

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 MUR 7161) DISMISSAL AND
6 Rodoni for Supervisor 2016) CASE CLOSURE UNDER THE
7) ENFORCEMENT PRIORITY
8) SYSTEM
9

10 **GENERAL COUNSEL'S REPORT**

11 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
12 basis to allocate its resources and decide which matters to pursue. These criteria include, without
13 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into
14 account both the type of activity and the amount in violation; (2) the apparent impact the alleged
15 violation may have had on the electoral process; (3) the complexity of the legal issues raised in the
16 matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as
17 amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing
18 relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial
19 discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored
20 MUR 7161 as a low-rated matter and has determined that it should not be referred to the Alternative
21 Dispute Resolution Office.¹

22 The Complaint alleges that Rodoni for Supervisor 2016 (the "Committee"), campaign
23 committee for Dennis Rodoni, candidate for Marin County, California, Board of Supervisors, failed
24 to register with the Commission as a political committee and failed to file a report of an independent
25 expenditure related to a mailing that advocated for the election of two federal candidates, Hillary
26 Clinton for President and Jared Huffman for U.S. Congress.² The mailer encourages recipients to
27 "Vote Your Democratic Team"—Clinton, Huffman, and Rodoni—and contains pictures of each

¹ The EPS rating information is as follows:
Dec. 19, 2016.

Complaint filed: Oct. 24, 2016. Response filed:

² Compl. at 1 (Oct. 24, 2016).

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1 against a rectangular background. In addition, the Complaint alleges that the mailer, which calls for
2 voters to "Vote your Democratic Team," misleads voters by suggesting that these federal candidates
3 have supported or endorsed Rodoni and his campaign committee.³

4 Dennis Rodoni, on behalf of the Committee, states that his campaign manager consulted with
5 the Commission's helpline, and the manager determined that Rodoni's campaign did not need to
6 register as a political committee.⁴ Further, Rodoni contends that of the total cost of the mailer,
7 \$7,051.31, the amount allocable to the two federal candidates fell below the \$250 threshold for
8 independent expenditure reporting.⁵ The Committee calculated the allocation based on the total
9 space in the mailer allocated to each of the federal candidates.⁶

10 The Act and Commission regulations define a "political committee" as "any committee, club,
11 association or other group of persons which receives contributions aggregating in excess of \$1,000
12 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a
13 calendar year."⁷ In *Buckley v. Valeo*,⁸ the Supreme Court held that the term "political committee"
14 "need only encompass organizations that are under the control of a candidate or the major purpose of
15 which is the nomination or election of a candidate."⁹ Accordingly, an organization that is not

³ *Id.* See also Compl. Attach. 1. The mailer includes photos of Clinton, Huffman, and Rodoni in a box titled "Vote Your Democratic Team." The mailer also includes the endorsements of several local office holders and political entities, but does not appear to suggest that Rodoni was expressly endorsed by the pictured federal candidate.

⁴ Resp. at 1 (Dec. 19, 2016).

⁵ *Id.* See also Resp. Attach. 1 (Analysis by campaign manager of cost of mailer and allocation of costs).

⁶ *Id.*

⁷ 52 U.S.C. § 30101(4)(A); 11 C.F.R. § 100.5.

⁸ 424 U.S. 1 (1976).

⁹ *Id.*

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1 controlled by a candidate must register as a political committee only if it (1) crosses the \$1,000
2 threshold; and (2) has as its “major purpose” the nomination or election of federal candidates.¹⁰

3 The term “independent expenditure” means an expenditure by a person expressly advocating
4 the election or defeat of a clearly identified candidate that is not made in concert or cooperation with
5 or at the request or suggestion of such candidate, the candidate’s authorized committee, or their
6 agents.¹¹ The term “clearly identified” means that the name or a photograph appears, or that the
7 identity of a candidate is apparent by unambiguous reference.¹² Any person making independent
8 expenditures must file a report with the Commission at the end of the first reporting period in which
9 independent expenditures with respect to a given election aggregate more than \$250.¹³ Further, an
10 independent expenditure made on behalf of more than one clearly identified Federal candidate shall
11 be attributed to each candidate according to the benefit each derives.¹⁴ In the case of a publication,
12 the attribution shall be determined by the proportion of space devoted to each candidate as compared
13 to the space devoted to all candidates.¹⁵

