



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

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| In the Matter of |) | |
| |) | |
| Heller for Senate and Chrissie |) | |
| Hastie in her official capacity |) | MUR 7395 |
| as treasurer |) | |
| Sen. Dean Heller |) | |
| Heller Enterprises, LLC |) | |

**STATEMENT OF REASONS OF VICE CHAIR ALLEN DICKERSON AND
COMMISSIONERS SEAN J. COOKSEY AND JAMES E. "TREY" TRAINOR, III**

The question in this matter is whether the Commission should use its limited enforcement resources to pursue allegations that a candidate's son provided personal services to his father's campaign at a discount that he could have legally provided for free. To ask that question is to answer it, and we voted to dismiss this matter as exercise of prosecutorial discretion under *Heckler v. Chaney*.¹

Heller Enterprises is a limited liability company whose founder, registered agent, and sole employee is Harrison Clark Heller, the son of former U.S. Senator Dean Heller.² Beginning in July 2016, Heller for Senate ("the Committee"), the principal campaign committee of Senator Heller, made monthly payments of \$2,500 to Heller Enterprises for "social media consulting" services.³ The Complaint alleges—and the Office of General Counsel ("OGC") agreed—that Heller Enterprises made, and the Committee accepted, an unreported in-kind contribution in the form of a discount.⁴ In support of this allegation, the Complaint cites to a news article in which Harrison Heller reportedly said he was being paid below market rate for his work on the campaign and the

¹ 470 U.S. 821 (1985).

² Complaint (May 24, 2018), MUR 7395 (Heller for Senate) (citing James DeHaven, *Sen. Dean Heller Paid Son At Least \$52,500 in Campaign Cash for Social Media Consulting*, RENO GAZETTE J. (May 18, 2018)); *see also* "Heller Enterprises, LLC," Utah Div. of Corps. and Commercial Code, <https://secure.utah.gov/bes/details.html?entity=8851207-0160#>.

³ *Id.* at 2–3. *See, e.g.*, Heller for Senate 2016 Oct. Quarterly Report at 40, 60 (Oct. 15, 2016); Heller for Senate 2016 Year-End Report at 63 (Jan. 31, 2017).

⁴ Complaint (May 24, 2018), MUR 7395 (Heller for Senate).

Committee stated, “Harris Heller produces quality content at a cheap discount to the campaign.”⁵ The weakness of this evidence is noteworthy: as to Harrison Heller, his reported statement that he provided a discount is merely a reporter’s characterization of an email statement.⁶

In their Response, Harrison Heller and the Committee characterize these press statements as “impromptu” and “hyperbole that are inconsistent with the actual facts of the matter.”⁷ In a sworn affidavit submitted to the Commission, Harrison Heller attests that he has experience in creating and distributing “digital and web-based media content,” and is “familiar with the fair market value for providing these services” for a fee “as an independent contractor.”⁸ Harrison Heller avers that he negotiated an arm’s-length contract with the Committee that provided for a reasonable, fair-market fee of \$2,500 per month for his services.⁹ He also specifically denies discussing “any special rate, either at a discount or otherwise,” with the Committee.¹⁰ These countervailing statements provide a compelling rebuttal to the Complaint’s anemic allegations.¹¹

We voted to dismiss this matter based on both the weakness of the legal case and prudential factors weighing against enforcement. Even if OGC were correct that Harrison Heller provided an in-kind contribution in the form of a below-market rate, that theory would inevitably conflict with the Commission’s volunteer exemption. In general, under the Act, a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”¹² “Anything of value” includes “all in-kind contributions,” such as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services[.]”¹³ The “usual and normal

⁵ James DeHaven, *Sen. Dean Heller Paid Son At Least \$52,500 in Campaign Cash for Social Media Consulting*, RENO GAZETTE J. (May 18, 2018). Harrison Heller also appears to go by “Harris.”

⁶ *See* Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 7 n.29, MURs 6470, 6482, 6484 (Free and Strong America PAC) (“As a general evidentiary matter, we decline to open investigations based solely upon hearsay reports or editorial characterizations contained in press articles, particularly where, as here, the speculation is rebutted by record evidence.”).

