

## FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

## VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

AÜG 1 6 2017

American Democracy Legal Fund Attn: Mr. Brad Woodhouse 455 Massachusetts Avenue, N.W. Washington, DC 20001

RE:

MUR 7198

Dear Mr. Woodhouse:

The Federal Election Commission ("Commission") reviewed the allegations in your complaint received on November 10, 2016. On July 27, 2017, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations and close its file in this matter. Accordingly, the Commission closed its file in this matter on July 27, 2017.

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. 66132 (Dec. 14, 2009). A copy of the
dispositive General Counsel's Report is enclosed for your information.

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).

Sincerely,

Lisa J. Stevenson

Acting General Counsel

BY: Jeff S. Jordan

Assistant General Counsel Complaints Examination and Legal Administration

Enclosure
General Counsel's Report

## BEFORE THE FEDERAL ELECTION COMMISSION

## ENFORCEMENT PRIORITY SYSTEM DISMISSAL REPORT

MUR: 7198 Respondents: Ronald Harold Johnson

Complaint Receipt Date: Nov. 10, 2016

Response Date(s): Dec. 1, 2016

James J. Malczewski, as treasurer (collectively the "Committee")

**EPS Rating:** 

Alleged Statutory/ 52 U.S.C. § 30120(d)(1)(B)
Regulatory Violations: 11 C.F.R. § 110.11(c)(3)(ii)-(iii)

The Complaint alleges that Johnson, a 2016 candidate for U.S. Senate in Wisconsin, and the Committee, violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by airing a television ad critical of Johnson's opponent that failed to include a written "stand by your ad" disclaimer at the end of the ad. Instead, the Complaint alleges that a written disclaimer was placed at the beginning of the ad. The Committee acknowledges the error.

The Act and Commission regulations require that television communications by candidates contain disclaimers, which include, among other things, a "stand by your ad" statement that identifies the candidate and states that the candidate approved the communication.<sup>4</sup> The required statement must be spoken by the candidate, and must also appear

Compl. at 2.

ld. See also Resp. at 1. The ad, titled "In It For Himself" is available at https://www.youtube.com/watch?v=iPuHYvlqyVg.

Resp. at 1. The Committee acknowledges that it failed to include a disclaimer at the end of the ad, but responds that there was little risk that voters would be misled by the ad because the written disclaimer appeared at the ad's beginning, and Johnson's picture and spoken disclaimer appeared at the end.

<sup>52</sup> U.S.C. § 30120(d)(1)(B); 11 C.F.R. § 110.11(c)(3)(ii).

EPS Dismissal Report MUR 7198 (Ron Johnson for Senate, Inc.) Page 2 of 3

in clearly readable writing at the end of the communication.<sup>5</sup> Although the Committee included both a written disclaimer at the beginning of the ad and a statement of approval from the candidate, the ad was technically noncompliant because the written disclaimer was not placed at the end of the ad.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (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 and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the technical nature of the violation, and the likelihood that the general public would not have been confused as to who sponsored and paid for the ad, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

Lisa J. Stevenson Acting General Counsel

Kathleen M. Guith
Associate General Counsel

<sup>&</sup>lt;sup>5</sup> 11 C.F.R. § 110.11(c)(3)(ii)-(iii).

<sup>&</sup>lt;sup>6</sup> Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).

EPS Dismissal Report	•
MUR 7198 (Ron Johnson for	Senate, Inc.)
Page 3 of 3	

7.1	1.17		
Date			

BY:

Stephen Gura

Deputy Associate General Counsel

Assistant General Counsel

Gavin Palmer

Intern