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BEFORE THE FEDERAL ELECTION COMMISSION

2012 JUN 26 PM 1:33

In the Matter of

2012 JUN 26 P 3 49

MUR 6549

Ted Waga

Committee to Elect Ted Waga III and

Laurie Lee Wymer, Treasurer

) DISMISSAL AND CELA
) CASE CLOSURE UNDER THE
) ENFORCEMENT PRIORITY
) SYSTEM

SENSITIVE

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6549 as a low-rated matter and has determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6549.¹

In this matter, the complainant, John MacDonald, asserts that Ted Waga, a candidate for Congress in Pennsylvania's Fourth Congressional District,² and his campaign committee, the

¹ The EPS rating information is as follows:
Filed: April 26, 2012.

Complaint Filed: April 4, 2012. Response

² According to the disclosure database, Ted Waga is registered as a candidate in the Nineteenth Congressional District of Pennsylvania.

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1 Committee to Elect Ted Waga III and Laurie Lee Wymer, in her official capacity as treasurer,
2 (the "Committee") violated the Act and Commission regulations by failing to include the
3 required disclaimers in certain campaign communications. According to the complainant, a
4 radio advertisement promoting Waga did not contain a statement of who paid for the
5 advertisement, as required by 2 U.S.C. § 441d(a)(1) and 11 C.F.R. § 110.11(b)(1), and Waga did
6 not include a verbal statement such as "My name is Ted Waga, candidate for Congress, and I
7 approve this message," or a "reasonable variation on that statement," pursuant to 2 U.S.C.
8 § 441d(d)(1)(A) and 11 C.F.R. § 110.11(c)(3). Compl. at 1. The complainant contends that,
9 although the advertisement includes a statement made by Waga identifying himself — "I'm Ted
10 Waga, and I'm running for Congress" — it does not include a statement of Waga's approval of
11 the advertisement or who paid for it.

12 In the Response, Waga, who replied on behalf of the Committee and himself, states that,
13 in his radio advertisement, he "was the only speaker in the spot, clearly identified [himself], did
14 not refer to any other candidate, and was clear about the office [he] was running for." Resp. at 1,
15 ¶ 1. He also claims that because the advertisements were set to air during hours that he was on
16 duty as a police officer, he did not have the opportunity to listen to the advertisements. *Id.*

17 Additionally, Waga states that, after receiving the Complaint, he contacted the radio
18 station sales manager and the sales manager told Waga that the "paid for" tag was added to the
19 end of the advertisement only a few days into Waga's campaign. Letter from Nikki Hilton,
20 Cumulus Broadcasting, to Ted Waga, attached to Response. Waga also states that, because the
21 complainant did not provide the dates and times of the advertisements that were allegedly
22 missing the disclaimer, he could not say with certainty whether any of the advertisements were in
23 fact missing the disclaimer. Resp. at 1, ¶ 2. Waga goes on to say, however, that if an

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advertisement was mistakenly aired without the required disclaimer, the radio station quickly corrected the mistake. *Id.*

Under the Act, if a candidate or an authorized political committee of a candidate pays for and authorizes a communication transmitted through any broadcasting station, such communication must clearly state that the communication was paid for by such authorized political committee. 2 U.S.C. § 441d(a)(1) and 11 C.F.R. § 110.11(b)(1). In addition, such communication broadcast on the radio must contain a statement made by the candidate that identifies the candidate and states that the candidate approves the communication. 2 U.S.C. § 441d(d)(1)(A) and 11 C.F.R. § 110.11(c)(3)(i).

Waga attaches to his Response three recordings of advertisements. Each of them begins with his statement, "I'm Ted Waga, and I'm running for Congress," and ends with, "Paid for by: Committee to Elect Ted Waga." The advertisements, however, do not include a statement made by Waga stating that he approves the message. These recordings demonstrate that the ads did not fully comply with the applicable disclaimer requirements. *See* 2 U.S.C. § 441d(d)(1)(A) and 11 C.F.R. § 110.11(c)(3).

Nonetheless, the advertisements contained sufficient identifying information to prevent the public from being misled as to who paid for them. Moreover, the record evidence shows that, although not fully compliant, the Committee attempted to quickly take remedial action. Thus, in furtherance of the Commission's priorities and resources, relative to other matters pending on the Enforcement docket, the Office of General Counsel believes that the Commission should exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the Office of General Counsel recommends that the Commission

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remind Waga and the Committee of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11, concerning the use of appropriate disclaimers on campaign radio advertisements.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission exercise its prosecutorial discretion and dismiss MUR 6549. *See Heckler v. Chaney*, 470 U.S. 821 (1985). In addition, the Office of General Counsel recommends reminding Ted Waga and the Committee to Elect Ted Waga III and Laurie Lea Wymer, in her official capacity as treasurer, of the requirements under 2 U.S.C. § 441d and 11 C.F.R. § 110.11, concerning the use of appropriate disclaimers on campaign radio advertisements, approve the attached Factual and Legal Analysis, and close the file.

Date: 6/26/12

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