



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUL 22 2013

Thomas Shane Stilson

Ozark, MO 65721

RE: MUR 6627
Mike Moon for Congress and
Cameron Nixon in his official
capacity as treasurer

Dear Mr. Stilson:

This is in reference to the complaint you filed with the Federal Election Commission on August 15, 2012, concerning various alleged violations with respect to Mike Moon for Congress. Based on that complaint and information provided by the respondents, on June 9, 2013, the Commission found that there was no reason to believe that the Moon Committee violated 2 U.S.C. §§ 441a, 441b, and 441d, provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"). Further, after considering the circumstances of this matter, the Commission determined to dismiss the remaining allegations in this matter. Accordingly, the Commission closed its file in the matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analyses, which more fully explain the basis for the Commission's decision, are enclosed.

The Act allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8). If you have any questions, please contact me at (202) 694-1650.

13044342313

Sincerely,

Daniel Petalas
Associate General Counsel
for Enforcement

A handwritten signature in black ink, appearing to read 'Mark Shonkwiler', with a long horizontal flourish extending to the right.

BY: Mark Shonkwiler
Assistant General Counsel

Enclosures
Factual and Legal Analyses

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6627

RESPONDENTS:

Mike Moon for Congress and Craig Comstock in his official capacity as treasurer

C. Michael Moon

I. INTRODUCTION

This matter was generated by a complaint filed by Thomas Shane Stilson. *See*

2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in the Missouri seventh congressional district. His principal campaign committee is Mike Moon for Congress and Craig Comstock in his official capacity as treasurer (the "Committee").¹

The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations in connection with (1) Moon's acceptance of in-kind contributions resulting from his appearances on a weekly radio program, "The Gun Show;" (2) Moon's acceptance of in-kind contributions resulting from the waiver or payment by a third party of a \$1,000 booth rental fee at a rally; (3) the Committee's failure to comply with reporting and disclaimer requirements on campaign literature and signage; (4) the

¹ The Committee's 2012 reports indicate that it received \$16,146.40 in receipts and made disbursements totaling \$16,146.40 during the same election cycle. *See* October 2012 Quarterly Report (Summary Page) (Oct. 15, 2012).

The Committee was also Moon's principal campaign committee for his 2010 candidacy in the same congressional district. Although Moon did not file a new Statement of Candidacy for 2012, the Committee's 2011 Year-End Report contained a notation that "Candidate declared to run in 2012 primary in October 2011. Started new election totals." *See* Committee's 2011 Year-End Report, Summary Page (Jan. 13, 2012). On August 8, 2012, the Reports Analysis Division ("RAD") sent Moon a letter advising him that he should either disavow a 2012 candidacy or file a 2012 Statement of Candidacy. Moon did not respond to the RAD letter. Pursuant to 11 C.F.R. § 100.3(a)(3), if the individual does not respond to the disavowal letter within 30 calendar days, he or she will be considered a candidate under the Act.

1 Committee's failure to report other alleged in-kind contributions, including the costs of signs and
2 an iPad; and (5) the Committee's or a third party's failure to report the costs of a pro-Moon
3 newspaper advertisement and the failure to include a disclaimer on the advertisement.

4 Separate responses were filed by Moon, the Committee, Matthew Canovi of Canovi &
5 Associates, LLC ("Canovi"), Journal Broadcast Group ("Journal Broadcast"), Bob Estep
6 ("Estep"), and Eric Wilber ("Wilber"). See Moon Resp. (Sept. 10, 2012), Committee Resp.
7 (Sept. 10, 2012), Canovi Resp. (Sept. 27, 2012), Journal Broadcast Resp. (Oct. 1, 2012), Estep
8 Resp. (Sept. 10, 2012), and Wilber Resp. (Sept. 17, 2012). As detailed below, the Commission
9 found no reason to believe that Respondents violated the Act by accepting excessive or
10 prohibited in-kind corporate contributions, by failing to properly report the receipt of various in-
11 kind contributions, and by not affixing a disclaimer to window decals and pocket constitutions.
12 Further, the Commission dismissed, as a matter of prosecutorial discretion, various allegations
13 relating to the receipt of a \$1,000 prohibited in-kind corporate contribution and missing and
14 incomplete disclaimers pursuant to *Heckler v. Chaney* 470 U.S. 821 (1985).

15 **I. FACTUAL AND LEGAL ANALYSIS**

16 **A. Radio Show**

17 Beginning in May 2011 (several months prior to Moon becoming a candidate), and
18 continuing after his loss in the August 2012 Republican primary, Moon regularly appeared as a
19 political commentator on "The Gun Show," a weekly two-hour radio program hosted by Canovi.
20 Moon Resp. at 1; Canovi Resp. at 1. The Show is broadcast on 104.1 KSGF-FM ("KSGF"), a
21 Springfield, Missouri radio station owned by Journal Broadcast. Journal Broadcast Resp. at 1.
22 Moon's participation on "The Gun Show" typically was limited to approximately five minutes of

1 airtime in the second hour of the show, with the last two or three minutes allotted for political
2 commentary.² Moon Resp. at 1.

3 The Complaint alleges that the radio show appearances constitute unreported in-kind
4 contributions because Canovi and Moon advocated Moon's election and solicited contributions
5 for his campaign. Compl. at 1. Moon acknowledges that his commentary was political in nature
6 and that, although he periodically mentioned his candidacy, he did not do so in every appearance.
7 Moon Resp. at 1. Moon further states that he did not provide his usual commentary on June 9,
8 2012, when he hosted "The Gun Show" in Canovi's absence. *Id.* According to Moon, there was
9 one mention of his Committee's website and one mention of an upcoming campaign rally. *Id.*
10 He denies soliciting contributions during his appearances on "The Gun Show." *Id.* Canovi
11 confirms that Moon was a political commentator during the second hour of "The Gun Show"
12 before, during, and after Moon's candidacy.³ Canovi Resp. at 1.

