did not file its Form 1 Statement of

² The Committee's website, www.stopaforusrep.com, (last accessed on December 16, 2010), thanks supporters for supporting Mr. Stopa's bid for Congress and includes the disclaimer "Paid for by the Committee to elect Michael Stopa." However, we were unable to locate earlier versions of Mr. Stopa's website, and thus were unable to independently verify whether the website included a proper disclaimer during Mr. Stopa's campaign.

³ See, e.g., <http://www.metrowestdailynews.com/news/x1013164684/Holliston-Republican-Mike-Stopa-to-run-for-Congress> (article posted on March 3, 2010 describes Stopa as a candidate for Congress) and <http://mikestopa.wordpress.com/2010/05/29/african-honor-on-mike-stopa-bing/> (article posted May 29, 2010 also describes Stopa as a congressional candidate).

11044291461

1 Organization until July 14, 2010, or nine days late, and that Mr. Stopa did not file a Form 2
2 Statement of Candidacy, which designated his principal campaign committee, until August
3 13, 2010, or 49 days late.

4 Although the emails referred to in the complaint do not appear to violate the Act, the
5 flyers nevertheless appear to lack the appropriate disclaimers. However, we also note that the
6 flyers appear to have provided sufficient identifying information so that the public would not
7 have been misled as to whether the Committee had paid for the communications, even though
8 they lacked a box around a statement indicating that the Committee had paid for them.
9 Furthermore, even though it appears that Mr. Stopa and his Committee filed their Statements of
10 Candidacy and Organization untimely, the delay in filing these reports was not inordinate (*i.e.*,
11 9 days late for the Form 1 and 49 days late for the Form 2). Accordingly, under EPS, the Office
12 of General Counsel has scored MUR 6332 as a low-rated matter and therefore, in furtherance of
13 the Commission's priorities as discussed above, the Office of General Counsel believes that the
14 Commission should exercise its prosecutorial discretion and dismiss this matter. *See Heckler*
15 *v. Chaney*, 470 U.S. 821 (1985).

16 Additionally, this Office recommends that the Commission remind: 1. The Committee
17 to Elect Michael Stopa and Hiromi Hoshino, in his official capacity as treasurer, of the
18 requirements of 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(a) and (b)(1) concerning the use of
19 appropriate disclaimers on certain campaign materials as well as the requirements set forth at
20 2 U.S.C. 433(a) concerning the timely submission of a Statement of Organization with the
21 Federal Election Commission; and 2. Mr. Stopa of the requirements of 2 U.S.C § 432(e)
22 concerning the timely submission of a Statement of Candidacy with the Federal Election
23 Commission.

11044291462


RECOMMENDATIONS

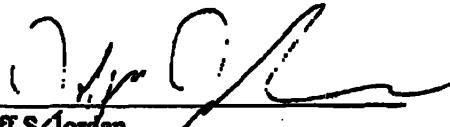
The Office of General Counsel recommends that the Commission dismiss MUR 6332, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind: 1. The Committee to Elect Michael Stopa and Hiroshi Hoshino, in his official capacity as treasurer, of the requirements of 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(a) and (b)(1) concerning the use of appropriate disclaimers on certain campaign materials as well as the requirements set forth at 2 U.S.C. 433(a) concerning the timely submission of a Statement of Organization with the Federal Election Commission; and 2. Mr. Stopa of the requirements of 2 U.S.C § 432(e) concerning the timely submission of a Statement of Candidacy with the Federal Election Commission.

Christopher Hughey
Acting General Counsel


1/10/11
Date

BY:


Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration


Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15



Ruth Heilizer
Attorney
Complaints Examination
& Legal Administration

11044291464