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BEFORE THE FEDERAL ELECTION COMMISSION

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4	In the Matter of)
5)
6	MUR 6378)
7	CONSERVATIVES FOR CONGRESS)
8	AND JEFFREY J. HILL, AS TREASURER)
9	JONES OUTDOOR ADVERTISING, INC.)
10	DWIGHT JONES)
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DISMISSAL AND CASE
CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"), and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases, or in certain cases where there are no facts to support the allegations, to make no reason to believe findings. The Office of General Counsel has scored MUR 6378 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, this Office recommends that the Commission make no reason to believe findings as to respondents Conservatives for Congress and Jeffrey J. Hill, in his official capacity as treasurer¹ (collectively "the Committee"), and Dwight Jones. We further recommend that

¹ At the time of the complaint, Sean McCaffrey was the treasurer for the Committee, but he was replaced on October 5, 2010 by Jeffrey J. Hill. See Amended Statement of Organization dated October 5, 2010.

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1 the Commission dismiss this matter as to respondent Jones Outdoor Advertising, Inc. ("Jones Outdoor
2 Advertising").

3 The complainant, Christine Hammerle, counsel to Giffords for Congress, asserts that the
4 respondent Committee violated the Act and underlying Commission regulations by failing to include
5 disclaimers on three public billboards, in apparent violation of 2 U.S.C. § 441d(a) and 11 C.F.R.
6 §§ 110.11(a) and (b)(3). As an example, attached to the complaint is a photograph of a billboard that
7 reads, "PELOSI'S PUPPET? GABBY'S GOTTA GO!" The complainant alleges that the billboard
8 fails to disclose the identity of the individual or entity that paid for and authorized the billboards, but
9 observes that similar language appears on communications associated with the Committee.
10 Specifically, according to the complainant, a screenshot taken from the Committee's website,
11 www.conservativesforcongress.org, printed on September 9, 2010, includes the phrase "Gabby's gotta
12 go." The website also includes YouTube videos with frames entitled "Pelosi's Puppet" that include
13 images of Pelosi holding strings attached to Gifford.

14 Subsequently, the complainant amended her complaint by providing us with an email from a
15 reporter that had apparently been forwarded by the Committee. In the email, the Committee states that
16 it did not pay for, authorize, or produce the Pelosi/Gifford billboard advertisements. Instead, the
17 Committee explains that any such advertisements were placed by Mr. Dwight Jones of Jones Outdoor
18 Advertising.

19 The Committee, Jones Outdoor Advertising, and Mr. Jones all filed responses. The Committee,
20 which denies paying for, producing, authorizing, or having any other involvement with the signs, states
21 that they were placed by Mr. Jones or his company, without any input from the Committee. Jones
22 Outdoors Advertising confirms that the Committee was not involved, and states that it placed the
23 advertisements in question on billboard structures that it owned. Although Jones Outdoors Advertising
24 states that its name appeared "in isolation" on the signs, it acknowledges that its address, website,

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1 telephone number, and the fact that the messages were not authorized by any candidate or candidate
2 committee were omitted. Jones Outdoor Advertising explains that media coverage of the *Citizens*
3 *United* decision left it with the understanding that the disclosure requirements had been negated but
4 upon being “informed of the statute,” the company states that it included the requisite disclaimer
5 information on the signs. Attached to its response are color photos of three billboards, which include
6 the phrase “Paid for by Jones Outdoor Advertising, Inc., www.jonesoutdoor.com. This communication
7 not authorized by any candidate or candidate’s committee.” The communications are, however, not
8 enclosed within printed boxes. See 11 C.F.R. § 110.11(c)(2)(ii).

9 Finally, Mr. Jones acknowledges that, in his capacity as president of Jones Outdoor
10 Advertising, he caused his company to post the billboards at issue, and used corporate funds to do so.
11 Mr. Jones states that, before having the billboards erected, he sought legal advice as to whether
12 disclaimers were required, and was informed that they were not. The response also notes that the
13 disclaimers were affixed to the billboards within days of receiving the complaint in this matter.

14 Under the Act and Commission regulations, all public communications² made by a political
15 committee must include disclaimers. 2 U.S.C. § 441d(a)(1); see also 11 C.F.R. § 110.11(a). In
16 addition, public communications that are not authorized by a candidate must include disclaimers
17 stating the name and permanent street address, telephone number or World Wide Web address of the
18 person who paid for the communication, as well as stating that the communication is not authorized by
19 any candidate or candidate’s committee. 2 U.S.C. § 441d(a)(3); see also 11 C.F.R. § 110.11(b)(3).
20 Moreover, such disclaimers must be contained within a box, as required under 11 C.F.R.
21 § 110.11(c)(2)(ii). Information provided by complainant in the amended complaint appears to

² “Public communications” include any communication “by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.25.

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1 corroborate the response that the signs do not belong to the Committee, but instead appear to be part of
2 an independent effort by Jones Outdoor Advertising, the company that owns the billboard structures.³

3 In light of the submissions in this matter, this Office recommends that the Commission find no
4 reason to believe that Dwight Jones (in his individual capacity), Conservatives for Congress and
5 Jeffrey J. Hill, in his official capacity as treasurer, violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11.

6 With respect to respondent, Jones Outdoor Advertising, it appears the company took partial remedial
7 action by adding verbiage to its signs disclosing that "www.jonesoutdoor.com" had paid for the
8 billboards and that the communications were not authorized by any candidate or candidate's
9 committee, as required by 2 U.S.C. § 441d(a)(3) and 11 C.F.R. § 110.11(b)(3). Therefore, under EPS,
10 the Office of General Counsel has scored MUR 6378 as a low-rated matter and in furtherance of the
11 Commission's priorities, as discussed above, the Office of General Counsel believes that the
12 Commission should dismiss this matter as to Jones Outdoor Advertising. *See Heckler v. Chaney*, 470
13 U.S. 821 (1985). Additionally, this Office recommends that the Commission remind Jones Outdoor
14 Advertising, Inc., concerning the Commission's disclaimer requirements, including the requirement
15 that disclaimers on printed materials be included within printed boxes, pursuant to 2 U.S.C. § 441d(a)
16 and 11 C.F.R. §§ 110.11(b) and (c).

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³ Although not specifically raised in the complaint, we note that it is possible that Jones Outdoor Advertising may have been required to report the costs associated with the billboards as independent expenditures. However, given the apparent limited scope of the activity at issue, we do not recommend pursuing this issue any further.

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RECOMMENDATIONS

1. Find no reason to believe that Dwight Jones, and Conservatives for Congress and Jeffrey J. Hill, in his official capacity as treasurer, violated 2 U.S.C. § 441d(a) and 11 C.F.R. § 110.11;
2. Dismiss the allegation that Jones Outdoor Advertising, Inc., violated 2 U.S.C. § 441d(a)(3) and 11 C.F.R. §§ 110.11(b) and (c); and
3. Send a reminder letter to Jones Outdoor Advertising, Inc., concerning the Commission's disclaimer requirements, including the requirement that disclaimers on printed materials be included within printed boxes, pursuant to 2 U.S.C. § 441d(a) and 11 C.F.R. §§ 110.11(b) and (c).
4. Close the file and approve the appropriate letters.


Christopher Hughey
Acting General Counsel

9/24/11
Date

BY:



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