13 Journal Broadcast states that it is the licensee of KSGF and that "The Gun Show" is
14 independently produced and hosted on airtime sold to Canovi, an unrelated third party.⁴ Journal
15 Broadcast Resp. at 2. Journal Broadcast further states that Canovi is not an employee of either
16 KSGF or Journal Broadcast and that he purchases two hours of airtime on KSGF at the same
17 market rate that the station sells time for more traditional advertisements.⁵ *Id.* Journal Broadcast
18 provides a staff person to operate the radio control board during the broadcast of "The Gun

² Moon states that the first hour of the show involved discussions of the latest advances in firearms (or the specific topic of the day) and the second hour involved a discussion of Second Amendment issues. *Id.*

³ The available information indicates that Canovi is the sole owner of Canovi & Associates. There is no information to indicate that Moon receives any type of compensation from Canovi or Journal Broadcast for his hosting duties.

⁴ The sole shareholder of Journal Broadcast Group is Journal Broadcast Corporation which operates as a subsidiary of Journal Communications. Journal Broadcast Resp. at 1.

⁵ Complainant asserts that Canovi pays \$250 per hour for the airtime, or \$2,000 per month. Compl. at 2.

1 Show,” which is included in the cost of the airtime, but Journal Broadcast has no involvement
2 with the show’s content.⁶ *Id.*

3 The Complainant supplemented the initial allegation with information relating to
4 archived podcasts of 38 airings of “The Gun Show” between October 16, 2011, and August 4,
5 2012.⁷ *See* Compl. Suppl. (Sept. 11, 2012). Our review of the available podcasts indicates that
6 Moon appeared on 28 of the 34 shows aired during his candidacy and that Moon and Canovi
7 either referred listeners to the Committee’s website or encouraged listeners to support Moon’s
8 candidacy during 19 of those 28 shows. *Id.* During three of those 19 shows that referenced
9 Moon’s candidacy, Moon and Canovi also solicited financial support for Moon’s campaign or
10 Canovi encouraged listeners to contribute to Moon’s campaign by asking listeners to support
11 “like-minded” candidates. *Id.* (claiming that solicitations took place on February 25, April 28,
12 and June 23, 2012). The Supplement also asserts that, from the inception of the campaign, Moon
13 placed campaign material, at no charge, in every one of the electronic newsletters distributed by
14 Canovi; the Complaint alleges that the Committee failed to report the receipt of an in-kind
15 contribution from Canovi and failed to place a proper disclaimer on the advertisement.⁸ *Id.* at 3.

⁶ Journal Broadcast further responds that the Complaint does not allege a violation on its part and further denies that it has made any contributions to Moon’s campaign or that it has any materials relevant to the Complaint. Journal Broadcast Resp. at 3. It requests that the Commission dismiss it as a Respondent in the matter. *Id.*

⁷ Although Complainant refers to Moon as Canovi’s co-host, the podcasts indicate that Moon generally provided political commentary during the last five minutes of the show rather than being present and involved in the discussions during the remainder of the show. However, there are a few instances when Moon appeared on the show and participated in the general discussion. *See generally* Compl. Suppl.

⁸ Moon did not specifically respond to the allegation regarding the newsletter and Canovi responded that he was unclear as to how to respond to the information contained in the Supplement to the Complaint as it cited to no particular statutory provision. *See* Moon Resp. at 1-2; Canovi Resp. at 1. It appears that Complainant is alleging that the Committee received an in-kind contribution from Canovi since Canovi sells advertising and sponsorships for the newsletter and failed to place the proper disclaimers on the advertisements. We reviewed the archived newsletters available on Canovi’s website, but could not locate any editions that contained any type of Moon advertisements. *See* <http://www.mattcanovi.com> (last accessed on Jan. 23, 2013). Based on the lack of available information supporting Complainant’s allegation, the Commission found no reason to believe that the Committee

1 The Act prohibits corporations from making contributions to federal candidates or their
2 committees. 2 U.S.C. § 441b(a). The Act also prohibits an individual from making a
3 contribution to a candidate or authorized political committee in any calendar year which
4 aggregates in excess of \$2,500. 11 C.F.R. § 100.52(a) (2012 cycle). "Anything of value"
5 includes an in-kind contribution. 11 C.F.R. §§ 100.52(d)(1), 100.111(a). All political
6 committees are required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a).

7 Contributions do not include "any cost[s] incurred in covering a news story, commentary
8 or editorial by any broadcasting station (including a cable television operator, programmer or
9 producer), Web site, newspaper, magazine or other periodical publication . . . unless the facility
10 is owned or controlled by any political party, political committee, or candidate[.] 11 C.F.R.
11 § 100.73; *see also* 2 U.S.C. § 431(9)(B)(i) (exempting certain news stories, commentaries, or
12 editorials from the definition of expenditure); 2 U.S.C. § 434(f)(3)(B)(i) (exempting
13 communications within certain news stories, commentaries, or editorials from the definition of
14 electioneering communication). This exclusion is known as the "press exemption."

15 If the press exemption applies to Canovi, there is no resulting in-kind contribution to
16 Moon or the Committee. On the other hand, if the press exemption does not apply to Canovi,
17 Moon's appearances could constitute a prohibited corporate or excessive in-kind contribution to
18 the Committee.⁹

19 The Commission conducts a two-step analysis to determine whether the press exemption
20 applies. First, the Commission asks whether the entity engaging in the activity is a press entity.

violated 2 U.S.C. §§ 434(b) and 441f by failing to report the receipt of a potentially prohibited in-kind corporate contribution and by failing to place the appropriate disclaimer on the alleged advertisements.

⁹ Canovi & Associates is Canovi's limited liability company. Commission regulations provide that, so long as a limited liability company does not opt to be treated like a corporation for tax purposes, a contribution from a limited liability company is treated as a contribution from a partnership. *See* 11 C.F.R. § 110.1(g)(3).

1 See Advisory Op. 2005-16 (Fired Up!). Second, in determining the scope of the exemption, the
2 Commission considers (1) whether the press entity is owned or controlled by a political party,
3 political committee, or candidate, and if not, (2) whether the press entity is acting as a press
4 entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press
5 function"). See *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).
6 If the press entity is not owned or controlled by any political party, political committee, or
7 candidate, and if it is acting as a press entity with respect to the conduct in question, the press
8 exemption applies and immunizes the activity at issue.

