

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2  
3 In the Matter of )

4 )  
5 Unknown Respondent )

MUR 7355

6  
7 **SECOND GENERAL COUNSEL'S REPORT**

8 **I. ACTIONS RECOMMENDED**

9 We recommend that the Commission: (1) substitute the name of Ahern Ad, LLC in the  
10 place of "Unknown Respondent"; (2) take no further action as to Ahern Ad, LLC; (3) find no  
11 reason to believe that that Heller for Senate and Chrissie Hastie in her official capacity as  
12 treasurer violated 52 U.S.C. § 30118(a), 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11;  
13 (4) approve the appropriate letters; and (5) close the file.

14 **II. BACKGROUND AND PROCEDURAL HISTORY**

15 This matter involves an electronic billboard reading "Heller for Senate" but not  
16 containing any disclaimer. The Complaint in this matter alleged that Heller for Senate ("Heller  
17 Committee"), the authorized committee of Dean Heller for United States Senate, failed to  
18 include a proper disclaimer on the billboard advertisement or accepted an impermissible  
19 corporate contribution.<sup>1</sup> On October 4, 2019, the Commission found reason to believe that  
20 Unknown Respondent violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to  
21 include a disclaimer on the electronic billboard and violated 52 U.S.C. § 30104(c) and 11 C.F.R.  
22 § 109.10 by failing to report an independent expenditure in connection with the electronic  
23 billboard identifying the then-U.S. Senator from Nevada Dean Heller.<sup>2</sup> The Commission took no

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<sup>1</sup> Compl. at 5 (Mar. 28, 2018).

<sup>2</sup> Certification ("Cert.") ¶¶ 1-2 (Oct. 8, 2019).

1 action at that time with respect to the allegations against Heller for Senate and Chrissie Hastie in  
2 her official capacity as treasurer.<sup>3</sup> The Commission also approved compulsory process.<sup>4</sup>

3 As a result of the investigation, we determined that Ahern Ad, LLC (“Ahern Ad”), a firm  
4 in Las Vegas, Nevada, controlled the advertisement space at issue and displayed the  
5 advertisements, and that no other entity paid to rent, lease or display the advertisement space.<sup>5</sup>  
6 After advising the Commission,<sup>6</sup> we notified Ahern Ad that we determined that it may be the  
7 “Unknown Respondent” to which the Commission previously made findings, and offered Ahern  
8 Ad an opportunity to respond to the Complaint and the Factual and Legal Analysis.<sup>7</sup> Ahern Ad  
9 responded that it displayed the ads as a marketing effort, and any violation of the law was  
10 inadvertent.<sup>8</sup> Because it produced and displayed the ads, Ahern Ad should be substituted in  
11 place of the previously Unknown Respondent in this matter. Based upon the limited amount in  
12 violation and the Commission’s treatment of other matters involving similar facts, we  
13 recommend that the Commission take no further action as to the allegations that Ahern Ad  
14 violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include disclaimers on a  
15 billboard expressly advocating Heller’s election and 52 U.S.C. § 30104(c) and 11 C.F.R.  
16 § 109.10 by failing to report an independent expenditure. Because nothing in the record  
17 indicates or suggests that the Heller Committee was involved in the creation or placement of the

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<sup>3</sup> *Id.* ¶ 3.

<sup>4</sup> *Id.* ¶ 5.

<sup>5</sup> See Ahern Ad Resp. to Voluntary Request for Information at 1 (June 24, 2021) (“Resp. to Voluntary Request”).

<sup>6</sup> See Memo to the Commission (June 30, 2020).

<sup>7</sup> Notification Letter from Delbert K. Rigsby, Attorney, FEC, to Russell Marsh, Counsel to Ahern Ad (Sept. 1, 2021).

<sup>8</sup> Ahern Ad Resp. to Notification Letter at 1 (Oct. 8, 2021) (“Resp. to Notification”).

1 advertisements, we further recommend that the Commission find no reason to believe that the  
2 Heller Committee violated 52 U.S.C. § 30118 by accepting a corporate contribution and  
3 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include disclaimers on the billboard.

