

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 8075

Respondents: The Seattle Times
 People for Patty Murray and Jay
 Petterson in his official capacity
 as treasurer

Complaint Receipt Date: October 5, 2022

Response Dates: October 25, 2022
 April 7, 2023

**Alleged Statutory and
 Regulatory Violations:**

52 U.S.C. § 30101(8)(A)(i)
 52 U.S.C. § 30118(a)
 11 C.F.R. § 100.52(d)(1)
 11 C.F.R. § 114.2(b)

The Complaint alleges that *The Seattle Times*, a newspaper serving Seattle, Washington, violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by allowing People for Patty Murray and Jay Petterson in his official capacity as treasurer (the “Murray Committee”), the principal campaign committee of 2022 Senate candidate Patty Murray, to use its corporate logo in campaign ads while denying the use of its logo in a campaign ad by Smiley for Washington (the “Smiley Committee”), the principal campaign committee of Murray’s general election opponent, Tiffany Smiley.¹ The Complaint alleges that by allowing the Murray Committee to use *The Seattle*

¹ Compl. at 1-2 (Oct. 5, 2022). The Complaint, filed by the Smiley Committee, states that *The Seattle Times* sent a cease-and-desist letter to the Smiley Committee regarding the use of its corporate logo and cites two campaign ads that the Murray Committee posted on YouTube that each contain *The Seattle Times* logo which *The Seattle Times* has apparently allowed. *Id.* at 1-2, 2 n.8.

1 *Times* logo but not the Smiley Committee, *The Seattle Times* made prohibited in-kind corporate
2 contributions to the Murray Committee.²

3 *The Seattle Times* responds that, as a threshold matter, the ads by the Murray Committee
4 cited in the Complaint are from the 2016 election and therefore not relevant to its decision to
5 enforce its logo during the 2022 election; moreover, *The Seattle Times* states that if there was a
6 contribution to the Murray Committee by not objecting to those ads, it would be outside the five-
7 year statute of limitations.³ In addition, *The Seattle Times* contends that a newspaper's decision
8 regarding whether to assert that its copyright or trademark is being infringed requires a fact-specific
9 assessment and that making this assessment is a normal function of a press entity that falls within
10 the Act's press exemption.⁴ Here, *The Seattle Times* states that it assessed that the Smiley
11 Committee had used its intellectual property in deceptive ways and therefore determined that it was
12 appropriate, in order to protect its editorial integrity and credibility with its readers, to ask that the
13 Murray Committee cease its unauthorized use of its intellectual property.⁵

14 In its Response, the Murray Committee argues for dismissal, asserting that it did not
15 coordinate or consult with *The Seattle Times* for a brief and minimal use of the logo in its two
16 campaign ads pursuant to the fair use doctrine.⁶ Further, the Murray Committee asserts that it is the
17 right of *The Seattle Times* to determine, in light of commercial interests, when it believes that a use
18 of its intellectual property violates its rights and when it does not.⁷ The Murray Committee also

² *Id.* at 2 (stating that "it is difficult to ascertain an exact numerical value of the use of *The Seattle Times*' logo in campaign advertising").

³ *The Seattle Times* Resp. at 2 (Oct. 25, 2022).

⁴ *Id.* at 3.

⁵ *Id.* (stating that the Smiley Committee "alter[ed] the appearance and placement of the *Times* logo and headlines in a manner that falsely suggested the *Times* (i) ran both articles as lead stories and (ii) endorsed the views expressed in the ad, including the Campaign's interpretation of the articles").

⁶ Murray Committee Resp. at 1 (Apr. 7, 2023).

⁷ *Id.* at 4 ("The Newspaper's independent decision to exercise that right in the matter at hand amounts to nothing more than it acting in the ordinary course of business for bona fide commercial reasons.").

1 cites to Commission precedent involving in-kind contributions of use of corporate names and logos
2 where the Commission dismissed either because the value of the contribution was *de minimis* or too
3 difficult to calculate.⁸

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

⁸ *Id.* at 1, 4-5.

⁹ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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January 30, 2024

Date