9 In determining whether Canovi & Associates qualifies for the press exemption, we first
10 consider whether it is a press entity. When conducting that analysis, the Commission "has
11 focused on whether the entity in question produces on a regular basis a program that
12 disseminates news stories, commentary, and/or editorials." Advisory Opinions 2010-08
13 (Citizens United), 2007-20 (XM Satellite Radio Inc.), 2005-19 (Inside Track).¹⁰ The available
14 information indicates that Canovi & Associates is in the business of producing on a regular,
15 weekly basis a talk radio program discussing issues related to the Second Amendment. It is
16 therefore a press entity. See Advisory Op. 2007-20 (XM Satellite Radio, Inc.) and AO 2005-19
17 (Inside Track) (applying the press exemption to a radio program where the host operated a
18 corporation that produced a show and purchased airtime to broadcast her show). That Canovi
19 has supported Moon's candidacy is irrelevant because the Commission has determined that "an
20 entity otherwise eligible for the press exemption does not lose its eligibility merely because of a

¹⁰ The Commission has also noted that the analysis of whether an entity qualifies as a press entity does not necessarily turn on the presence or absence of any one particular fact. Advisory Opinions 2010-08 (Citizens United), 2007-20 (XM Satellite Radio Inc.), 2005-19 (Inside Track).

1 lack of objectivity in a news story, commentary, or editorial.” Advisory Opinions 2010-08
2 (Citizens United), 2005-16 (Fired Up!), 2005-19 (Inside Track).

3 We next consider whether the press entity is owned or controlled by a political party,
4 political committee, or candidate. Available information indicates that Canovi & Associates is
5 not owned or controlled by a political committee, political party or candidate. Although Moon
6 regularly appears on “The Gun Show” as a guest, there is no information suggesting that he (or
7 any other candidate, committee or political party) has any ownership interest in the entity. All
8 available information indicates that Canovi controls the content of the entire show.

9 We also consider whether the press entity is acting in its legitimate press function with
10 respect to the activity at issue, paying particular attention to whether the materials under
11 consideration are available to the general public and whether they are comparable in form to
12 those ordinarily issued by the entity. Advisory Opinions 2010-08 (Citizens United), 2005-16
13 (Fired Up!). “The Gun Show” is available to the general public residing in or near Springfield,
14 Missouri, which includes potential voters within Missouri’s seventh congressional district. See
15 <http://www.ksgf.com> (last accessed January 22, 2013). Podcasts of “The Gun Show” are also
16 available for download through the radio station’s website. See
17 <http://www.ksgf.com/podcasts/thegunshow/> (last accessed February 2, 2013). In addition, a
18 review of the podcasts provided by Complainant indicates that “The Gun Show’s” format was
19 similar to those shows ordinarily produced by and paid for by a press entity.

20 Complainant takes issue with the frequency with which Moon appeared on the show and
21 disputes the allegation that he and Canovi expressly advocated Moon’s candidacy. Compl. at 1;
22 Compl. Suppl. at 1. The Commission, however, has held that intermittent requests for
23 contributions to a candidate’s campaign do not foreclose application of the press exemption, as

1 long as the entity is not owned or controlled by a political committee, political party, or a
2 candidate, and the entity is not serving as an intermediary for the receipt of the contributions.
3 See Advisory Op. 1980-109 (Ruff Times); see also Advisory Opinion 2008-14 (distinguishing
4 between "regular" and "intermittent" express advocacy and solicitations). It further appears that
5 "The Gun Show," for the most part, has consistently followed the same format, which did not
6 include expressly advocating for Moon's candidacy or soliciting contributions to his
7 Committee.¹¹ See generally Compl. Suppl. Since the three solicitations of funds for Moon's
8 candidacy are not a regular, fixed part of "The Gun Show," it does not prevent "The Gun Show"
9 from satisfying the press exemption requirements. Therefore, we conclude that "The Gun Show"
10 was acting in its legitimate press function with regard to Moon's appearances.

11 We thus conclude that Moon's appearances on "The Gun Show" do not constitute
12 excessive or prohibited contributions to the Committee in violation of 2 U.S.C. §§ 441a or 441b.

13 As to Journal Broadcast, the available information indicates that, because Canovi
14 produces "The Gun Show" and maintains control over its content, Journal Broadcast was acting
15 as an entrepreneur and not a press entity exercising its "unfettered right... to cover and comment
16 on political campaigns" when it sold airtime to Canovi & Associates to broadcast "The Gun
17 Show." See Advisory Op. 1982-44 (DNC/RNC), citing H.R. Report No. 93-1239, 93d Congress,

¹¹ We note, however, that there was at least one show, and possibly two, that aired during Moon's candidacy where he hosted the entire show. See <http://www.ksgf.com/podcasts/thegunshow/158302525.html> (last accessed Jan. 22, 2013). While Complainant alleges that Moon also hosted the June 3, 2012, show in Canovi's absence, we were unable to locate a podcast for this particular show. In addition, there were some shows during his candidacy where Moon's appearance lasted longer than the customary five minutes allotted at the end of the second hour. See, e.g., <http://www.ksgf.com/podcasts/thegunshow/164125606.html> (June 28, 2012) (last accessed Jan. 22, 2013).

In previous MURs, the Commission has held that the press exemption applies in instances where the program format does not change after the individual becomes a candidate. See MUR 5555 (Ross) (radio talk show host who became a candidate was eligible for the press exemption where program format did not change after he began to consider candidacy) and MUR 4689 (Dorman) (radio guest-host who later became a candidate was eligible for the press exemption for commentary critical of eventual opponent where there was "no indication that the formats, distribution, or other aspects of production" were any different when the candidate hosted than they were when the regular host was present).

1 2d Sess. 4 (1974); *see also* MUR 6089 (Hart) (citing to MUR 5297 (Wolfe) (concluding that the
2 station acted as an entrepreneur, not press entity, when it aired a show hosted by Wolfe because
3 Wolfe paid for the airtime and maintained complete control over the content of the show)).
4 Therefore, we conclude that Journal Broadcast and KSGF have not made any prohibited or
5 excessive in-kind corporate contributions to the Committee in violation of 2 U.S.C. §§ 441a or
6 441b.