### 4 **III. SUMMARY OF INVESTIGATION**

5 Dean Heller was a candidate for the U.S. Senate in Nevada in 2018, and Heller for Senate  
6 is his principal campaign committee.<sup>9</sup> At issue in this matter are ten different rotating  
7 advertisements supporting Heller that appeared on an electronic billboard at a 76 gas station in  
8 Las Vegas, Nevada.<sup>10</sup> The Complaint provided photographs of the billboard advertisements  
9 interspersed with advertisements for free electric vehicle charging, stating “provided by 76”  
10 alongside the gas station’s logo.<sup>11</sup> The Complaint did not identify the precise location of the 76  
11 gas station that hosted the billboard, stating only that it was located in Las Vegas.<sup>12</sup> Nor did the  
12 Complaint provide the time frame during which the billboards identifying Heller were displayed,  
13 or the duration of each display.<sup>13</sup> On October 4, 2019, the Commission voted to find reason to  
14 believe that Unknown Respondent violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by  
15 failing to include disclaimers on the electronic billboard and that Unknown Respondent violated  
16 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10 by failing to report an independent expenditure,  
17 and authorized an investigation.<sup>14</sup>

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<sup>9</sup> See Dean Heller, Amended Statement of Candidacy (Oct. 2, 2018); Heller for Senate, Amended Statement of Organization (Oct. 2, 2018).

<sup>10</sup> Compl. at 2.

<sup>11</sup> *Id.* at 1-2, Ex. A.

<sup>12</sup> *Id.* at 1-5.

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> Cert. ¶¶ 1, 2 (Oct. 8, 2019).

1           During our investigation, we contacted the Complainant with clarifying questions about  
2 the location of the electronic billboard. Additionally, we sought information about the company  
3 owning the electronic billboard and information about the ownership of the 76 gas station in Las  
4 Vegas, Nevada where the billboard was located.

5           We determined that the electronic billboard was displayed on a mobile solar generator  
6 (“MSG”) owned by DC Solar, a manufacturer and distributor of solar powered equipment. DC  
7 Solar was at the center of multiple (unrelated) federal criminal investigations, Securities  
8 Exchange Commission (“SEC”) enforcement litigation, and bankruptcy reorganization in what  
9 the U.S. Department of Justice (“DOJ”) would describe as “a billion dollar Ponzi scheme.”<sup>15</sup>  
10 After unsuccessful voluntary requests to counsel for DC Solar’s bankruptcy trustee,<sup>16</sup> the  
11 Commission authorized a subpoena to DC Solar care of the bankruptcy trustee requesting  
12 information related to the identity of the person or entity responsible for the advertisements.<sup>17</sup> In  
13 response, the trustee asserted that she was unable to find relevant records but also represented

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<sup>15</sup> Press Release, U.S. Dep’t of Justice, *Top Executives Plead Guilty to Participating in a Billion Dollar Ponzi Scheme—the Biggest Criminal Fraud Scheme in the History of the Eastern District of California* (Jan. 24, 2020), <https://www.justice.gov/usao-edca/pr/top-executives-plead-guilty-participating-billion-dollar-ponzi-scheme-biggest-criminal>; Press Release, *Sec. & Exch. Comm’n, SEC Charges California Contractor and CPA for Roles in \$909 Million Ponzi Scheme* (Oct. 22, 2019), <https://www.sec.gov/litigation/litreleases/2019/lr24651.htm>. See also Don Thompson, *2 Guilty in \$1B Fraud as Feds Auction Burt Reynolds Trans Am*, ASSOCIATED PRESS, Oct. 22, 2019, <https://anews.com/article/saramento-us-news-ap-top-news-movies-ca-state-wire-1122343110b5846a891a6b63afac042b6>; Nick Cahill, *Feds Seize Millions from Couple Accused in Ponzi Scheme*, COURTHOUSE NEWS SERVICE (Mar. 19, 2019), <https://www.courthousenews.com/feds-seize-millions-from-couple-accused-of-ponzi-scheme/>.

<sup>16</sup> With DC Solar under investigation, we sought relevant information from the owner of the 76 gas franchise. See Letter from Cerissa Cafasso, Attorney, FEC, to Tarun Maitra (Jan. 21, 2020); Letter from Cerissa Cafasso, Attorney, FEC, to Soma Prasad (Jan. 21, 2020); Letter from Cerissa Cafasso, Attorney, FEC, to Tarun Maitra (Jan. 30, 2020); Letter from Cerissa Cafasso, Attorney, FEC, to Soma Prasad (Jan. 30, 2020). However, ownership had changed, and the letters to the owners at the time the advertisements were displayed were returned as undelivered when attempted both to the franchise location and what we understood to be their home address.

