

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM

DISMISSAL REPORT

MUR: MUR 7906

Respondents: Charles W. Herbster
Herbster Angus Farms, Inc.
Conklin Company, Inc.

Complaint Receipt Date: May 17, 2021

Response Date: June 24, 2021

EPS Rating:

**Alleged Statutory/
Regulatory Violations:** 52 U.S.C. §§ 30101, 30102, 30103, 30104, 30116, 30118, 30120;
11 C.F.R. §§ 100.5, 100.16, 102.1, 102.2, 104.1, 104.3, 104.4,
109.10, 109.20, 109.21, 110.11

The Complaint asserts that in July 2016, Herbster Angus Farms, Inc. and/or Conklin

20 Company, Inc. spent over \$9,000 for a magazine advertisement advocating the election of Donald J.
21 Trump for U.S. President, featuring a photo of Trump with Charles Herbster, the owner and CEO of
22 the two corporations.¹ The Complaint alleges that the ad was paid for by one or both corporations,
23 was an independent expenditure triggering political committee status, the corporations failed to
24 register and file disclosure reports with the FEC, and the corporation failed to comply with the
25 disclaimer requirements for the ad, in violation of the Act and Commission regulations.²

26 The Response from the Conklin Company, Inc., asserts that the latest possible publication
27 date of the magazine advertisement would have been July 31, 2016, and, therefore, the five-year
28 statute of limitations in this matter has either already expired or will expire soon.³ The Response
29 alternatively suggests that the Commission should dismiss the allegations as a matter of
30 prosecutorial discretion, asserting that the alleged amount in violation is modest, the allegations do

¹ Compl. at 1, 3. (May 17, 2021).

2 *Id.*

³ Resp. at 1-2 (Jun 24, 2021).

EPS Dismissal Report
MUR 7906 (Charles W. Herbster, *et al.*)
Page 2 of 3

1 not raise any complex legal issues, and the alleged violation had little or no impact on the 2016
2 election.⁴

3 Based on its experience and expertise, the Commission has established an Enforcement
4 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
5 assess whether particular matters warrant further administrative enforcement proceedings. These
6 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
7 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
8 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
9 potential violations and other developments in the law. This matter is rated as low priority for
10 Commission action after application of these pre-established criteria. Given that low rating and
11 other factors, including the impending statute of limitations, we recommend that the Commission
12 dismiss the Complaint consistent with the Commission’s prosecutorial discretion to determine the
13 proper ordering of its priorities and use of agency resources.⁵ We also recommend that the
14 Commission close the file as to all Respondents and send the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel

07.15.21

Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

4 *Id.* at 3.

⁵ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

EPS Dismissal Report
MUR 7906 (Charles W. Herbster, *et al.*)
Page 3 of 3

1
2
3
4
5
6
7
8
9
10

Kristina Portner

Kristina M. Portner
Attorney

Donald E. Campbell

Donald E. Campbell
Attorney