7 Accordingly, the Commission found no reason to believe that Journal Broadcast, Canovi,
8 and Canovi & Associates made and the Committee accepted a prohibited or excessive in-kind
9 corporate contribution based on Moon's appearances on "The Gun Show" during his candidacy
10 in violation of 2 U.S.C. §§ 441a and 441b. Further, it found no reason to believe that that the
11 Committee failed to report such a contribution in violation of 2 U.S.C. § 434(b).

12 **B. The Rally for Common Sense**

13 The Committee had a booth at the May 19, 2012, Rally for Common Sense, which was
14 staged by Common Sense Exchange. The Complaint alleges that Jonica Hope, a Committee
15 volunteer and webmaster for the Rally, may have waived the \$1,000 booth fee for the
16 Committee.¹² Compl. at 2. If Common Sense Exchange made an in-kind contribution, it would
17 have violated 2 U.S.C. § 441b because Common Sense Exchange is non-profit corporation. *See*
18 <http://www.sos.mo.gov/kbimaging/29374539.pdf> (last accessed Feb. 2, 2013). On this basis, the
19 Complaint alleges that the Rally may have made, and the Committee may have accepted and

¹² The Commission attempted to notify Common Sense Exchange on two separate occasions (August 22, 2012, and September 11, 2012) at the same address found on its website, but both packages were returned as undeliverable. It also sent a notification letter to Jonica Hope but did not receive a response from her. *See* Letter to Kim Paris, Common Sense Exchange Rally d/b/a Rally for Common Sense from Jeff Jordan, CELA (Aug. 22, 2012) and (Sept. 11, 2012) (Notification Letters); Letter to Jonica Hope from Jeff Jordan, CELA (Aug. 22, 2012) (Notification Letter).

1 failed to report, a prohibited corporate in-kind contribution from Common Sense Exchange in
2 violation of 2 U.S.C. §§ 441b and 434(b). *Id.*

3 The Committee responds that the July 2012 Quarterly Report does, in fact, contain an un-
4 itemized expenditure totaling \$750 in connection with the Rally. Committee Resp. at 1; Moon
5 Resp. at 2; *see* July 2012 Quarterly Report (Summary Page) (filed on Jul. 14, 2012). Neither
6 response, however, indicates that the \$750 disbursement was for the booth rental fee. *Id.*
7 According to the Committee, it may have “misinterpreted” the filing requirements regarding this
8 expenditure, but it is willing to amend the report to itemize this particular disbursement. *Id.* The
9 meaning of the Committee’s statement is unclear. It may indicate that the \$750 expenditure
10 represents the booth rental fee but that the Committee was unaware it was required to itemize the
11 expenditure. The Committee does not, however, address the \$250 difference between the \$1,000
12 fee and the \$750 reported expenditure. Further, the Committee does not dispute the information
13 showing that federal candidates were required to pay \$1,000 for the booth rental. Compl., Ex.
14 A1.

15 Since we were unable to notify Common Sense Exchange and Jonica Hope did not file a
16 response, we cannot determine the reason for the \$250 variance. It is possible that Common
17 Sense Exchange provided a commercially reasonable discount from \$1,000 to \$750, that
18 Common Sense Exchange provided a discount resulting in a \$250 in-kind contribution, or that
19 Common Sense Exchange waived the fee altogether.

20 Regardless, we do not believe that this potential violation warrants further action by the
21 Commission, given the resources that would be necessary to investigate the matter which
22 involves a negligible amount of money. Accordingly, the Commission decided to exercise

1 prosecutorial discretion and dismiss the allegation as to Common Sense Exchange, the
2 Committee, Moon, and Hope pursuant to *Heckler v. Chaney*.

3 **C. Committee's Potential Disclaimer and Reporting Violations**

4 The Complaint alleges that the Committee and other individuals failed to comply with the
5 disclaimer requirements of Commission regulations with regard to several pieces of campaign
6 literature, including: (1) pamphlets; (2) a billboard; (3) an advertisement printed on a tractor
7 trailer; (4) pocket constitutions; and (5) window decals. Compl. at 1-3. Complainant further
8 alleges that the Committee failed to report the receipt of in-kind contributions and the costs
9 incurred in connection with some of the campaign literature. *Id.*

10 The Act requires a disclaimer whenever a political committee makes a disbursement for
11 the purpose of financing any public communication through any broadcast, cable, satellite
12 communication, newspaper, magazine, outdoor advertising facility, mass mailing, or any other
13 type of general public political advertising. 2 U.S.C. § 441d(a); 11 C.F.R. §§ 100.26, 110.11. A
14 disclaimer is also required for all public communications by any person that expressly advocates
15 the election or defeat of a clearly identified candidate. 11 C.F.R. § 110.11(a)(2). The
16 communication must disclose who paid for the communication and whether it was authorized by
17 a candidate, an authorized political committee of a candidate, or its agents.

18 2 U.S.C. § 441d(a)(1)-(3); 11 C.F.R. § 110.11(b)(1)-(3). For printed communications, the
19 required disclaimer information must be printed in a box in sufficiently-sized type and with
20 adequate color contrast. 2 U.S.C. § 441d(c); 11 C.F.R. § 110.11(c).

21 **1. Pamphlets Distributed by the Committee**

22 First, Complainant alleges that the Committee distributed "campaign literature" and
23 failed both to place its disclaimer language in the required box and to state whether the

1 communication was authorized by the candidate or committee. Compl. at 2, Exs. B1-B4. The
2 communications appear to be in the form of pamphlets; these exhibits provided by Complainant
3 appear to show the front and back of two different communications. *Id.*

4 Exhibit B1 contains the caption "Liberty and Justice for All Mike Moon for Congress"
5 and contains a picture of the Moon family on the left-hand side of the communication; language
6 on the upper right-hand side of the page reads "Mike Moon Constitutional Conservative for
7 Congress" along with text reading "Missouri's 7th Congressional District." *Id.*, Ex. B1. The
8 lower right-hand side of the communication contains the Committee's website address, its
9 address and telephone number, and a disclaimer statement, "Paid for by Mike Moon for
10 Congress," in much smaller type than the rest of the language. *Id.* Exhibit B2 most likely
11 represents the back page of Exhibit B1 since it is roughly the same size as Exhibit B1. Exhibit
12 B2 contains the caption "MIKE MOON STANDS STRONG ON FREEDOM PRINCIPLES"
13 and lists Moon's stance on issues such as agriculture, defense, social security, the Second
14 Amendment, and governmental authority. *See* Compl., Exs. B1-B2.

