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3 **BEFORE THE FEDERAL ELECTION COMMISSION**

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COMMISSION

2014 SEP 11 PM 3:51

4 In the Matter of)

5 MUR 6677)

6 Charles Boustany Jr. M.D. for Congress, Inc.)
7 and Alan D. Hebert¹ as Treasurer)

DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

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11 **GENERAL COUNSEL'S REPORT**

12 Under the Enforcement Priority System, the Commission uses formal scoring criteria as a
13 basis to allocate its resources and decide which matters to pursue. These criteria include, without
14 limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking
15 into account both the type of activity and the amount in violation; (2) the apparent impact the
16 alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised
17 in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of
18 1971, as amended (the "Act")², and developments of the law. It is the Commission's policy that
19 pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its
20 prosecutorial discretion to dismiss cases under certain circumstances. The Office of General
21 Counsel has scored MUR 6677 as a low-rated matter and determined that it should not be referred
22 to the Alternative Dispute Resolution Office.³ For the reasons set forth below, the Office of
23 General Counsel recommends that the Commission dismiss the allegations that Respondents
24 violated the Act or Commission regulations in MUR 6677.

¹ Disclosure documents submitted by Charles Boustany Jr. M.D. for Congress, Inc. report that the Committee's treasurer is Alan D. Hebert. See Amended Statement of Organization, dated June 6, 2014. However, the Committee's Response and Designation of Counsel form spell the treasurer's surname as "Herbert."

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended ("the Act"), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

³ The EPS rating information is as follows: Complaint Filed: October 25, 2012. Response December 21, 2012.

1 In this matter, William B. Canfield III filed a complaint on behalf of his client, Jeff Landry,⁴
2 alleging that Charles Boustany Jr. M.D. for Congress, Inc. and Alan D. Hebert as treasurer
3 (collectively, the "Committee"),⁵ violated the Act and Commission regulations by distributing a
4 mailer that failed to include a disclaimer. Compl. at 1, 2. Complainant states that prior to the
5 November 6, 2012 general election, the Committee engaged the services of Targeted Creative
6 Communications, Inc. to provide "direct mail advertising services," and that the Committee did not
7 provide a disclaimer stating who paid for and authorized a mailer. *Id.* Complainant asserts that
8 while the actual distribution and cost of the mailer is unknown, "upon information and belief, [it
9 was] sent to all mail addresses in [Louisiana's] Third Congressional District." Compl. at 1.

10 Attached to the Complaint are copies of two images that Complainant states are examples of
11 "the direct mail advertising efforts provided by Targeted Creative Communications, Inc. to the
12 Boustany committee." Compl., Attach. at 1, 2. The first image includes an apparent photograph of
13 Jeff Landry writing the words "I will stop lying" on a schoolroom chalkboard. *Id.*, Attach at 1.
14 Placed over the photo is the message, "Jeff Landry needs to learn a lesson about lying." *Id.* The
15 name of the sender is not identified on the mailer, but a return address of "P. O. Box 80126,
16 Lafayette, LA 70598"⁶ is indicated, and a pre-paid postage mark reads "PAID Targeted Creative
17 Communications Inc." *Id.* The second image shows another apparent photograph of Landry, with

⁴ Jeff Landry is the former U.S. Representative for Louisiana's Third Congressional District; Landry lost to Boustany in the 2012 general election.

⁵ The Committee is the principal campaign committee of Congressman Charles Boustany, Jr., former U.S. Representative for Louisiana's Seventh Congressional District. Boustany currently represents Louisiana's newly-drawn Third Congressional District.

⁶ Complainant asserts that the post office box appears to be the address of Targeted Creative Communications, Inc. However, Statements of Organization filed with the Commission by the Committee indicate that it is the Committee's mailing address. See Statement of Organization (filed June 9, 2014), accessible at http://docquery.fec.gov/cgi-bin/fecimg/?_14961238042%200; Statement of Organization (filed September 7, 2011), accessible at http://docquery.fec.gov/cgi-bin/fecimg/?_11932321045%200; Statement of Organization (filed December 28, 2005), accessible at http://docquery.fec.gov/cgi-bin/fecimg/?_25971688539%200.

