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1 2	BEFORE THE FEDERAL ELECTION COMMISSION	
3 4 5 6 7 8 9	In the Matter of  MUR 7210  Frank Durkalski  Chesterland News	) ) ) DISMISSAL AND ) CASE CLOSURE UNDER THE ) ENFORCEMENT PRIORITY ) SYSTEM )
1	GENERAL COUNSEL'S REPORT	
12	Under the Enforcement Priority System, the Commission uses formal scoring criteria as a	
13	basis to allocate its resources and decide which matters to pursue. These criteria include, without	
4	limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into	
15	account both the type of activity and the amount in violation; (2) the apparent impact the alleged	
6	violation may have had on the electoral process; (3) the complexity of the legal issues raised in the	
17	matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as	
8	amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing	
19	relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial	
20	discretion to dismiss cases under certain circumstances and where appropriate, to find no reason to	
21	believe that a violation occurred.	
22	The Office of General Counsel h	as scored MUR 7210 as a low-rated matter and has
23	determined that it should not be referred to the Alternative Dispute Resolution Office. 1 For the	
24	reasons set forth below, we recommend that the Commission dismiss the allegations that Frank	
>5	Durkalski violated the Act or Commission regulations, and find no reason to believe that the	

The Complaint alleges that on August 10th and October 19, 2016, the Chesterland News ran two paid advertisements criticizing Hillary Clinton that lacked appropriate disclaimers. After

Chesterland News violated the Act or Commission regulations.

The EPS rating information is as follows: Filed: February 3, 2017 and March 3, 2017.

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1 receiving a copy of the Complaint, the Chesterland News published a "Clarification" on November 2,

- 2 2016, providing the name and address of the individual responsible for the ads.<sup>2</sup> The clarification
- 3 provided the following information: "Paid for by Frank Durkalski, 8124 Mulberry Road, Chester
- 4 Township, and not authorized by any candidate or candidate committee."<sup>3</sup>

The Chesterland News responds—correctly—that a media entity has no duty to ensure a paid political ad complies with the Act's disclaimer requirements; instead, the obligation rests with the person placing the ad.<sup>4</sup> Durkalski responds that he saw the ad in another newspaper and decided to run it in the Chesterland News.<sup>5</sup> He further states that the ad did not contain an endorsement, and that he was expressing his First Amendment rights. *Id.* Durkalski also states that he was responsible for the November 2, 2016, clarification. *Id.* 

Whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, through a newspaper or general public political advertising, the Act and Commission regulations require that the communication clearly state the name and street address of the person who paid for communication, and, if the communication is not authorized by a candidate or candidate's committee, state that it is not authorized as such. 52 U.S.C. § 30120(a)(3); 11 C.F.R. §§ 110.11(a)(2), (b)(3).

The Complaint attached black and white copies of the ads and a copy of the clarification.

Publicly available information for 2016 advertising rates for the Chesterland News indicates that quarter-page advertisements cost \$152 for black and white ads and \$202 for color ads. See <a href="http://www.chesterlandnews.com/wp-content/uploads/2016/05/Rate-Card-CN-2016\_final\_web.pdf">http://www.chesterlandnews.com/wp-content/uploads/2016/05/Rate-Card-CN-2016\_final\_web.pdf</a>. Therefore, the total cost would have been, at most, \$404 for two color quarter-page ads, and \$304 for two black and white quarter-page ads.

<sup>4</sup> Chesterland News Resp. at 1. See generally, 11 C.F.R. § 110.11(b), (c).

<sup>5</sup> Durkalski Resp. at 1.

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Date

Page 3 1 Thus, in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket and the small amount at issue, <sup>6</sup> and Durkalski's pre-election clarification that 2 3 identified him as the party responsible for the ads, the Office of General Counsel recommends that 4 the Commission exercise its prosecutorial discretion and dismiss the allegations against him 5 pursuant to Heckler v. Chaney, 470 U.S. 821, 831-32 (1985). We also recommend that the 6 Commission find no reason to believe as to the Chesterland News. Finally, we recommend that the 7 Commission approve the attached Factual and Legal Analyses, close the file as to all respondents, 8 and send the appropriate letters. 9 RECOMMENDATIONS 1. Dismiss the allegations that Frank Durkalski violated the Act and Commission 11 regulations, pursuant to the Commission's prosecutorial discretion under Heckler 12 v. Chaney, 470 U.S. 821 (1985); 13 14 2. Find no reason to believe that the Chesterland News violated the Act and Commission regulations; 3. Approve the attached Factual and Legal Analyses and the appropriate letters; and 4. Close the file as to all Respondents. Lisa J. Stevenson General Counsel Kathleen M. Guith Associate General Counsel BY: 9.20.17

Dismissal and Case Closure Under EPS — MUR 7210 (Frank Durkalski, et al.)

General Counsel's Report

Deputy Associate General Counsel

Although the available information does not indicate exactly what the ads' costs were, they were likely just over \$250, the threshold for independent expenditure reporting. See 52 U.S.C. §§ 30101(17), 30104(c); 11 C.F.R. §§ 100.16(a), 104.4(e)(3), 105.4, 109.10(b).

General Counsel's Report

Dismissal and Case Closure Under EPS — MUR 7210 (Frank Durkalski, et al.)