<sup>17</sup> See Subpoena to Produce Documents & Order to Submit Written Documents (July 14, 2020) (requesting documents from DC Solar care of bankruptcy trustee). See also Cert. ¶ 1 (July 8, 2020).

1 that she could not be sure she had all of the information that had existed when the “federal  
2 authorities raided” DC Solar in December 2018.<sup>18</sup>

3 We determined that the billboard was displayed at the 76 gas station located at  
4 4708 W. Charleston Boulevard — at an intersection with a traffic count of 87,000 cars per day.<sup>19</sup>  
5 The available information does not indicate the precise duration the advertisements were  
6 displayed, but the Complaint was signed on March 13, 2018, and the entire MSG was reportedly  
7 removed from the station by March 18, 2018.<sup>20</sup>

8 Further, we contacted the SEC to see if it could provide information regarding DC Solar  
9 and the use of the electronic billboard in 2018. However, the SEC did not have any relevant  
10 records. We also contacted DOJ and through the U.S. Attorney's Office for the Eastern District  
11 of California about information regarding DC Solar; through that office we learned that the MSG  
12 in question had been leased to Ahern Ad at the time in question and that there was no  
13 information related to the advertisements in DC Solar's files.<sup>21</sup>

14 We sent a voluntary request for information to Ahern Ad asking for information such as  
15 who paid for the advertisements, the cost of the advertisements, the dates and locations of the

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<sup>18</sup> DC Solar Bankruptcy Trustee Response to Subpoena to Produce Documents & Order to Submit Written Documents at 1, 2 (Aug. 19, 2020).

<sup>19</sup> See Glen Meek, *Electronic Billboards Promoting Heller, Electric Vehicles Cause a Complaint and a Conundrum*, THE NEVADA INDEPENDENT (Mar. 20, 2018), <https://thenevadaindependent.com/article/electronic-billboards-promoting-electric-vehicles-heller-cause-a-complaint-and-a-conundrum>. As noted in the article, the gas station is at the intersection of W. Charleston and S. Decatur Boulevard. When looking on 76's website in December 2019, a street-view image of the gas station under construction displayed the traffic count. The company website is found at, [www.76.com](http://www.76.com). A screenshot of image is available in the Voting Ballot Matters folder.

<sup>20</sup> See *id.*

<sup>21</sup> Email from Christopher Hales, Office of the U.S. Attorney for the Eastern District of California, to Cerissa Cafasso, Attorney, FEC (Apr. 30, 2021).

1 advertisements and supporting documentation.<sup>22</sup> Ahern Ad responded through counsel and  
2 stated that no person, organization, or entity paid for the advertisements.<sup>23</sup> Rather, Ahern Ad  
3 stated that “it displayed the ads in the hopes that this would generate business with the Heller  
4 campaign, but no ads were ever purchased.”<sup>24</sup> According to the Nevada Secretary of State,  
5 Ahern Ad’s entity status is “revoked,” and it is not currently allowed to transact business.<sup>25</sup>

#### 6 **IV. NOTICE TO AHERN AD AND ITS RESPONSE**

7 After receiving Ahern Ad’s response to our voluntary request during the investigation,  
8 we determined that Ahern Ad may be the entity that we identified as Unknown Respondent. We  
9 notified the Commission that we intended to notify Ahern Ad of the allegations in the Complaint  
10 and offer it an opportunity to respond.<sup>26</sup> Thereafter, we notified Ahern Ad that the investigation  
11 revealed that it had produced and displayed the advertisements on the billboard space that it  
12 controlled and that Ahern Ad may be the Unknown Respondent as to which the Commission  
13 previously made findings.<sup>27</sup> We also offered Ahern Ad an opportunity to respond to the  
14 Complaint and the Commission’s Factual and Legal Analysis.<sup>28</sup> Ahern Ad responded by  
15 reiterating its answers made during the investigation that nobody paid for the ads and that the ads

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<sup>22</sup> Letter from Cerissa Cafasso, Attorney, FEC, to Evan and Tammy Ahern, owners of Ahern Ad (May 20, 2021).

<sup>23</sup> Resp. to Voluntary Request at 1 (June 24, 2021).