14 The only information suggesting the Committee might have crossed the \$1,000 expenditure
15 threshold is the mailer and the documents showing its production costs. Even if the costs allocable to
16 Clinton and Huffman exceeded \$1,000—which appears unlikely—the available information indicates

¹⁰ *Id.* See also 52 U.S.C. § 30103.

¹¹ 52 U.S.C. § 30101(17).

¹² 52 U.S.C. § 30101(18).

¹³ 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10(b).

¹⁴ 11 C.F.R. § 106.1(a). See MUR 6492 (Erie County Ohio Republican Party) (Cost associated with newspaper advertisement allocated based on the space devoted to two federal candidates.). See also Advisory Op. 2006-11 (Washington Democratic State Central Committee) at 3 (Expenditures made on behalf of *more than one* clearly identified candidate “shall be attributed to each such candidate according to the benefit reasonably expected to be derived.” For “publications” (which includes mass mailings), the attribution is determined by “the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates.”).

¹⁵ *Id.*

1 that the Committee did not have as a major purpose the nomination or election of federal candidates.
2 Instead, the Committee is the campaign committee of a local candidate.¹⁶ Therefore, we recommend
3 that the Commission find no reason to believe that Rodoni for Supervisor 2016 violated 52 U.S.C.
4 § 30103.

5 We also recommend that the Commission dismiss the independent expenditure reporting
6 allegations. While the Committee's estimate of the allocable costs, 1.6% per candidate, may not
7 accurately represent the value of any independent expenditures in support of Clinton and Huffman, it
8 appears that the allocable costs were modest. Therefore, in furtherance of the Commission's
9 priorities, relative to other matters pending on the Enforcement docket, the Office of General Counsel
10 recommends that the Commission exercise its prosecutorial discretion and dismiss the allegation that
11 the Committee violated 52 U.S.C. § 30104(c) by failing to disclose the cost of the mailer as an
12 independent expenditure.¹⁷

13 **RECOMMENDATIONS**

- 14
- 15 1. Find no reason to believe that Dennis Rodoni for Supervisor 2016 violated 52 U.S.C.
16 § 30103;
 - 17 2. Dismiss the allegation that Dennis Rodoni for Supervisor 2016 violated 52 U.S.C.
18 § 30104(c) pursuant to the Commission's prosecutorial discretion under *Heckler v.*
19 *Chaney*, 470 U.S. 821 (1985);
 - 20 3. Approve the Factual and Legal Analysis;
 - 21 4. Approve the appropriate letters; and
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¹⁶ Under the Act, a candidate for local office may not spend any funds for a public communication that constitutes federal election activity unless the funds are subject to the Act's "limitations, prohibitions, and reporting requirements." 52 U.S.C. § 30125(f)(1). In this matter, there is no information that the Committee accepted contributions prohibited under the Act. A review of the Committee's disclosure reports, filed with Marin County, California, reveals no contributions prohibited under the Act. At the time the communication was disseminated, there were accumulative individual contributions that would exceed the Act's \$2,700 individual contribution limit to a candidate. However, it appears that there were sufficient funds within the limitations of the Act to cover the cost of the communication. Therefore, these contributions do not change our recommendations. County of Marin, Candidate and Campaign Filing, at <https://www.marincounty.org/depts/rv/financial-disclosure/candidate-and-campaign-filing>.

¹⁷ *Heckler v. Chaney*, 470 U.S. 821 (1985).

5. Close the file.

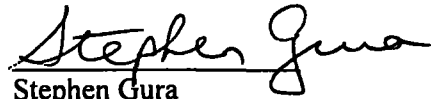
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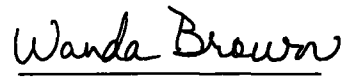
9.14.17

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