



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**VIA ELECTRONIC MAIL**

July 29, 2020

Harry N. Niska  
Howse & Thompson, P.A.  
3189 Fernbrook Lane N.  
Plymouth, MN 55447  
[hniska@howselaw.com](mailto:hniska@howselaw.com)

RE: MUR 7676  
Michelle Fischbach  
Fischbach for Congress  
and Paul Kilgore, as treasurer

Dear Mr. Niska:

On January 2, 2020, the Federal Election Commission (“Commission”) notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations. A copy of the complaint was forwarded to your clients at that time. On July 24, 2020, based upon the information contained in the complaint and information provided by respondents, the Commission voted to dismiss allegations that Michelle Fischbach, Fischbach for Congress and Paul Kilgore, as treasurer, violated provisions of the Act. The Commission then closed its file in this matter. 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). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson  
Acting General Counsel

A handwritten signature in blue ink, appearing to read "Jeff S. Jordan".

BY: Jeff S. Jordan  
Assistant General Counsel

Enclosure:  
General Counsel’s Report

1 **BEFORE THE FEDERAL ELECTION COMMISSION**  
2  
3 **ENFORCEMENT PRIORITY SYSTEM**  
4 **DISMISSAL REPORT**  
5

6 **MUR:** 7676

**Respondent:** Michelle Fischbach  
Fischbach for Congress  
and Paul Kilgore, as treasurer  
(the “Committee”)

11 **Complaint Receipt Date:** December 27, 2019

12 **Response Date:** February 13, 2020

16 **Alleged Statutory/** **52 U.S.C. § 30120(a)(1) and (c)(1-3);**  
17 **Regulatory Violations:** **11 C.F.R. § 110.11(a)(1), (b)(1), (c)(1-2)**  
18

19 The Complaint alleges that the Committee distributed, via email, two fundraising letters that  
20 lacked a complete box around the Committee’s disclaimers, asserting that both letters have a partial  
21 line above and below the disclaimer.<sup>1</sup> The Response argues that emails do not require a box around  
22 disclaimers because that requirement applies only to printed public communications, and, in any event,  
23 any violation is technical.<sup>2</sup>

24 Based on its experience and expertise, the Commission has established an Enforcement  
25 Priority System using formal, pre-determined scoring criteria to allocate agency resources and  
26 assess whether particular matters warrant further administrative enforcement proceedings. These  
27 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity  
28 and the amount in violation; (2) the apparent impact the alleged violation may have had on the  
29 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in  
30 potential violations and other developments in the law. This matter is rated as low priority for  
31 Commission action after application of these pre-established criteria. Given that low rating, the

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<sup>1</sup> Compl. at 1 (December 27, 2019). The Complaint included copies of the two emails. *Id.* at 2-5.

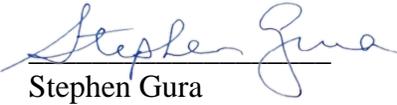
<sup>2</sup> Resp. at 2-3 (February 13, 2020), citing 11 C.F.R. § 110.11(c)(2).

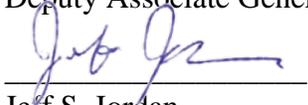
1 technical nature of the alleged violation, and that recipients would likely understand that the  
2 Committee was responsible for the emails, we recommend that the Commission dismiss the  
3 Complaint consistent with the Commission's prosecutorial discretion to determine the proper  
4 ordering of its priorities and use of agency resources.<sup>3</sup> We also recommend that the Commission  
5 close the file as to all Respondents and send the appropriate letters.

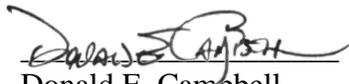
6  
7 Lisa J. Stevenson  
8 Acting General Counsel  
9

10 Charles Kitcher  
11 Acting Associate General Counsel  
12

13 3.6.20  
14 Date

15 BY:   
16 Stephen Gura  
17 Deputy Associate General Counsel

18   
19 Jeff S. Jordan  
20 Assistant General Counsel

21   
22 Donald E. Campbell  
23 Attorney

<sup>3</sup> *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).