



FEDERAL ELECTION COMMISSION
Washington, DC

VIA ELECTRONIC AND CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 6, 2021

Laura A. Wigley

Lincoln, NE 68506

RE: MUR 7906

Dear Ms. Wigley:

The Federal Election Commission reviewed the allegations in your complaint received on May 17, 2021. On August 2, 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 Charles W. Herbster, Herbster Angus Farms, Inc., and the Conklin Company, Inc., and close its file in this matter. Accordingly, the Commission closed its file in this matter on August 2, 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* 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).

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

Roy Q. Lockett

BY: Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
General Counsel's Report

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

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

The Response from the Conklin Company, Inc., asserts that the latest possible publication date of the magazine advertisement would have been July 31, 2016, and, therefore, the five-year statute of limitations in this matter has either already expired or will expire soon.³ The Response alternatively suggests that the Commission should dismiss the allegations as a matter of 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).

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.

15 Lisa J. Stevenson
16 Acting General Counsel
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18 Charles Kitcher
19 Associate General Counsel
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22
23 07.15.21

24 Date

BY:


Stephen Gura

25 Stephen Gura
26 Deputy Associate General Counsel
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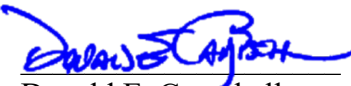
⁴ *Id.* at 3.

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

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Kristina M. Portner
Attorney



Donald E. Campbell
Attorney