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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
MUR 6381) CASE CLOSURE UNDER THE
AMERICAN HOSPITAL ASSOCIATION) ENFORCEMENT PRIORITY
AMERICAN HOSPITAL ASSOCIATION PAC) SYSTEM
AND MELINDA HATTON, AS TREASURER)
HERRICK MEDICAL CENTER)
SCHAUER FOR CONGRESS AND)
BRAD J. NEIDHARDT, AS TREASURER)

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. For the reasons set forth below, this Office recommends that the Commission make no reason to believe findings in MUR 6381.

In this matter, complainant Richard L. Blank ("Complainant") alleges that the American Hospital Association ("the AHA"),¹ Herrick Medical Center ("Herrick"), and Schauer for Congress and Brad J. Neidhardt, in his official capacity as treasurer ("the Committee"), violated the Act when the AHA ran several advertisements in April 2010 thanking Congressman Mark

¹ The AHA is organized as a nonprofit corporation under section 501(c)(6) of the Internal Revenue Code.

Schauer² for voting for a health care bill, which the Complainant alleges was a political endorsement of the congressman and the bill.³ The Complainant asserts that he has made payments to Herrick for medical services, and because Herrick pays membership dues to the AHA, Herrick and/or the AHA "misappropriated funds" because the Complainant's payments were likely used to fund the advertisements without the Complainant's knowledge.

The AHA's response, which includes an affidavit from Melinda Hatton, the AHA's general counsel, argues that the complaint does not state a violation of the Act. The AHA admits that it used general treasury funds to run advertisements in April 2010 that mentioned Congressman Schauer with respect to his vote on a health care reform bill, but insists the advertisements did not mention Mr. Schauer's candidacy or advocate his election or his opponent's defeat. Further, the AHA claims that the advertisements did not contain express advocacy, and were not coordinated with Congressman Schauer's campaign. In the aftermath of the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 50 (2010), the AHA maintains that it was lawfully permitted to use treasury funds to pay for communications such as those at issue, as long as they were not coordinated with Congressman Schauer or the Committee.⁴

Herrick submitted a response which includes an affidavit from Herrick's President, Timothy J. Jakacki. In his affidavit, Mr. Jakacki asserts that while Herrick is a dues-paying general member of the AHA, Herrick was not involved with any aspect of the advertisements in

² On November 2, 2010, Mr. Schauer was defeated in the general election for Michigan's 7th Congressional District.

³ While video of the advertisements are no longer publicly accessible, the AHA issued a press release announcing its advertising campaign. See Press Release, American Hospital Association, New Ad Campaign Applauds Key Members of Congress for Protecting Patients and Communities (April 5, 2010), available at <http://goo.gl/2pLP6>.

⁴ AHA PAC did not file a separate response.

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1 question. Mr. Jakacki maintains that Herrick did not authorize the advertisements, was not
2 involved with their production, and did not arrange or pay for their broadcast.

3 The Committee's response, filed by Treasurer Brad Neidhardt, asserts that the AHA's
4 advertisements were not authorized, solicited, funded, or approved by the Committee, and the
5 Committee had no part in the development of the advertisements.

6 The respondents do not appear to have violated any provisions of the Act. Although the
7 complainant asserts that the advertisements served as an endorsement of the candidate, the AHA
8 states that its advertisements did not mention Mr. Schauer's candidacy or advocate his election or
9 his opponent's defeat. As the advertisements do not appear to have contained express advocacy,
10 it would have been permissible for the AHA to run them even prior to the *Citizens United*
11 decision which, as the respondents point out, allows corporations to use their general treasury
12 funds for independent expenditures. Moreover, the advertisements ran in April 2010, which was
13 several months before the August 3, 2010 primary election, and, as such, did not constitute
14 electioneering communications. See 2 U.S.C. § 434(f)(3)(A)(i) (electioneering communications
15 are broadcast, cable, or satellite communications that, *inter alia*, refer to a clearly identified
16 candidate for Federal office and are distributed thirty days before a primary election). Finally,
17 both the AHA and the Committee maintain that there was no coordination, and we have been
18 provided no information to the contrary. Therefore, based on the speculative nature of the
19 complaint and the declarations and statements made in the responses and affidavits, we
20 recommend that the Commission find no reason to believe that the American Hospital
21 Association, Herrick Medical Center, Schauer for Congress and Brad Neidhardt, in his official
22 capacity as treasurer, or American Hospital Association PAC and Melinda Hatton, in her official
23 capacity as treasurer, violated the Act, and close the file.

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RECOMMENDATIONS

1. Find no reason to believe that American Hospital Association, Herrick Medical Center, Schauer for Congress and Brad Neidhardt, in his official capacity as treasurer, or American Hospital Association PAC and Melinda Hatton, in her official capacity as treasurer, violated the Act.
2. Close the file and send the appropriate letters.

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7/12/11
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