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RECEIVED
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COMMISSION
SECRETARIAT
BEFORE THE FEDERAL ELECTION COMMISSION
2012 OCT -1 PM 1:51

In the Matter of)

MUR 6550)

Committee to Elect Sean Summers and)

Joseph N. Gothie as treasurer)

) DISMISSAL AND
) CASE CLOSURE UNDER THE
) ENFORCEMENT PRIORITY
) SYSTEM
)

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both 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 complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has determined that MUR 6550 should not be referred to the Alternative Dispute Resolution Office. Also, for the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6550.

In this matter, the Complainant, John McDonald, asserts that the Committee to Elect Sean Summers² and Joseph N. Gothie in his official capacity as treasurer (the "Committee") was

² Summers was a primary election candidate from Pennsylvania's Fourth Congressional District.

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1 responsible for distributing flyers that allegedly failed to provide any disclaimer information, as
2 required by the Act and underlying Commission regulations, citing 11 C.F.R. § 110.11(a).
3 Compl. at 1-2. Specifically, according to the Complainant, the flyers should have included a
4 clear and conspicuous statement stating that the Committee had paid for them. *Id.* at 1. Such
5 statements should have been of sufficient type size to be clearly readable, set apart from the
6 remainder of the flyers in a printed box, and printed with a reasonable degree of color contrast
7 between the background and the printed disclaimer. *Id.*

8 Attached to the Complaint as Exhibit A is a copy of the flyer at issue, which consists of
9 one double-sided page. On the right-hand side, under the heading "What People Are Saying,"
10 are expressions of support for Summers's candidacy from eleven individuals, six on the front
11 side of the page and five on the back. Compl., Ex. A at 1-2. On the left-hand side of the flyer's
12 front page is a color headshot of Summers under which the caption "Supporters" appears,
13 followed by a list of approximately 20 individuals. *Id.* at 1. Most of the left-hand side of the
14 back of the page is blank, except for the bottom, where what appear to be yard signs are depicted
15 in color. The first sign, which is the only one facing the reader, includes the following slogan:
16 "A leader. Not a politician. Summers for Congress." *Id.* at 2.

17 Treasurer Gothie, responding on behalf of the Committee, acknowledges that the flyers at
18 issue had been prepared and distributed by the Summers campaign and that, although the
19 omission of the required disclosure language "was inadvertent . . . it did occur." Resp. at 1. As
20 a mitigating factor, Gothie explains that "the flyer was not a 'hit piece' designed to disparage
21 other candidates . . . distributed by anonymous means." *Id.* Instead, he states that the flyers
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1 were distributed by Summers's campaign volunteers who were simultaneously distributing other
2 campaign information "which contained the required disclosure language." *Id.* Pointing out that
3 the Complainant was apparently not misled as to the fact that the Summers campaign had
4 distributed the flyers, Gothie also notes that the election at issue was both his and candidate
5 Summers's "first federal election" and, while both were aware of the disclaimer requirement,
6 they did not catch the omission "during the proofing process." *Id.*

7 Finally, Gothie states that he reviewed the Committee's invoices and determined that the
8 cost of producing "100 of the flyers in question" was \$82.15. *Id.* at 2. Attached to the Response
9 is a copy of the invoice identified by Gothie, from Printing Express, for 100 flyers entitled "What
10 People are saying." Resp., Attach. 1. The cost of the flyers is listed as \$77.50, plus \$4.65 tax,
11 for a total of \$82.15. *Id.* The Committee's 12-Day Pre-Primary Report, filed on April 12, 2012,
12 discloses an \$82.15 disbursement to "Printing Express Inc." for "flyer duplication."

13 On September 4, 2012, the Committee filed a Miscellaneous Report with the Commission
14 requesting permission to terminate, and explaining that the Committee's only debts are loans
15 owed to Summers. The request to terminate includes a letter from Summers discharging the
16 Committee of its loan obligations to him above the Committee's cash on hand of \$1,066.38.

17 In assessing the potential magnitude of the activity at issue, the Office of General
18 Counsel notes that the distribution of the flyers was not widespread (only 100 were
19 disseminated) and the cost to produce them (\$82.15) was *de minimis*. Moreover, the general
20 public was unlikely to have been misled as to who paid for the flyers given the circumstances
21 here. Therefore, in furtherance of the Commission's priorities, relative to other

matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), approve the attached Factual & Legal Analysis and the appropriate letters, and close the file.


RECOMMENDATIONS


1. Dismiss MUR 6550, pursuant to the Commission's prosecutorial discretion;
2. Approve the attached Factual & Legal Analysis and the appropriate letters; and
3. Close the file.

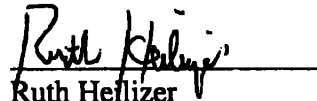
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9/25/12
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