



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OCT 10 2014

William B. Canfield III, Esq.
1900 M Street, NW
Suite 600
Washington, DC 20036

RE: MUR 6677

Dear Mr. Canfield:

The Federal Election Commission reviewed the allegations in your complaint received on October 25, 2012. On October 3, 2014, based upon the information provided in the complaint and information provided by the respondents, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on October 3, 2014.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

Sincerely,

General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Charles Boustany Jr. M.D. for Congress, Inc. MUR 6677
and Alan D. Hebert¹ as Treasurer

I. INTRODUCTION

This matter was generated by a complaint filed by William B. Canfield III, on behalf of Jeff Landry, on October 25, 2012, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations by Charles Boustany Jr. M.D. for Congress, Inc. and Alan D. Hebert in his official capacity as treasurer. It was scored as a relatively low-rated matter under the Enforcement Priority System, a system by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

In this matter, William B. Canfield III filed a complaint on behalf of his client, Jeff Landry,² alleging that Charles Boustany Jr. M.D. for Congress, Inc. and Alan D. Hebert as treasurer (collectively, the "Committee"),³ violated the Act and Commission regulations by distributing a mailer that failed to include a disclaimer. Compl. at 1, 2. Complainant states that

¹ Disclosure documents submitted by Charles Boustany Jr. M.D. for Congress, Inc. report that the Committee's treasurer is Alan D. Hebert. See Amended Statement of Organization, dated June 6, 2014. However, the Committee's Response and Designation of Counsel form spell the treasurer's surname as "Herbert."

² Jeff Landry is the former U.S. Representative for Louisiana's Third Congressional District; Landry lost to Boustany in the 2012 general election.

³ The Committee is the principal campaign committee of Congressman Charles Boustany, Jr., former U.S. Representative for Louisiana's Seventh Congressional District. Boustany currently represents Louisiana's newly-drawn Third Congressional District.

1 prior to the November 6, 2012 general election, the Committee engaged the services of Targeted
2 Creative Communications, Inc. to provide “direct mail advertising services,” and that the
3 Committee did not provide a disclaimer stating who paid for and authorized a mailer. *Id.*
4 Complainant asserts that while the actual distribution and cost of the mailer is unknown, “upon
5 information and belief, [it was] sent to all mail addresses in [Louisiana’s] Third Congressional
6 District.” Compl. at 1.

7 Attached to the Complaint are copies of two images that Complainant states are examples
8 of “the direct mail advertising efforts provided by Targeted Creative Communications, Inc. to the
9 Boustany committee.” Compl., Attach. at 1, 2. The first image includes an apparent photograph
10 of Jeff Landry writing the words “I will stop lying” on a schoolroom chalkboard. *Id.*, Attach at
11 1. Placed over the photo is the message, “Jeff Landry needs to learn a lesson about lying.” *Id.*
12 The name of the sender is not identified on the mailer, but a return address of “P. O. Box 80126,
13 Lafayette, LA 70598”⁴ is indicated, and a pre-paid postage mark reads “PAID Targeted Creative
14 Communications Inc.” *Id.* The second image shows another apparent photograph of Landry,
15 with messages such as “Jeff Landry lied to us and wants to raise our taxes,” “Vote NO on Jeff
16 Landry” (emphasis in original), and “Jeff Landry is running a false, negative campaign”
17 *Id.*, Attach. at 2. As in the first image, the name of the sender is not identified. *Id.*

18 In its response to the allegations, the Committee acknowledges that an “inadvertent
19 mistake” was made regarding the mailer at issue, and states that it distributed “more than thirty
20 different mail pieces during the 2012 election cycle that included the proper disclaimer.” Resp.

⁴ Complainant asserts that the post office box appears to be the address of Targeted Creative Communications, Inc. However, Statements of Organization filed with the Commission by the Committee indicate that it is the Committee’s mailing address. See Statement of Organization (filed June 9, 2014), accessible at http://docquery.fec.gov/cgi-bin/fecinq/?_14961238042%200, Statement of Organization (filed September 7, 2011), accessible at http://docquery.fec.gov/cgi-bin/fecinq/?_11932321045%200, Statement of Organization (filed December 28, 2005), accessible at http://docquery.fec.gov/cgi-bin/fecinq/?_25971688539%200.

1 at 1. The Committee asserts that the mailer at issue "is the only mail piece where an inadvertent
2 mistake was made." *Id.* Additionally, the Committee states that the post office box listed on the
3 mail piece and in the Complaint is in fact the mailing address of the Boustany campaign, "not the
4 address of its mail vendor as erroneously claimed in the Complaint." *Id.* The Committee did not
5 respond to the Complaint's assertion that the mailer was sent to all mail addresses in the Third
6 Congressional District, nor did the Response address the exact scope of the mailer's distribution.

7 **B. Legal Analysis**

8 A disclaimer is required whenever a political committee makes a disbursement for a
9 "public communication." 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a)); 11 C.F.R.
10 § 110.11(a)(1).⁵ A public communication is "a communication by means of any broadcast,
11 cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass
12 mailing, or telephone bank to the general public, or any other form of general public political
13 advertising." 52 U.S.C. § 30101(22) (formerly 2 U.S.C. § 431(22)); 11 C.F.R. § 100.26. A mass
14 mailing, in turn, is defined as a mailing of more than 500 pieces of mail of an identical or
15 substantially similar nature within any 30-day period. 52 U.S.C. § 30101(23) (formerly 2 U.S.C.
16 § 431(23)); 11 C.F.R. § 100.27. Although Respondents acknowledge the communication at issue
17 is a mail piece, the scope of its distribution is unclear. If the mailer did not meet the threshold of
18 "more than 500 pieces of mail of an identical or substantially similar nature," as set forth at 11
19 C.F.R. § 100.27, it would not be considered a "public communication," and thus would not be
20 subject to the disclaimer requirements at 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) and

⁵ Regardless of content, all public communications authorized and paid for by a candidate, an authorized committee of a candidate, or an agent of either, must clearly state that the communications were paid for by the authorized political committee. 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); 11 C.F.R. § 110.11(b)(1). Whenever any person makes a disbursement for a "public communication" that expressly advocates the election or defeat of a clearly identified candidate, he or she must include a disclaimer. 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a)); 11 C.F.R. §§ 110.11(a)(2), (b).

1 11 C.F.R. § 110.11. *See* MUR 6252 (A.J. Otjen, *et al.*). In this matter, it appears that the mailer
2 at issue was paid for by the Committee and was directed at federal candidate Jeff Landry, and the
3 Committee acknowledges that the mailer did not include a disclaimer. However, the exact scope
4 and cost of the mailer is unknown, and the Committee asserts that proper disclaimers were
5 included on over thirty other mail pieces during the campaign.

6 Exercising its prerogative to order its priorities, the Commission determined that further
7 resources were not warranted to determine with certainty whether the mailer qualified as a
8 "public communication" that would have required a disclaimer. Accordingly, the Commission
9 exercises its prosecutorial discretion and dismisses this matter pursuant to *Heckler v. Chaney*,
10 470 U.S. 821 (1985).