



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 2, 2021

VIA EMAIL

James Ostrowski
63 Newport Ave
Buffalo, New York 14216
jamesmostrowski@icloud.com

RE: MUR 7782
Duane Whitmer for Congress and
Alyce Auman, as Treasurer;
Duane James Whitmer

Dear Mr. Ostrowski:

On August 21, 2021, 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”). On May 26, 2021, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that Duane Whitmer for Congress and Alyce Auman, in her official capacity as treasurer, and Duane James Whitmer 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 Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016). If you have any questions, please contact Kristina Portner, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Jeff S. Jordan". The signature is written in a cursive, flowing style.

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).

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 Jordan /KP
Jeff S. Jordan
Assistant General Counsel

Kristina Portner
Kristina M. Portner
Attorney