15 Exhibit B4 appears to represent the front page of a second communication, and Exhibit
16 B3 the back page. The front page contains the caption and information regarding Moon's pledge
17 if elected to office. *Id.*, B3-B4. At the very bottom of the page in much smaller print is text
18 reading, "Paid for by Mike Moon for Congress." *Id.* The back page contains a list of legislation
19 that Moon's opponent, Billy Long, voted for and that are "against the Constitution." *Id.*, Ex. B3.
20 A statement at the bottom of the page says, "Vote Mike Moon on August 7th" along with the
21 Committee's campaign website and address. *Id.* There are no visible postmarks on the
22 literature, which suggests they were likely circulated by hand, not mailed. *Id.*, Exs. B1-B4.

1 Complainant asserts that Moon was observed handing out one of more of these communications
2 at the Rally for Common Sense. Compl. at 2, Exs. B1-B2.

3 The only information regarding distribution of the pamphlets is the Complaint's assertion
4 that Moon was seen with the pamphlets at the Rally for Common Sense. Compl. at 2. Moon and
5 the Committee acknowledge that the Committee did not place the disclaimer in a printed box, but
6 claim that the literature included "paid for by" language. Moon Resp. at 2; Committee Resp. at
7 1. The Committee's acknowledgement of the disclaimers is a strong indication that it was
8 responsible for the distribution of the campaign literature.¹³

9 Because of the likely *de minimis* costs of production for the pamphlets, the Commission
10 decided to exercise prosecutorial discretion and dismiss the allegation that the Committee failed
11 to affix an appropriate disclaimer that was contained in a printed box.

12 2. Billboard Advertisement

13 The second disclaimer allegation is that the 12 ft. by 8 ft. billboard, purportedly posted by
14 the Committee, containing the language "MIKE MOON FOR U.S. CONGRESS 7TH District,"
15 and providing the Committee's website, was posted with a disclaimer stating "Paid for by Bob
16 Estep" that was not "clear and conspicuous" as required by the Act and regulations. Compl. at 2,
17 Exs. C1-C3. As stated in the Complaint, *see* Compl. at 2-3, the Committee reported the receipt
18 of the in-kind contribution totaling \$1,532.00 on its July 2012 Quarterly Report. *See* July 2012
19 Quarterly Report (Itemized Receipts) at p. 3 (filed on July 14, 2012). The exhibits provided by
20 Complainant represent various pictures of one campaign sign, which show that the disclaimer

¹³ We note that neither Moon nor the Committee's responses provide information regarding the method of distribution for the literature, the quantity distributed, or the costs associated with the creation or distribution of the literature. *See* Moon Resp. at 1; Committee Resp. at 1. In reviewing the Committee's disclosure reports for the 2012 election cycle, we are not able to determine which disbursement(s), if any, could apply to the campaign literature. *See* Committee Disclosure Reports.

1 language "Paid for by Bob Estep" is in the far bottom right-hand corner of the billboard in much
2 smaller print than the other content of the billboard. Compl., Exs. C1-C3.

3 Moon responds that the billboard sign was paid for by Bob Estep, the printer added the
4 "paid for by" language to the sign, that the signage contained the appropriate disclaimer
5 language, and that it was properly reported by the Committee. Moon Resp. at 2.

6 We conclude that the billboard constitutes a public communication because the billboard
7 is an outdoor advertising facility and that it required a disclaimer because it contained express
8 advocacy ("Mike Mden for U.S. Congress 7th District") pursuant to 11 C.F.R. § 100.22(a). See
9 2 U.S.C. § 441d; 11 C.F.R. § 100.26. Estep paid for the communication that appears to have
10 been authorized by the Committee. The regulations provide that a communication paid for by a
11 person and authorized by a committee must contain disclaimer language set apart in a printed
12 box with the effect that it is clear and conspicuous to the reader. 11 C.F.R. § 110.11(b)(2),
13 (c)(2)(ii).

14 The disclaimer language is not complete. It does not state that the Committee authorized
15 the communication, and it is not contained in a printed box set apart from the other content of the
16 communication in adequate print type. But the violations are technical in nature and the
17 information provided could be viewed as sufficient to inform the public of the person responsible
18 for the communication. Thus, the Commission decided to exercise prosecutorial discretion and
19 dismiss the allegation, pursuant to *Heckler v. Chaney*, that Estep failed to affix the appropriate
20 disclaimer to the billboard. See MUR 6252 (Otjen) (EPS Dismissal) (dismissing Complaint on
21 insufficient disclaimer because the advertisements contained information indicating that the
22 candidate authorized the communications).

1 3. Hand-Painted Committee Signs

2 The third disclaimer allegation is that campaign signs posted by the Committee did not
3 contain any disclaimer and that the Committee failed to report expenditures made in connection
4 with the signs in violation of 2 U.S.C. §§ 441d and 434(b). Compl., Exs. D1-D5. All of the
5 signs appear to be the same and say "Mike Moon for U.S. Congress." None of the signs has a
6 disclaimer. *Id.*

7 Moon responds that the signs were hand-painted and that he "overlooked" the need for
8 disclaimers. Moon Resp. at 2. The Responses do not address whether the Committee reported
9 any expenditures in connection with the signs, and we are unable to determine, by reviewing the
10 disclosure reports, whether it did so. Moon Resp. at 2; Committee Resp. at 1.

11 Because the signs were hand-painted, the amount of money involved in creating these
12 signs was likely *de minimis*. Accordingly, the Commission decided to exercise prosecutorial
13 discretion and dismiss these allegations. *See Heckler v. Chaney*; *see also* MUR 6252 (Otjen).