Jeff S. Jordan Assistant General Counsel

Donald E. Campbell Attorney

# FEDERAL ELECTION COMMISSION **FACTUAL AND LEGAL ANALYSIS**

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3 RESPONDENT: Frank Durkalski

MUR 7210

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#### I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Frank Durkalski and the Chesterland News. It was scored as a low-rated matter under the Enforcement Priority 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**

15 The Complaint alleges that on August 10th and October 19, 2016, the Chesterland News 16 ran two paid advertisements criticizing Hillary Clinton that lacked appropriate disclaimers. After 17 receiving a copy of the Complaint, the Chesterland News published a "Clarification" on 18 November 2, 2016, providing the name and address of the individual responsible for the ads. 1 19 The clarification provided the following information: "Paid for by Frank Durkalski, 8124 20 Mulberry Road, Chester Township, and not authorized by any candidate or candidate 21 committee."2

22 The Chesterland News responds—correctly—that a media entity has no duty to ensure a 23 paid political ad complies with the Act's disclaimer requirements; instead, the obligation rests

ı The Complaint attached black and white copies of the ads and a copy of the clarification.

Publicly available information for 2016 advertising rates for the Chesterland News indicates that quarterpage advertisements cost \$152 for black and white ads and \$202 for color ads. See http://www.chesterlandnews.com/wp-content/uploads/2016/05/Rate-Card-CN-2016 final web.pdf. Therefore, the total cost would have been, at most, \$404 for two color quarter-page ads, and \$304 for two black and white quarterpage ads.

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- 2 and decided to run it in the Chesterland News. 4 He further states that the addid not contain an
- 3 endorsement, and that he was expressing his First Amendment rights. Durkalski also states that
- 4 he was responsible for the November 2, 2016, clarification.

# B. Legal Analysis

Whenever any person makes a disbursement for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, through a newspaper or general public political advertising, the Act and Commission regulations require that the communication clearly state the name and street address of the person who paid for communication, and, if the communication is not authorized by a candidate or candidate's committee, state that it is not authorized as such. 52 U.S.C. § 30120(a)(3); 11 C.F.R. §§ 110.11(a)(2), (b)(3).

Accordingly, in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket and the small amount at issue,<sup>5</sup> and Durkalski's pre-election clarification that identified him as the party responsible for the ads, the Commission exercises its prosecutorial discretion and dismisses the allegations as to Frank Durkalski pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

Chesterland Resp. at 1. See generally, 11 C.F.R. § 110.11(b), (c).

Durkalski Resp. at 1.

Although the available information does not indicate exactly what the ads' costs were, they were likely just over \$250, the threshold for independent expenditure reporting. See 52 U.S.C. §§ 30101(17), 30104(c); 11 C.F.R. §§ 100.16(a), 104.4(e)(3), 105.4, 109.10(b).

# FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

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**RESPONDENT:** Chesterland News

MUR 7210

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#### II. FACTUAL AND LEGAL ANALYSIS

### A. Factual Background

The Complaint alleges that on August 10th and October 19, 2016, the Chesterland News ran two paid advertisements criticizing Hillary Clinton that lacked appropriate disclaimers. After receiving a copy of the Complaint, the Chesterland News published a "Clarification" on November 2, 2016, providing the name and address of the individual responsible for the ads. 

The clarification provided the following information: "Paid for by Frank Durkalski, 8124 Mulberry Road, Chester Township, and not authorized by any candidate or candidate committee."

The Chesterland News responds—correctly—that a media entity has no duty to ensure a paid political ad complies with the Act's disclaimer requirements; instead, the obligation rests

The Complaint attached black and white copies of the ads and a copy of the clarification.

Publicly available information for 2016 advertising rates for the Chesterland News indicates that quarter-page advertisements cost \$152 for black and white ads and \$202 for color ads. See <a href="http://www.chesterlandnews.com/wp-content/uploads/2016/05/Rate-Card-CN-2016\_final\_web.pdf">http://www.chesterlandnews.com/wp-content/uploads/2016/05/Rate-Card-CN-2016\_final\_web.pdf</a>. Therefore, the total cost would have been, at most, \$404 for two color quarter-page ads, and \$304 for two black and white quarter-page ads.

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- 4 he was responsible for the November 2, 2016, clarification.

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communications expressly advocating the election or defeat of a clearly identified candidate,

through a newspaper or general public political advertising, the Act and Commission regulations

require that the communication clearly state the name and street address of the person who paid

for communication, and, if the communication is not authorized by a candidate or candidate's

committee, state that it is not authorized as such. 52 U.S.C. § 30120(a)(3); 11 C.F.R.

12 §§ 110.11(a)(2), (b)(3).

13 Accordingly, because Durkalski, not the Chesterland News, paid for the ads and was

responsible for the disclaimer on the ads, the Commission finds no reason to believe that the

15 Chesterland News violated the Act or Commission regulations.

Chesterland Resp. at 1. See generally, 11 C.F.R. § 110.11(b), (c).

Durkalski Resp. at 1.

# FEDERAL ELECTION COMMISSION FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Frank Durkalski,

**MUR 7210** 

Chesterland News

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Case Closure — MUR 7210 (Frank Durkalski) Factual and Legal Analysis Page 2

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Accordingly, in furtherance of the Commission's priorities relative to other matters pending on the Enforcement docket and the small amount at issue,<sup>5</sup> and Durkalski's pre-election clarification that identified him as the party responsible for the ads, the Commission exercises its prosecutorial discretion and dismisses the allegations as to Frank Durkalski and Chesterland News pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

Chesterland Resp. at 1. See generally, 11 C.F.R. § 110.11(b), (c).

Durkalski Resp. at 1.

Although the available information does not indicate exactly what the ads' costs were, they were likely just over \$250, the threshold for independent expenditure reporting. See 52 U.S.C. §§ 30101(17), 30104(c); 11 C.F.R. §§ 100.16(a), 104.4(e)(3), 105.4, 109.10(b).