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BEFORE THE FEDERAL ELECTION COMMISSION

2011 MAY 24 PM 3:49

2011 MAY 24 P 4:06

CELA

In the Matter of

MUR 6398

JOSEPH A. SESTAK, JR.

SESTAK FOR SENATE AND

MARGARET M. INFANTINO,

AS TREASURER

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY SYSTEM

**SENSITIVE**

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 ("the 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 6398.

1 In this matter, complainant Mary Barket alleges that candidate Joseph A. Sestak, Jr.<sup>1</sup>  
2 and Sestak for Senate and Margaret M. Infantino, in her official capacity as treasurer (the  
3 "Committee"), violated the "Stand by Your Ad" requirements under 2 U.S.C. 441d(d) and  
4 11 C.F.R. § 110.11(c)(3). These provisions require televised campaign advertisements to  
5 include an audio statement by the candidate in which the candidate identifies himself or  
6 herself and states that he or she approves the message, accompanied by either an  
7 "unobscured, full-screen view" of the candidate or a picture of the candidate that is at least  
8 80% of the screen height, as well as a similar statement that must appear clearly in writing  
9 at the end of the television communication. See 11 C.F.R. §§ 110.11(c)(3)(ii) and (iii).  
10 Specifically, the complainant alleges that Mr. Sestak failed to state his name, the office that  
11 he was seeking, and the fact that he approved the message, all of which, she states, are  
12 required by 11 C.F.R. § 110.11(c)(3)(iv).

13 In response, Mr. Sestak and the Committee maintain that the campaign  
14 advertisement at issue complied with the Act and underlying Commission regulations. The  
15 respondents point out that, while section 110.11(c)(3)(iv) sets forth examples of permissible  
16 spoken disclaimers, including "I am [insert name of candidate], a candidate for [Federal  
17 office sought], and I approved this advertisement," and "My name is [insert name of  
18 candidate]. I am running for [insert Federal office sought], and I approved this message,"  
19 the regulation also explicitly states that "these are not the only allowable statements." *Id.*  
20 According to the respondents, the advertisement referenced in the complaint meets the  
21 "Stand by Your Ad" requirements set forth at 11 C.F.R. § 110.11(c)(3), because the

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<sup>1</sup> Mr. Sestak was an unsuccessful candidate for the United States Senate from Pennsylvania in 2010.

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1 candidate identified himself in the first sentence of the ad by stating "I'm Joe Sestak . . ."

2 and, in the last sentence, states "I authorize this message . . . ."

3       The available information indicates that the advertisement at issue, which can be  
4 viewed at <http://goo.gl/LTPCf>, appears to meet the Commission's "Stand By Your Ad"  
5 requirements. As the response notes, and contrary to the complaint's allegations, the  
6 candidate states his name, and also states that he authorized the message. *See* 11 C.F.R.  
7 § 110.11(c)(3)(iv); *see also* *Explanation and Justification, Regulations on Disclaimers,*  
8 *Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 *Fed.*  
9 *Reg.* 76962, 76967 (December 13, 2002) (examples listed in section (c)(3)(iv) are "not  
10 mandatory" and are "not the only acceptable disclaimers"). Further, it appears that these  
11 oral statements were accompanied by an unobscured full-screen view of the candidate, as  
12 well as a proper written disclaimer at the end of the ad identifying the Committee and  
13 stating that the Committee authorized the message. *See* 11 C.F.R. §§ 110.11(c)(3)(ii) and  
14 (iii). Therefore, this Office recommends that the Commission find no reason to believe that  
15 Joseph A. Sestak, Jr., Sestak for Senate, and Margaret M. Infantino, in her official capacity  
16 as treasurer, violated 2 U.S.C. § 441d(d) and 11 C.F.R. § 110.11.

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**RECOMMENDATIONS**

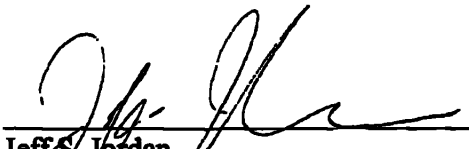
1. Find no reason to believe that Joseph A. Sestak, Jr., Sestak for Senate, and Margaret M. Infantino, in her official capacity as treasurer, violated 2 U.S.C. § 441 d(d) and 11 C.F.R. § 110.11.
2. Close the file and send the appropriate letters.


Christopher Hughey  
Acting General Counsel.

5/25/11  
Date

BY:

  
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Complaints Examination  
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