<sup>24</sup> *Id.*

<sup>25</sup> SILVERFLUME NEVADA’S BUSINESS PORTAL, *Nevada Business Search*, <http://esos.nv.gov/EntitySearch/OnlineEntitySearch> (last visited August 11, 2022); *see also*, Ahern Ad Resp. to Notification Letter at 2, Ex. A; NEV. REV. STAT. § 86.274 (“On the first day of the first anniversary of the month following the month in which the filing was required, the charter of the company is revoked and its right to transact business is forfeited.”).

<sup>26</sup> Memo to the Commission (Aug. 19, 2021).

<sup>27</sup> Notification Letter to Ahern at 1.

<sup>28</sup> *Id.*

1 were displayed in hopes of generating business, and also acknowledging that the billboards did  
2 not indicate that they were authorized by the Heller campaign or who paid for the  
3 advertisements.<sup>29</sup> Additionally, Ahern Ad states that its business status is “revoked,” and its  
4 owners, Evan and Tammi Ahern, have filed for personal bankruptcy.<sup>30</sup>

## 5 **V. DISCUSSION**

### 6 **A. Ahern Ad Failed to Include a Disclaimer in the Advertisement and Failed to** 7 **File an Independent Expenditure Report, but the Commission Should** 8 **Take No Further Action** 9

10 As set forth in the Commission’s Factual and Legal Analysis, the advertisement here did  
11 not satisfy the requirements of the Act and Commission regulations because it did not contain  
12 information indicating who paid for it or whether it was authorized by a candidate or candidate’s  
13 committee.<sup>31</sup> The investigation revealed that Ahern Ad provided the space for and content of the  
14 advertisement that expressly advocates the election of a clearly identified candidate — *i.e.*,  
15 “Heller for Senate.”<sup>32</sup> Because the evidence does not indicate that the Heller Committee  
16 authorized the advertisement,<sup>33</sup> the advertisement should have contained a disclaimer that it was  
17 paid for by Ahern Ad, state Ahern Ad’s street address, telephone number or Internet address, and  
18 that the advertisement was not authorized by any candidate or candidate committee.<sup>34</sup>

19 The Commission’s Factual and Legal Analysis also states that based on general cost  
20 information for electronic billboards, the billboard likely cost more than \$250, which would

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<sup>29</sup> Resp. to Notification at 1.

<sup>30</sup> See Resp. to Notification at 2; *see also supra* n.24; Resp. to Notification, Ex. B.

<sup>31</sup> F&LA at 3. See 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a)(2).

<sup>32</sup> See F&LA at 5-6; 11 C.F.R. § 100.22 (definition of express advocacy).

<sup>33</sup> See *infra* section V.B.

<sup>34</sup> See 52 U.S.C. § 30120(a)(3); 11 C.F.R. § 110.11(b)(3).

1 require the reporting of an independent expenditure.<sup>35</sup> Although the evidence obtained  
2 information during the investigation does not reflect the specific monetary value of the  
3 advertisements, the MSG was located at a heavily trafficked intersection<sup>36</sup> that supports the  
4 finding at the reason-to-believe stage that the advertisement appeared to have a value of at least  
5 \$250 and therefore required an independent expenditure report.<sup>37</sup> Accordingly, Ahern Ad should  
6 have filed the appropriate independent expenditure report.

7         Despite the violations of the Act, which the investigation has both confirmed and yielded  
8 additional information about the circumstances of the advertising, we do not recommend that the  
9 Commission further pursue enforcement in this matter. The amount in violation, although not  
10 specifically known,<sup>38</sup> does not appear to exceed that in similar matters in which the Commission  
11 has taken no further action.<sup>39</sup> Accordingly, we recommend that the Commission take no further

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<sup>35</sup> F&LA at 6-7. *See* 52 U.S.C. § 30104(c); 11 C.F.R. § 109.10.

<sup>36</sup> *See supra* at 5.

<sup>37</sup> *See* F&LA at 7.

<sup>38</sup> Ahern Ad did not display the billboard ads for a paying customer, but that does not vitiate the disclaimer and independent expenditure reporting violations, because the express advocacy message of the billboard was viewable by individuals passing by the gas station and existed with or without a paying customer.