1 messages such as “Jeff Landry lied to us and wants to raise our taxes,” “Vote NO on Jeff Landry”
2 (emphasis in original), and “Jeff Landry is running a false, negative campaign . . .” *Id.*, Attach.
3 at 2. As in the first image, the name of the sender is not identified. *Id.*

4 In its response to the allegations, the Committee acknowledges that an “inadvertent mistake”
5 was made regarding the mailer at issue, and states that it distributed “more than thirty different mail
6 pieces during the 2012 election cycle that included the proper disclaimer.” Resp. at 1. The
7 Committee asserts that the mailer at issue “is the only mail piece where an inadvertent mistake was
8 made.” *Id.* Additionally, the Committee states that the post office box listed on the mail piece and
9 in the Complaint is in fact the mailing address of the Boustany campaign, “not the address of its
10 mail vendor as erroneously claimed in the Complaint.” *Id.* The Committee did not respond to the
11 Complaint’s assertion that the mailer was sent to all mail addresses in the Third Congressional
12 District, nor did the Response address the exact scope of the mailer’s distribution.

13 A disclaimer is required whenever a political committee makes a disbursement for a “public
14 communication.” 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a)); 11 C.F.R. § 110.11(a)(1).⁷
15 A public communication is “a communication by means of any broadcast, cable, or satellite
16 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank
17 to the general public, or any other form of general public political advertising.” 52 U.S.C.
18 § 30101(22) (formerly 2 U.S.C. § 431(22)); 11 C.F.R. § 100.26. A mass mailing, in turn, is defined
19 as a mailing of more than 500 pieces of mail of an identical or substantially similar nature within
20 any 30-day period. 52 U.S.C. § 30101(23) (formerly 2 U.S.C. § 431(23)); 11 C.F.R. § 100.27.

⁷ Regardless of content, all public communications authorized and paid for by a candidate, an authorized committee of a candidate, or an agent of either, must clearly state that the communications were paid for by the authorized political committee. 52 U.S.C. § 30120(a)(1) (formerly 2 U.S.C. § 441d(a)(1)); 11 C.F.R. § 110.11(b)(1). Whenever any person makes a disbursement for a “public communication” that expressly advocates the election or defeat of a clearly identified candidate, he or she must include a disclaimer. 52 U.S.C. § 30120(a) (formerly 2 U.S.C. § 441d(a)); 11 C.F.R. §§ 110.11(a)(2), (b).

1 Although Respondents acknowledge the communication at issue is a mail piece, the scope of its
2 distribution is unclear. If the mailer did not meet the threshold of "more than 500 pieces of mail of
3 an identical or substantially similar nature," as set forth at 11 C.F.R. § 100.27, it would not be
4 considered a "public communication," and thus would not be subject to the disclaimer requirements
5 at 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d) and 11 C.F.R. § 110.11. See MUR 6252 (A.J.
6 Otjen, *et al.*). In this matter, it appears that the mailer at issue was paid for by the Committee and
7 was directed at federal candidate Jeff Landry, and the Committee acknowledges that the mailer did
8 not include a disclaimer. However, the exact scope and cost of the mailer is unknown, and the
9 Committee asserts that proper disclaimers were included on over thirty other mail pieces during the
10 campaign.

11 In assessing the potential magnitude of the activity at issue, coupled with the fact that the
12 mailer had some identifying information concerning the Committee, the Office of General Counsel
13 does not believe further Commission resources are warranted to determine with certainty whether
14 the mailer qualified as a "public communication," which would have required a disclaimer.
15 Therefore, the Office of General Counsel recommends that the Commission dismiss this matter
16 pursuant to its prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985), approve the
17 attached Factual & Legal Analysis and the appropriate letters, and close the file.

18

RECOMMENDATIONS


1. Dismiss MUR 6677 pursuant to the Commission's prosecutorial discretion;
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file.

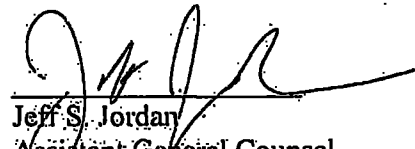
General Counsel

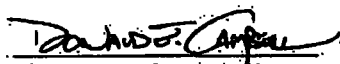
Date

9/10/14

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