14 4. Pocket Constitution

15 The fourth disclaimer allegation pertains to pocket constitutions that were allegedly paid
16 for and authorized by the Committee. The Complaint alleges that the constitutions required a
17 disclaimer and that the Committee failed to include the proper disclaimer language, and that the
18 Committee failed to report the costs as an expenditure or as an in-kind contribution. Compl. at 3,
19 Ex. F.

20 A review of the pocket constitution indicates that it was not created by the Committee but
21 rather likely purchased for the purpose of distribution. The lack of a postmark indicates that the

1 communication was not mailed but most likely handed out to potential voters.¹⁴ The back of the
2 pocket constitution contains a sticker saying "Mike Moon for U.S. Congress," along with the
3 Committee's website and campaign address. Compl., Ex. F.

4 While Moon and the Committee do not address the disclaimer allegation, they state that
5 the Committee reported, in its operating total expenditure on the July 2012 Quarterly Report, an
6 un-itemized \$220 expenditure in connection with the pocket constitution. Moon Resp. at 2;
7 Committee Resp. at 1. They also state that the Committee is willing to amend the report to
8 itemize the expenditure, if required. *Id.*

9 Here, the constitutions did not require a disclaimer. Moreover, the Committee placed a
10 campaign sticker on the back of the pocket constitution indicating who the candidate was, the
11 campaign address, and the website. Thus, the Commission found no reason to believe that the
12 Committee failed to provide the proper disclaimer language in violation of 2 U.S.C. § 441d and
13 failed to properly report the costs associated with the pocket constitution in violation of 2 U.S.C.
14 § 434(b).

15 5. Window Decals

16 Fifth, the Complaint alleges that the Committee distributed public communications in the
17 form of window decals without proper disclaimers. Images of the decals were posted on the
18 Committee's website. Compl. at 4, Ex. I. The alleged window decals say "Mike Moon for
19 Congress." *Id.* Moon denies that the Committee purchased window decals.¹⁵ Moon Resp. at 2.

¹⁴ In Complaint Exhibit A2, submitted in connection with the Rally's vendor's booth, there is a picture of Moon with another individual identified as William Looman. Moon appears to be holding the same type of pocket constitution referred to in Complaint Exhibit F.

¹⁵ We reviewed the Committee's website, but did not find any images that appeared to be window decals. See <http://www.mikemoonforcongress.com> (last viewed on January 22, 2013).

1 There is no available information to suggest that the Committee distributed window
2 decals as alleged. Even if the Committee did distribute window decals, Commission regulations
3 state that the disclaimer provisions do not apply to items such as bumper stickers, pins, buttons,
4 and similar small items upon which a disclaimer cannot be conveniently printed. 11 C.F.R.
5 § 110.11(f)(1)(i). Window decals, similarly, are small items exempt from disclaimer
6 requirements. Accordingly, the Commission found no reason to believe that the Committee
7 violated 2 U.S.C. § 441d with respect to the alleged window decals.

8 **D. Apple iPad**

9 Complainant alleges that the Committee failed to report the receipt of an Apple iPad,
10 valued at \$399, as an in-kind contribution in violation of 2 U.S.C. § 434(b). Compl. at 3-4.
11 Moon responds that the iPad was purchased on August 11, 2012, and that the Committee would
12 report the expenditure in its next disclosure report, the October 2012 Quarterly Report. Moon
13 Resp. at 2. The Committee did not respond to this particular allegation. Committee Resp. at 1.

14 A review of the Committee's October 2012 Quarterly Report indicates that it reported
15 making a disbursement totaling \$428.83 on August 10, 2012, at WalMart for a fundraiser. See
16 October 2012 Quarterly Report (Itemized Disbursements) at p. 4 (filed on Oct. 15, 2012).
17 Although the Responses do not specifically describe the purpose of the WalMart expenditure,
18 and we cannot conclusively determine whether this particular disbursement was for the iPad, the
19 expenditure is within the price range for the least expensive version of the iPad, and purported
20 date of purchase. Moon Resp. at 2.

21 Based on the available information, the Commission found no reason to believe that the
22 Committee violated 2 U.S.C. § 434(b) by failing to report the disbursement in connection with
23 the iPad.

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E. Bob Estep Communication

The Complainant alleges that Estep failed to include a disclaimer on a communication hand-painted on the side of his tractor trailer advocating the election of Moon; that Estep potentially made an excessive in-kind contribution to the Committee in connection with the communication; and that the costs associated with the use of Estep's tractor trailer were not reported as an in-kind contribution by the Committee. Compl. at 3, Exs. E1-E2. The tractor trailer has an advertisement that covers the entire length of one side and reads "Mike Moon for U.S. Congress 7th District" and "MikeMoonforCongress.com." Compl., Exs. E1-E2.

Moon responds that the trailer, owned by Estep, was hand-painted with a "disclaimer added"; that Estep purchased the paint and supplies and hired an individual to paint the trailer; and that Estep provided the Committee with the costs, which the Committee reported. Moon Resp. at 2.

The Committee disclosed the receipt of an in-kind contribution totaling \$285 from Estep on its October 2012 Quarterly Report that appears to be in connection with this communication. See October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15, 2012). Estep responds that, acting on advice from an unnamed individual, a disclaimer was affixed to the tractor trailer with a "wide tipped marker." Estep Resp. at 1. Estep's response indicates that the disclaimer was not affixed to the communication at the outset but added at a later date. *Id.*

In light of the addition of the hand painted disclaimer, the Commission decided to exercise prosecutorial discretion and dismiss the allegation as to Estep pursuant to *Heskler v. Chaney*. See MUR 6252 (Otjen).

As to the allegation of Estep's making an excessive in-kind contribution, the Committee's disclosure reports indicate that Estep made three contributions to the Committee:

1 one for \$1,532, one for \$200, and a third for \$285, aggregating to \$2,017. See July Quarterly
2 Report (Itemized Receipts) at p. 1, 3; October 2012 Quarterly Report (Itemized Receipts) at p. 1.
3 (filed on Jul. 14, 2012 and Oct. 15, 2012). Therefore, the Commission found no reason to
4 believe that Estep made and the Committee received an excessive in-kind contribution in
5 violation of 2 U.S.C. § 441a.

