

FEDERAL ELECTION COMMISSION WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Matthew Graf

MAR 2 2 2019

Rock Island, IL 61201

RE: MUR 7463

Dear Mr. Graf:

The Federal Election Commission reviewed the allegations in your complaint received on August 9, 2018. On March 14, 2019, 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 as to John Fitzgerald for Congress, and John Fitzgerald, and close its file in this matter. Accordingly, the Commission closed its file in this matter on March 14, 2019. A copy of the General Counsel's Report, which more fully explains the basis for the Commission's decision, is enclosed.

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).

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

Jeff S. Yordan

Assistant General Counsel

BY:

Enclosure

· General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM DISMISSAL REPORT

MUR: 7463 Complaint Receipt Date: August 9, 2018 Response Date: September 4, 2018 Respondents: John Fitzgerald for Congress (the "Committee") John Fitzgerald¹

EPS Rating:

Alleged Statutory/	52 U.S.C. §§ 30101(2); 30102(b)(3), (e)(1) & (h)(1); 30103; 30104;
	30114(b); 30116
Regulatory Violations:	11 C.F.R. §§ 100.3(a)(1) and (2); 101.1(a); 102.1(a); 103.2; 103.3

The Complaint alleges that Fitzgerald failed to register as a candidate, appoint an authorized committee and treasurer, and file disclosure reports, in violation of the Act and Commission regulations.² The Complaint also alleges that Fitzgerald is soliciting contributions through his personal PayPal account, not a committee account, which could result in personal use.³ Fitzgerald responds that he neither raised nor spent \$5,000 in his campaign and, therefore, does not meet the Act's definition of a candidate, and is not required to register and report to the FEC, form a campaign committee, or appoint a treasurer.⁴

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

The Complaint does not identify any specific instances of personal use of campaign funds. See Compl. at 1-4.

¹ Fitzgerald ran for Congress from California's 11th Congressional District. Fitzgerald qualified for the general election, but lost that election by nearly 50% of the vote. *See* California Secretary of State, U.S. Representative Election Results, <u>https://elections.cdn.sos.ca.gov/sov/2018-general/sov/48-congress.pdf</u> (Last visited February 27, 2019).

² Compl. at 1, 2 (August 9, 2018). Fitzgerald previously ran in California's 7th Congressional District in 2010 and 11th Congressional District in 2012.

⁴ Response at 1 (September 4, 2018). Fitzgerald states that the total amount of contributions PayPal forwarded to his campaign was \$889.20. *Id.* Fitzgerald did not indicate how much was spent on the campaign, except to note that it was less than \$5,000.

EPS Dismissal Report MUR 7463 (John Fitzgerald for Congress) Page 2 of 2

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, and the apparently low dollar amount at issue, 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.⁵ We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

> Lisa J. Stevenson Acting General Counsel

Charles Kitcher Acting Associate General Counsel for Enforcement

Stephen Gura / Stor

Stephen Gura Deputy Associate General Counsel for Enforcement

Jeff S. Jórdan Assistant General Counsel Complaints Examination & Legal Administration

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Donald E. Campbell Attorney Complaints Examination & Legal Administration

2/28/2019 Date BY:

Heckler v. Chaney, 470 U.S. 821, 831-32 (1985).