<sup>39</sup> *See* Second Gen. Counsel's Rpt. at 6-7, MUR 6642 (Unknown Respondents/Kauffman) (recommending no further action on the disclaimer and independent expenditure reporting violations where the billboard advertisement cost \$3,000 and evidence indicates that the individual who paid for the ad was acting on his own and not in concert with other individuals or groups) and Amended Cert. ¶ 1.b. (May 9, 2014), MUR 6642 (Unknown Respondent/Kauffman) (approving recommendation); Second Gen. Counsel's Rpt. at 2, MURs 6486 and 6491 (Unknown Respondents/Hicks) (recommending no further action after reason to believe findings of disclaimer and independent expenditure reporting violations where the billboard advertisements cost \$10,500 but the individual who paid for the ads described herself as elderly and infirm, cooperated after notification of the apparent violations, lacked experience with election laws and had not coordinated her activities with any political party or candidate) and Cert. ¶ 1 (Dec. 6, 2012), MURs 6486 & 6491 (Unknown Respondents/Hicks) (approving recommendation); Second Gen. Counsel's Rpt. at 6, MUR 6838 (Unknown Respondent/Aossey) (recommending no further action on the disclaimer and independent expenditure reporting violations where the mailers cost \$3,250 and evidence indicates that the individual who paid for the mailers was solely responsible for the mailers and did not collaborate with a political campaign) and Cert. ¶ 2 (Sept. 16, 2016), MUR 6838 (Unknown Respondent/Aossey) (dismissed pursuant *Heckler v. Chaney*, 470 U.S. 821 (1985), with a letter of caution, the allegations as to Joseph Aossey's violations of the disclaimer and independent expenditure reporting provisions of the Act). *See also* Second Gen. Counsel's Rpt. at 2, MUR 7280 (Unknown Owner of Trump 2020 Facebook Page/Utley) (recommending no further action on the disclaimer and independent expenditure reporting violations where \$483 was spent on the Facebook advertisements)

1 action<sup>40</sup> as to the allegations that Ahern Ad, LLC violated 52 U.S.C. § 30120(a) and 11 C.F.R.  
2 § 110.11 by failing to include disclaimers on the electronic billboard and 52 U.S.C. § 30104(c)  
3 and 11 C.F.R. § 109.10 by failing to report an independent expenditure.<sup>41</sup>

4 **B. There Is No Reason to Believe the Heller Committee Authorized**  
5 **the Advertisement**  
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7 The evidence developed in the investigation, Ahern Ad's response to the Complaint, and  
8 the Heller Committee's response to the Complaint<sup>42</sup> all counter the allegations against the Heller  
9 Committee that it was involved in the creation or placement of the advertisements.<sup>43</sup> Therefore,  
10 we recommend that the Commission find no reason believe that the Heller Committee violated  
11 52 U.S.C. § 30118(a) by accepting a corporate contribution and 52 U.S.C. § 30120(a) and  
12 11 C.F.R. § 110.11 by failing to place a disclaimer on the electronic billboard.

13 **VI. RECOMMENDATIONS**

14 1. Substitute the name of Ahern Ad, LLC in the place of "Unknown Respondent" in the  
15 Commission's previous findings in MUR 7355;

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and Cert. ¶¶ 1.b, 1.c. (Apr. 28, 2022), MUR 7280 (Unknown Owner of Trump 2020 Facebook Page/Utley)  
(approving recommendation).

<sup>40</sup> We also note in support of the no further action recommendation Ahern Ad's prompt response to the  
Commission's initial inquiry during the investigation and to the subsequent notification.

<sup>41</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

<sup>42</sup> See Heller for Senate Response at 2 (Apr. 24, 2018) (denies knowing who paid for the advertisement and  
denies authorizing the advertisement).

<sup>43</sup> Resp. to Voluntary Request at 1; Resp. to Notification at 1. The Commission previously took no action as  
to the Heller Committee at the time it found reason to believe as to Unknown Respondent. See Cert. ¶ 3 (Oct. 8,  
2019).

- 1           2. Take no further action as to the allegations that Ahern Ad, LLC violated 52 U.S.C.  
2           § 30120(a) and 11 C.F.R. § 110.11 by failing to include disclaimers on the electronic  
3           billboard and 52 U.S.C. § 30104(c) and 11 C.F.R. § 109.10 by failing to report an  
4           independent expenditure;
- 5           3. Find no reason to believe that Heller for Senate and Chrissie Hastie in her official  
6           capacity as treasurer violated 52 U.S.C. § 30118(a) by accepting a corporate  
7           contribution, and 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11 by failing to include  
8           disclaimers on the electronic billboard;
- 9           4. Approve the appropriate letters; and
- 10          5. Close the file.

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