



FEDERAL ELECTION COMMISSION  
Washington, DC

August 6, 2021

**VIA ELECTRONIC MAIL**

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[BZehr@wiley.law](mailto:BZehr@wiley.law)

Michael E. Toner

Brandis L. Zehr

Wiley Rein LLP

1776 K Street NW

Washington, DC 20006

RE: MUR 7906  
Herbster Angus Farms, Inc.  
Conklin Company, Inc.

Dear Mr. Toner and Ms. Zehr:

On May 20, 2021, the Federal Election Commission (“Commission”) notified your clients, Herbster Angus Farms, Inc., and Conklin Company, Inc., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the “Act”). On August 2, 2021, based upon the information contained in the complaint and information provided by respondents, the Commission decided to dismiss allegations that Herbster Angus Farms, Inc. and Conklin Company, Inc. 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

*Roy Q. Lockett*

BY: Roy Q. Lockett  
Acting 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:** MUR 7906

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

10 **Complaint Receipt Date:** May 17, 2021

11 **Response Date:** June 24, 2021  
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14

15 **Alleged Statutory/** 52 U.S.C. §§ 30101, 30102, 30103, 30104, 30116, 30118, 30120;  
16 **Regulatory Violations:** 11 C.F.R. §§ 100.5, 100.16, 102.1, 102.2, 104.1, 104.3, 104.4,  
17 109.10, 109.20, 109.21, 110.11  
18

19 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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

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<sup>1</sup> Compl. at 1, 3. (May 17, 2021).

<sup>2</sup> *Id.*

<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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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19 Charles Kitcher  
20 Associate General Counsel

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22  
23 07.15.21

24 \_\_\_\_\_  
Date

BY: Stephen Gura  
Stephen Gura  
Deputy Associate General Counsel


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<sup>4</sup> *Id.* at 3.


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

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Kristina M. Portner  
Attorney

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Donald E. Campbell  
Attorney