⁷ Response at 1 (Jul. 6, 2018), MUR 7395 (Heller for Senate).

⁸ *Id.* at Ex. 1 ¶¶ 1–2.

⁹ *Id.* at ¶¶ 4–6. Additionally, we must also note that determining an appropriate “market rate” for social media services is a difficult endeavor. Coordinating social media, even for a political campaign, is not as easy to peg to a market rate as is, for example, renting a car from a business with fixed and advertised prices. Yet OGC would ask us to do precisely that here. Put simply, we do not believe the Commission could calculate the true market rate for the type of services that Harrison Heller provided the Committee with any reasonable level of certainty.

¹⁰ *Id.* ¶ 8

¹¹ *See, e.g.*, Factual and Legal Analysis to Freedom’s Watch at 6, MUR 5999 (Freedom’s Watch) (“Given that there is no probative information of coordination, and [Respondent] has provided specific sworn denials of the existence of coordination, there is no basis to open an investigation in this matter.”)

¹² 52 U.S.C. § 30101(8)(A)(i).

¹³ 11 C.F.R. § 100.52(d)(1). The Commission has determined that a discounted price or rate offered in the ordinary course of business, which is also available to non-political clients, would still be the “usual and normal charge” and therefore would not be an in-kind contribution. *See* Advisory Op. 2006-01 at 2 (Pac for a Change); Advisory Op. 2004-18 at 3 (Friends of Joe Lieberman); *see also* Factual and Legal Analysis at 4–5, MUR 5942 (Rudy Giuliani Presidential Comm., Inc., *et al.*).

charge” for services is “the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.”¹⁴

The definition of “contribution” does not include, however, “the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.”¹⁵ Commission regulations further clarify that “[n]o contribution results where an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee’s time is considered his or her own to use as he or she sees fit.”¹⁶

As described in the Complaint and Response, all of Harrison Heller’s work constituted personal services. Therefore, he could have provided all his work to the Committee free of charge without running afoul of the Act or Commission regulations. As a result, there is a weighty argument that any discount that Harrison Heller provided to the campaign could be considered a form of volunteer activity, which would be consistent with his work as an independent contractor. Under this view, no violation occurred here.

Finally, the circumstances of this case counsel in favor of a discretionary dismissal. The sums at issue are relatively small.¹⁷ Moreover, the conduct is sufficiently old that the statute of limitations period was impending and due to lapse in July 2021, making the possibility of completing a full investigation even more remote.¹⁸ With an eye toward our existing backlog of enforcement matters, we believe that the Commission is better served prioritizing other investigations.¹⁹

In view of these considerations, pursuing this matter further would not be a prudent use of the Commission’s limited resources.²⁰ Accordingly, we voted to exercise the Commission’s prosecutorial discretion and dismiss the allegations in this matter.

¹⁴ 11 C.F.R. § 100.52(d)(2).

¹⁵ 52 U.S.C. § 30101(8)(B)(1); 11 C.F.R. § 100.74.


¹⁶ 11 C.F.R. § 100.54(b).

¹⁷ First General Counsel’s Report at 2 (Oct. 16, 2018), MUR 7395 (Heller for Senate).

¹⁸ *Id.* at 1.

¹⁹ *See generally* Statement of Commissioner Ellen L. Weintraub on the Senate’s Votes to Restore the Federal Election Commission to Full Strength (Dec. 9, 2020), *available at* <https://www.fec.gov/resources/cms-content/documents/2020-12-Quorum-Restoration-Statement.pdf>.

²⁰ *Heckler*, 470 U.S. at 832 (“[T]he agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency’s overall policies, ...”).



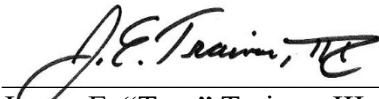
Allen Dickerson
Vice Chair

April 27, 2021
Date



Sean J. Cooksey
Commissioner

April 27, 2021
Date



James E. "Trey" Trainor, III
Commissioner

April 27, 2021
Date