

MAY 20 2008

BEFORE THE FEDERAL ELECTION COMMISSION

**SENSITIVE**

In the Matter of )

MUR 5985 )

TIM BURNS FOR CONGRESS )

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY SYSTEM

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

and are deemed inappropriate for review by the Alternative Dispute Resolution

Office are forwarded to the Commission with a recommendation for dismissal. The

Commission has determined that pursuing low-rated matters compared to other higher rated

matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to

dismiss these cases.

The Office of General Counsel scored MUR 5985 as a low-rated matter. In this case,

the complainant, Stephen M. Gelé, alleges that the Tim Burns for Congress Committee

("Committee") violated various disclaimer provisions under the Federal Election Campaign

Act and failed to disclose a disbursement (or in-kind contribution). Specifically, the

Committee allegedly failed to include disclaimers indicating who paid for its signs and its

website, failed to use a sufficiently large font size and include a printed box around

disclaimers on its mailers, and failed to report a disbursement (or an in-kind contribution) for

the Committee's use of office space at the offices of Florida Marine Transport, Inc. ("FMT").

which is the candidate's employer.

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1 FMT acknowledged in its response that its employees volunteered their time for the  
2 Committee. Furthermore, FMT noted that the first set of signs printed lacked a disclaimer,  
3 but that a sign printed in March 2008 did include the appropriate language. Also, FMT stated  
4 that all postcard mailers included a disclaimer and that the Committee's website (over which  
5 FMT observed it had no control) currently contained a disclaimer. Lastly, FMT stated that  
6 on March 24, 2008, it provided Tim Burns with an itemized invoice for twenty-five expenses  
7 (totaling \$6,378.22), which FMT incurred on behalf of the Committee throughout the  
8 campaign. These expenses included food bills, office supplies, cell phone charges, mass  
9 mailings, gas, as well as the rental charge for the FMT office space used by the Committee.  
10 In addition to the invoice and receipts, FMT submitted a copy of a check (dated March 23,  
11 2008) to FMT from Tim Burns for Congress, LLC, for \$6,378.22 in repayment of the  
12 expenses, which was subsequently reported on the Committee's 2008 April Quarterly Report.

13 In light of the de minimis nature of the alleged violations, and in furtherance of the  
14 Commission's priorities and resources, relative to other matters pending on the Enforcement  
15 docket, the Office of General Counsel believes that the Commission should exercise its  
16 prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821  
17 (1985).

#### 18 **RECOMMENDATION**

19 The Office of General Counsel recommends that the Commission dismiss  
20 MUR 5985, close the file effective two weeks from the date of the Commission vote, and  
21 approve the appropriate letters.

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Thomasenia P. Duncan  
General Counsel

BY:

Date

5/12/08

Gregory R. Baker  
Special Counsel

Complaints Examination  
& Legal Administration

Jeff S. Jordan

Supervisory Attorney  
Complaints Examination  
& Legal Administration

Michael Columbo  
Attorney

Attachment:

Narrative in MUR 5985

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2 **MUR 5985**

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4 **Complainant:** Stephen M. Gelé

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6 **Respondents:** Tim Burns for Congress Committee,  
7 Carol D. Sides, as Treasurer, and  
8 Dennis Pasentine, Florida Marine Transporters, Inc.  
9

10 **Allegations:** The complainant, Stephen M. Gelé, alleges that the Tim Burns for  
11 Congress Committee ("Committee") violated various disclaimer provisions under the  
12 Federal Election Campaign Act and failed to disclose a disbursement (or in-kind  
13 contribution). Specifically, the Committee allegedly failed to include disclaimers  
14 indicating who paid for its signs and its website, failed to use a sufficiently large font size  
15 and include a printed box around disclaimers on its mailers, and failed to report a  
16 disbursement (or an in-kind contribution) for the Committee's use of office space at the  
17 offices of Florida Marine Transport, Inc. ("FMT"), which is the candidate's employer.  
18

19 **Response:** FMT acknowledged in its response that its employees volunteered  
20 their time for the Committee. Furthermore, FMT noted that the first set of signs printed  
21 lacked a disclaimer, but that a sign printed in March 2008 did include the appropriate  
22 language. Also, FMT stated that all postcard mailers included a disclaimer and that the  
23 Committee's website (over which FMT observed it had no control) currently contained a  
24 disclaimer. Lastly, FMT stated that on March 24, 2008, it provided Tim Burns with an  
25 itemized invoice for twenty-five expenses (totaling \$6,378.22), which FMT incurred on  
26 behalf of the Committee throughout the campaign. These expenses included food bills,  
27 office supplies, cell phone charges, mass mailings, gas, as well as the rental charge for  
28 the FMT office space used by the Committee. In addition to the invoice and receipts,  
29 FMT submitted a copy of a check (dated March 23, 2008) to FMT from Tim Burns for  
30 Congress, LLC, for \$6,378.22 in repayment of the expenses, which was subsequently  
31 reported on the Committee's 2008 April Quarterly Report. The candidate responded on  
32 behalf of the Committee and admitted to the disclaimer violations and noted that  
33 corrective action had been taken.  
34

35 **Date complaint filed:** March 24, 2008

36  
37 **Response filed:** May 2, 2008 ; On August 13, 2008 (Candidate on behalf of himself and  
38 Time Burns for Congress, LLC responded to the complaint)

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