6 As to the allegation that the value of the use of the tractor trailer was not reported by the
7 Committee as an in-kind contribution, the available information indicates that the Committee
8 reported the contribution. Therefore, the Commission found no reason to believe that the
9 Committee failed to report the value of the use of Estep's tractor trailer in violation of 2 U.S.C.
10 § 434(b).

11 **F. Eric Wilber's Newspaper Advertisement**

12 Complainant alleges that Eric Wilber paid for a newspaper advertisement placed in
13 Springfield, Missouri's *Community Free Press* from July 25-August 7, 2012, advocating Moon's
14 candidacy, failed to report it as an independent expenditure and failed to provide the proper
15 disclaimer information. Compl. at 4, Ex. H.

16 Wilber responds that he was a volunteer for the Moon Committee and received two calls
17 from Gregg Hansen, a *Community Free Press* representative, inquiring whether Moon was
18 interested in placing an advertisement. Wilber Resp. at 1. Moon informed Wilber that the
19 Committee did not have sufficient funds to pay for an advertisement. *Id.* When Hansen called
20 again regarding a less expensive advertisement, Wilber subsequently called Hansen back and
21 responded that the Committee did not have the funds to pay for the ad and asked if he could pay
22 for the advertisement himself. *Id.* Upon learning that he could do so, Wilber agreed to place the

1 advertisement with the understanding that it would be his expenditure. *Id.* Wilber does not
2 indicate whether Moon had any knowledge that Wilber was planning to place an advertisement.

3 The newspaper advertisement reads "Moon for Congress" and states in the upper left-
4 hand corner, "Paid for by Citizen Eric Wilber." ¹⁶ *See* Compl., Ex. H. According to Wilber, he
5 inquired as to the type of disclosure information required, but Hansen was unable to provide any
6 guidance. Pointing to his status as a political novice, Wilber says he was unaware that any
7 contact information needed to be placed on the advertisement. *Id.* The newspaper invoiced the
8 Committee for the advertisement, but Wilber paid it. *Id.*; at Attachment (copy of invoice).
9 Wilber states that he did not report the expenditure because it was below the Commission's \$250
10 threshold and, even if it were not, the report would not have been due at the time of the
11 Complaint. *Id.* at 2. Moon responded that the advertisement was paid for on July 25, 2012, and
12 would be reported in the next quarterly report. The Committee, on its October 2012 Quarterly
13 Report, disclosed its receipt of a \$232 in-kind contribution for "advertising" from Wilber on July
14 25, 2012. *See* October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15,
15 2012).

16 The Committee properly reported newspaper advertisement as an in-kind contribution.
17 We therefore find no reason to believe that Wilber violated 11 C.F.R. § 109.10 by failing to file
18 an independent expenditure in connection with the newspaper advertisement.

19 The advertisement did not contain an adequate disclaimer. The advertisement constitutes
20 a public communication because it was distributed in the newspaper. 11 C.F.R. §§ 100.26,
21 110.11. It required a disclaimer because it said "Moon for Congress" and therefore was express
22 advocacy under to 11 C.F.R. § 100.22(a). The advertisement contained language indicating that

¹⁶ *See also* <http://www.cfpmidweek.com/weeks/IssuePDFs/vol10i15web.pdf> (last accessed on Jan. 22, 2013).

1 Wilber paid for it but did not contain language providing Wilber's permanent street address,
2 telephone number or language indicating that it was not authorized by a candidate, committee or
3 political party as required by the regulations. 11 C.F.R. § 110.11(c)(3).

4 But the disclaimer information in the advertisement provided the public with notice as to
5 who was responsible for the advertisement and the amount of money involved (\$232) was *de*
6 *minimis*. We therefore exercise prosecutorial discretion, and dismiss the allegation that Wilber
7 violated the disclaimer provisions pursuant to *Heckler v. Chaney*.

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2 **FEDERAL ELECTION COMMISSION**
3
4 **FACTUAL AND LEGAL ANALYSIS**
5
6

7 MUR 6627
8

9 **RESPONDENTS:**

Common Sense Exchange d/b/a Rally for Common
Sense.

Jonica Hope

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14 **I. INTRODUCTION**
15

16 This matter was generated by a complaint filed by Thomas Shane Stilson. *See*

17 2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in
18 the Missouri seventh congressional district. His principal campaign committee is Mike Moon for
19 Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Common
20 Sense Exchange d/b/a Rally for Common Sense is a non-profit corporation. Jonica Hope is an
21 alleged Committee volunteer and webmaster for the rally held by Common Sense Exchange.

22 The Complaint alleges that Respondents violated the Federal Election Campaign Act of
23 1971, as amended (the "Act"), and Commission regulations in connection with Moon's
24 acceptance of an in-kind contribution resulting from the waiver or payment by a third party of a
25 \$1,000 booth rental fee at a rally.

26 Separate responses were filed by Moon, and the Committee. *See* Moon Resp. (Sept. 10,
27 2012), and Committee Resp. (Sept. 10, 2012). Common Sense Exchange and Jonica Hope did
28 not submit Responses.¹ As detailed below, the Commission decided to dismiss, as a matter of

¹ The Commission attempted to notify Common Sense Exchange on two separate occasions (August 22, 2012, and September 11, 2012) at the same address found on its website, but both packages were returned as undeliverable. It also sent a notification letter to Jonica Hope but did not receive a response from her. *See* Letter to Kim Paris, Common Sense Exchange Rally d/b/a Rally for Common Sense from Jeff Jordan, CELA (Aug. 22, 2012).

