FEDERAL ELECTION COMMISSION
WASHINGTON, D.C.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 8016 and 8018
Jarome Bell for Congress, *et al.*	)	

STATEMENT OF REASONS OF CHAIRMAN SEAN J. COOKSEY AND COMMISSIONER ALLEN J. DICKERSON

These matters involved allegations that Jarome Bell for Congress and Unknown Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by failing to include disclaimers on various mailers that were sent to voters before the June 2022 Republican primary for Virginia's Second Congressional District.[1] We rejected the Office of the General Counsel's ("OGC") recommendation to find reason to believe and open an investigation, and instead voted to dismiss the Complaints as an exercise of our prosecutorial discretion.[2]

In the First General Counsel's Report, OGC concluded that six of the seven mailers described in the Complaints did not "expressly advocate the election or defeat of a clearly identified candidate," and therefore did not require disclaimer statements under the Act or Commission regulations.[3] We agreed. However, OGC recommended that the Commission find reason to believe that Unknown Respondents had violated disclaimer requirements in connection with a single mailer, known as Mailer 1, which in OGC's view "appear[ed] to contain express advocacy under 11 C.F.R. § 100.22(a) and (b)."[4] Because key details about this mailer were absent from the factual record, OGC proposed to conduct "a limited investigation to identify the unknown entity who paid for and authorized the anonymous mailer containing express advocacy (Mailer 1), identify its costs, and determine the scope of its distribution."[5] With respect to Jarome Bell for

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1 Certification (July 23, 2024), MURs 8016 & 8018 (Jarome Bell for Congress, *et al.*).

2 *See* Heckler v. Chaney, 470 U.S. 821 (1985).

3 First General Counsel's Report at 21–22 (June 5, 2024), MURs 8016 & 8018 (Jarome Bell for Congress, *et al.*).

4 *See id.* at 15. In addition, OGC recommended finding reason to believe that Unknown Respondents failed to report the mailer either as an independent expenditure or as a communication by a political committee. *Id.* at 27–28.

5 First General Counsel's Report at 28 (June 5, 2024), MURs 8016 & 8018 (Jarome Bell for Congress, *et al.*).

Congress, which forcefully denied any knowledge of or involvement with the mailers at issue, and GDA Wins, which simply produced the mailers on behalf of a client, OGC recommended the Commission take no action until the conclusion of its proposed investigation.[6]

Rather than find reason to believe and authorize an investigation to uncover the source, costs, and distribution of a single mailer concerning a congressional primary that occurred more than two years ago, we opted to exercise our prosecutorial discretion and dismiss the case. As in other recent matters involving anonymous mailers from unknown sources, the costs of even a limited investigation here would outweigh the potential results of determining who was responsible for this one mailer, how much it cost, and how many voters received it.[7] And while OGC downplayed the likely scope of its proposed investigation, considerable agency resources would likely have had to be expended to locate the information it sought given the minimal evidence in the available record—assuming OGC's investigation could locate that information at all.[8]

Because an investigation into the mailer at issue would have been an imprudent use of the Commission's resources, we dismissed the Complaints and closed the file.

Sean J. Cooksey
Chairman

August 26, 2024
Date

Allen J. Dickerson
Commissioner

August 26, 2024
Date

6 *Id.* at 26.

7 *See* Statement of Reasons of Chairman Sean J. Cooksey at 4 (Apr. 23, 2024), MURs 8017 & 8023 (Unknown Respondent(s), *et al.*) (describing outcomes of recent OGC investigations of mailers sent by unknown sources).

8 For example, the First General Counsel's Report noted that "[t]he record does not conclusively establish that each mailer meets the definition of a 'mass mailing,'" and therefore it remained unclear whether Mailer 1 would even have been subject to disclaimer or reporting requirements under the Act. First General Counsel's Report at 7 (June 5, 2024), MURs 8016 & 8018 (Jarome Bell for Congress, *et al.*); *see also id*. at 20 ("[T]he Commission's database shows no independent expenditures paid to GDA Wins, IAPTA, or Mt. Vernon in connection with Bell.").