

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
MUR 6458) CASE CLOSURE UNDER THE
FRIENDS OF SEAN BIELAT) ENFORCEMENT PRIORITY SYSTEM
AND NORM FAY, AS TREASURER)
SEAN BIELAT)
ABIOMED, INC.)

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 6458.

In this matter, complainant Stacey Monahan, Executive Director of the Massachusetts Democratic Party, alleges that Friends of Sean Bielat and Norm Fay, in his official capacity as treasurer (the "Committee"),¹ candidate Sean Bielat² and Abiomed, Inc. violated the Act when the Committee accepted a \$2,400 prohibited corporate contribution from Abiomed, Inc. Attached to the

¹ Jason Stanley was the Committee's treasurer at the time the complaint and response were filed. Subsequently, the Committee notified the Commission that Norm Fay had become the Committee's treasurer.

² Mr. Bielat was an unsuccessful candidate from Massachusetts's 4th Congressional District.

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1 complaint is a copy of what appears to be a page from the Committee's 2010 Post-General Report,
2 disclosing a \$2,400 contribution from "The Abiomed Inc.," on October 21, 2010.

3 In response, both the Committee and Abiomed, Inc. assert that the contribution was permissible
4 because it was made by Abiomed, Inc.'s registered political action committee, Abiomed PAC. The
5 Committee maintains that it made a clerical error when it inadvertently left "PAC" off the entry in its
6 FEC report, but it states that it amended its report on March 9, 2011 to reflect that Abiomed PAC was
7 the correct contributor. The Committee further asserts that the contribution was "well below the
8 \$5,000 contribution limit for PACs of its type." Additionally, in its response, Abiomed, Inc. asserts
9 that the Committee's filing was inaccurate, and includes a copy of the contribution check, which is
10 imprinted with the name "Abiomed Inc. Political Action Committee" and is made out to "Bielat for
11 Congress"[sic] in the amount of \$2,400.

12 The Act prohibits corporations from making contributions to candidate committees in
13 connection with any federal election. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b). Moreover, candidates
14 and political committees are prohibited from knowingly accepting contributions in excess of the
15 limitations in 2 U.S.C. § 441a(a) which, during the 2009-2010 election cycle, was \$5,000 per election
16 from multicandidate political action committees and \$2,400 from other political action committees.
17 See 2 U.S.C. § 441a(f); 11 C.F.R. §§ 110.1 and 110.2; see also *Contribution Limitation Increases for*
18 *Individuals [and] Nonmulticandidate Committees... for 2009-2010 Election Cycle*, 74 Fed.Reg. 7435
19 (Feb. 17, 2009).

20 In this case, it appears that the Committee initially filed an inaccurate report, which indicated
21 that Abiomed Inc., as opposed to Abiomed PAC, made the \$2,400 contribution. And, although it
22 appears that Abiomed PAC did not attain multicandidate committee status until October 25, 2010,
23 several days after making the \$2,400 contribution to the Committee, the contribution at issue was
24 nonetheless within the limits set forth *supra*. Therefore, because it does not appear that Abiomed, Inc.,

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made, or the Committee accepted, a corporate or excessive contribution, this Office recommends that the Commission find no reason to believe that Friends of Sean Bielat and Norm Fay, in his official capacity as treasurer, Sean Bielat, and Abiomed, Inc. violated 2 U.S.C. § 441b(a).

RECOMMENDATIONS

1. Find no reason to believe that Friends of Sean Bielat and Norm Fay, in his official capacity as treasurer, Sean Bielat, and Abiomed, Inc. violated 2 U.S.C. § 441b(a).
2. Close the file and send the appropriate letters.

8/23/11
Date

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