



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 2, 20201

VIA EMAIL AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles J. Flynn

Ransomville, NY 14131

RE: MUR 7782

Dear Mr. Flynn:

The Federal Election Commission reviewed the allegations in your complaint received on August 14, 2020. On May 26, 2021, 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 Duane Whitmer for Congress and Alyce Auman in her official capacity as Treasurer and Duane James Whitmer, and close its file in this matter. Accordingly, the Commission closed its file in this matter on May 26, 2021. 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 Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016).

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

A handwritten signature in black ink that reads "Jeff Jordan".

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM

DISMISSAL REPORT

MUR: 7782

Respondents: Duane Whitmer for Congress
and Alyce Auman, as Treasurer
("the Committee")
Duane James Whitmer

Complaint Receipt Date: August 18, 2020

Response Date: October 8, 2020

EPS Rating: ■

**Alleged Statutory
Regulatory Violations:**

**52 U.S.C. § 30120(a)
11 C.F.R. § 100.11(a), (b)(1), (c)**

The Complainant alleges that he received two mailings from the Committee prior to the June 23, 2020, special election, which lacked a disclaimer regarding who paid for the mailings.¹ The Respondents acknowledge that the mailings did not contain disclaimers, but assert that the mailings did refer to the Committee's website that contained a disclaimer and that additional training has been provided to the individuals responsible for the Committee's mailings to ensure that future mailings contain the required disclaimer.²

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 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

¹ Compl. at 1, Exs. A-B (Aug. 18, 2020).

² Resp. at 1 (Oct. 8, 2020).

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unlikelihood that the public was misled as to who paid for the mailings, and the Committee's remedial actions, 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. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). 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

05.14.21
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel
Jeff S. Jordan / KP
Jeff S. Jordan
Assistant General Counsel

Kristina Portner
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