

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7517

Respondents: Mast for Congress
and Paul Kilgore, as Treasurer
("the Committee")¹
Brian Mast

Complaint Receipt Date: October 16, 2018

Response Date: November 27, 2018

EPS Rating:

Alleged Statutory
Regulatory Violations:

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

The Complaint alleges that the Committee failed to include the appropriate disclaimer on a television advertisement that attacks Mast's opponent.² The Complaint states that although the ad has a written and spoken disclaimer, it does not include a clearly identifiable image of Mast.³ Respondents do not dispute the small size of the image of the candidate in the ad, but maintain that the image was clearly identifiable and complied with the plain language of the Act.⁴ Respondents further state that the Committee revised the ad less than one day after the first version aired, and replaced it with a second version that included a full-screen image of the candidate.⁵

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

¹ Brian Mast won the November 6, 2018, general election for Florida's 18th Congressional District.

² Compl. at 1, 2 (October 16, 2018).

³ *Id.* at 2. The Complaint claims that the ad shows an indistinct small image of an individual against an American flag that does not clearly identify the candidate, and is barely recognizable as Mast. *Id.* The Complaint attaches a screenshot of the final frame of the ad that shows an image of Mast's opponent taking up most of the screen, and contains an image of Mast that is adjacent to, and approximately the same size as, the written disclaimer. *Id.* at Ex. A.

⁴ Resp. at 2, 3 (October 9, 2018). Respondents observe that Commission regulations state that the photographic image of a candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height, see 11 C.F.R. § 110.11(c)(3)(ii), but maintain that the 80% standard is a safe harbor provision and not a requirement, and assert that the Act does not contain a sizing requirement. *Id.* at 3.

⁵ *Id.* at 2, 3.

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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 swift revision of the ad, and the unlikelihood the general public would have been confused as to whether the television ad was authorized by Mast,⁶ we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.⁷ We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

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4/19/19

Date

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⁶ Although the television ad did not contain a video of Mast stating that he approved the ad, or a large image of the candidate, Respondents assert that the original ads included a voiceover of Mast orally stating that he approved the ad and a written disclaimer stating that the Committee paid for them. Resp. at 3; *see also* Compl. at 2.

⁷ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).