

Carol A. Laham
202.719.7301
claham@wiley.law

Andrew G. Woodson
202.719.4638
awoodson@wiley.law

wiley

Wiley Rein LLP
2050 M St NW
Washington, DC 20036
Tel: 202.719.7000

wiley.law

June 10, 2024

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Christal Dennis, Paralegal
1050 First Street, NE
Washington, D.C. 20463

Re: Matter Under Review 8263 (Esposito for Congress and Taylor Moose, as Treasurer; Alison Esposito)

Dear Commissioners,

This office represents Esposito for Congress and Taylor Moose in her official capacity as treasurer, in addition to the candidate, Alison Esposito (collectively, the Campaign) in the above-referenced matter. On their behalf, we hereby respond to the complaint filed on May 20, 2024, filed by Tiffany Muller of End Citizens United (the "Complaint"). Executed Statements of Designation of Counsel have been attached at Exhibit A.

As discussed below, we urge the Commission to dismiss this Complaint as a matter of prosecutorial discretion.

The Complaint

In general terms, the Complaint alleges that Ms. Esposito used federal campaign funds to pay for personal parking expenses on a small number of occasions. More specifically, while the Complaint raises activity not subject to the Federal Election Campaign Act, only the following three transactions, which total \$2141, are within the Commission's jurisdiction:

Payments to Icon Parking by Esposito For Congress

PAYEE	STREET	CITY	DATE	AMOUNT	DESCRIPTION
ICON PARKING HOLDINGS LLC	PO BOX 682	NEW YORK	11/22/2023	\$1,083.00	TRAVEL
ICON PARKING	PO BOX 682	NEW YORK	01/02/2024	\$529.00	TRAVEL
ICON PARKING	PO BOX 682	NEW YORK	02/01/2024	\$529.00	TRAVEL

Discussion

As indicated in the Complaint, these were mistaken payments. What the Complaint does not tell you, because the complainant did not know, is that the Campaign addressed these mistaken payments prior to the Campaign receiving the Complaint from the FEC, and, in two cases, weeks before the Complaint's filing. Specifically, the referenced 1/02/24 expense and the referenced 2/01/24 expense were reversed by the Campaign on April 29, 2024, twenty-one days before the Complaint was filed with the FEC, and more than ten days prior to the *Politico* story that triggered the Complaint. These chargebacks will be reflected on the Campaign's next report. In addition, the referenced 11/22/23 payment was reimbursed by the Candidate and deposited into the Campaign's account on May 22. This too will be disclosed on the Campaign's next report. While this reimbursement was completed two days after the Complaint was filed, it was also two days before the Campaign received the Complaint from the FEC. Thus, it did not take receipt of a complaint for the Campaign to correct this mistake. The Campaign addressed the issue of its own accord.¹

In addition, the amount at issue here is *de minimis* and does not warrant the use of the Commission's resources. Specifically, the amount of the alleged violation represents less than .9% of the committee's reported expenditures so far this cycle.² Indeed, the total amount of the alleged violation – \$2,141 – is generally below the threshold the Commission has used when dismissing other matters.³ And, Commissioners have explained that “prompt correction of [an] asserted violation” is “consistent with existing authority” to dismiss cases under *Heckler v. Chaney*, 470 U.S. 821 (1985).⁴ Thus, consistent with past precedent, the Commission should dismiss this matter as an act of prosecutorial discretion.

¹ At the time of each of these expenses, the Campaign owed Ms. Esposito \$10,000 which she had loaned her campaign in October 2023. That \$10,000 was more than enough to offset these mistaken expenditures.

² Esposito for Congress, *Financial Summary*, <https://www.fec.gov/data/committee/C00852889/?tab=summary>.

³ See, e.g., Factual and Legal Analysis, MUR 7367 at 2 (Anthony J. Brindisi), Nov. 7, 2018 at <https://www.fec.gov/files/legal/murs/7367/18044454012.pdf> (dismissing total of \$2,000 in prohibited contributions from candidate's state committee under a *de minimis* rationale); Statement of Reasons of Vice Chair Ellen L. Weintraub and Commissioner Shana M. Broussard, MUR 7773 (DePasquale for PA 10), May 30, 2024, https://www.fec.gov/files/legal/murs/7773/7773_14.pdf (invoking prosecutorial discretion to dismiss a potential \$14,000 violation); Statement of Reasons of Chairman Michael E. Toner and Commissioners David M. Mason and Hans A. von Spakovsky, MUR 5651 at 8 (Joseph Gallagher), July 20, 2006, <https://www.fec.gov/resources/about-fec/commissioners/toner/sor/sormur5651.pdf> (explaining that the “the Commission has now established a \$13,000 threshold for pursuing” numerous types of FECA violations).

⁴ Statement of Reasons of Vice Chairman Robert D. Lenhard and Commissioners Steven T. Walther and Ellen L. Weintraub, MUR 5651 at 4-5, Sept. 21, 2006, <https://www.fec.gov/resources/about-fec/commissioners/walther/sor/mur5651.pdf>; see also Statement of Reasons of Commissioners Allen J. Dickerson, Dara Lindenbaum and James E. “Trey” Trainor, III, MUR 7833 (Montcalm LLC), May 1, 2024, https://www.fec.gov/files/legal/murs/7833/7833_26.pdf (finding that prompt correction supported dismissing a matter as an exercise of prosecutorial discretion).

Federal Election Commission
June 10, 2024
Page 3

Conclusion

Accordingly, the Commission should dismiss this matter, which involves a *de minimis* amount reimbursed prior to the Campaign receiving the Complaint, as an act of prosecutorial discretion.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carol A. Laham".

Carol A. Laham
Andrew G. Woodson

Enclosures

Federal Election Commission
June 10, 2024
Page 4

EXHIBIT A



STANDARD & POOR'S 500 INDEX
 (1990-1991)

STANDARD & POOR'S 500 INDEX

(1990-1991)

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX

STANDARD & POOR'S 500 INDEX



FEDERAL ELECTION COMMISSION
1050 First Street, NE
Washington, DC

STATEMENT OF DESIGNATION OF COUNSEL

Provide one form for each Respondent/Witness

EMAIL cela@fec.gov

AR/MUR/RR/P-MUR# 8263

Name of Counsel: Carol A. Laham & Andrew G. Woodson

Firm: Wiley Rein LLP

Address: 2050 M St NW

Washington, D.C. 20036

Office#: (202) 719-7000 Fax#: _____

Mobile#: _____

E-mail: claham@wiley.law

The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

5/31/2024
Date

Digitally signed by Taylor Moose
DN: cn=Taylor Moose, o, ou,
email=moose@hdfec.com, c=US
Date: 2024.05.31 21:23:01 -04'00'
Taylor Moose
(Signature - Respondent/Agent/Treasurer)

Treasurer
Title

Taylor Moose
(Name - Please Print)

Esposito for Congress and Taylor Moose, as Treasurer

RESPONDENT:
(Please print Committee Name/ Company Name/Individual Named in Notification Letter)

Mailing Address: Contact through legal counsel.
(Please Print)

Home#: _____ Mobile#: _____

Office#: _____ Fax#: _____

E-mail: _____

This form relates to a Federal Election Commission matter that is subject to the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A). This section prohibits making public any notification or investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.