1 prosecutorial discretion, the allegations relating to the receipt of a \$1,000 prohibited in-kind
2 corporate contribution pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 The Committee had a booth at the May 19, 2012, Rally for Common Sense, which was
5 staged by Common Sense Exchange. The Complaint alleges that Jonica Hope, a Committee
6 volunteer and webmaster for the Rally, may have waived the \$1,000 booth fee for the
7 Committee. Compl. at 2. If Common Sense Exchange made an in-kind contribution, it would
8 have violated 2 U.S.C. § 441b because Common Sense Exchange is non-profit corporation. See
9 <http://www.sos.mo.gov/kbimaging/29374539.pdf> (last accessed Feb. 2, 2013). On this basis, the
10 Complaint alleges that the Rally may have made, and the Committee may have accepted and
11 failed to report, a prohibited corporate in-kind contribution from Common Sense Exchange in
12 violation of 2 U.S.C. §§ 441b and 434(b). *Id.*

13 The Committee responds that the July 2012 Quarterly Report does, in fact, contain an un-
14 itemized expenditure totaling \$750 in connection with the Rally. Committee Resp. at 1; Moon
15 Resp. at 2; see July 2012 Quarterly Report (Summary Page) (filed on Jul. 14, 2012). Neither
16 response, however, indicates that the \$750 disbursement was for the booth rental fee. *Id.*
17 According to the Committee, it may have “misinterpreted” the filing requirements regarding this
18 expenditure, but it is willing to amend the report to itemize this particular disbursement. *Id.* The
19 meaning of the Committee’s statement is unclear. It may indicate that the \$750 expenditure
20 represents the booth rental fee but that the Committee was unaware it was required to itemize the
21 expenditure. The Committee does not, however, address the \$250 difference between the \$1,000

and (Sept. 11, 2012) (Notification Letters); Letter to Jonica Hope from Jeff Jordan, CELA (Aug. 22, 2012) (Notification Letter).

1 fee and the \$750 reported expenditure. Further, the Committee does not dispute the information
2 showing that federal candidates were required to pay \$1,000 for the booth rental. Compl., Ex.
3 A1.

4 Since we were unable to notify Common Sense Exchange, and Jonica Hope did not file a
5 response, we cannot determine the reason for the \$250 variance. It is possible that Common
6 Sense Exchange provided a commercially reasonable discount from \$1,000 to \$750, that
7 Common Sense Exchange provided a discount resulting in a \$250 in-kind contribution, or that
8 Common Sense Exchange waived the fee altogether.

9 Regardless, we do not believe that this potential violation warrants further action by the
10 Commission, given the resources that would be necessary to investigate the matter which
11 involves a negligible amount of money. Accordingly, the Commission decided to exercise
12 prosecutorial discretion and dismiss the allegation as to Common Sense Exchange, the
13 Committee, Moon, and Hope pursuant to *Heckler v. Chaney*.

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6627

RESPONDENT: Bob Estep

I. INTRODUCTION

This matter was generated by a complaint filed by Thomas Shane Stilson. *See* 2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in the Missouri seventh congressional district. His principal campaign committee is Mike Moon for Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Bob Estep is an individual who allegedly paid for the placement of a pro-Moon billboard advertisement and the creation of a pro-Moon advertisement placed on the side of a tractor trailer that he owned.

The Complaint alleges that the Committee and Bob Estep violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with the Committee's and Estep's failure to comply with reporting and disclaimer requirements on campaign signage.

Separate responses were filed by Moon, the Committee and Estep. *See* Moon Resp. (Sept. 10, 2012); Committee Resp. (Sept. 14, 2012); Estep Resp. (Sept. 17, 2012). As detailed below, the Commission: (1) found no reason to believe that Estep made and the Committee received an excessive in-kind contribution in violation of 2 U.S.C. § 441a; (2) found no reason to believe that the Committee failed to report the value of the use of Estep's tractor trailer in violation of 2 U.S.C. § 434(b); and (3) exercised prosecutorial discretion and dismissed the

1 allegations that Estep failed to comply with the disclaimer requirements pursuant to *Heckler v.*
2 *Chaney*, 470 U.S. 821 (1985).

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Billboard Advertisement**

5 The Complainant alleges that the 12 ft. by 8 ft. billboard, purportedly posted by the
6 Committee, containing the language "MIKE MOON FOR U.S. CONGRESS, 7TH District," and
7 providing the Committee's website, was posted with a disclaimer stating "Paid for by Bob
8 Estep" that was not "clear and conspicuous" as required by the Act and regulations. Compl. at 2,
9 C1-C3. As stated in the Complaint, *see* Compl. at 2-3, the Committee reported the receipt of the
10 in-kind contribution totaling \$1,532.00 on its July 2012 Quarterly Report. *See* July 2012
11 Quarterly Report (Itemized Receipts) at p. 3 (filed on Jul. 14, 2012). The exhibits provided by
12 Complainant represent various pictures of one campaign sign, which show that the disclaimer
13 language "Paid for by Bob Estep" is in the far bottom right-hand corner of the billboard in much
14 smaller print than the other content of the billboard. Compl., Exs. C1-C3.

15 Moon responds that the billboard sign was paid for by Bob Estep, the printer added the
16 "paid for by" language to the sign, that the signage contained the appropriate disclaimer
17 language, and that it was properly reported by the Committee. Moon Resp. at 2.

18 We conclude that the billboard constitutes a public communication because the billboard
19 is an outdoor advertising facility and that it required a disclaimer because it contained express
20 advocacy ("Mike Moon for U.S. Congress 7th District") pursuant to 11 C.F.R. § 100.22(a). *See*
21 2 U.S.C. § 441d; 11 C.F.R. § 100.26. Estep paid for the communication that appears to have
22 been authorized by the Committee. The regulations provide that a communication paid for by a
23 person and authorized by a committee must contain disclaimer language set apart in a printed

1 box with the effect that it is clear and conspicuous to the reader. 11 C.F.R. § 110.11(b)(2);
2 (c)(2)(ii).

3 The disclaimer language is not complete. It does not state that the Committee authorized
4 the communication, and it is not contained in a printed box set apart from the other content of the
5 communication in adequate print type. But the violations are technical in nature and the
6 information provided could be viewed as sufficient to inform the public of the person responsible
7 for the communication. Thus, the Commission decided to exercise prosecutorial discretion and
8 dismiss the allegation, pursuant to *Heckler v. Chaney*, that Estep failed to affix the appropriate
9 disclaimer to the billboard. See MUR 6252 (Otjen) (EPS Dismissal) (dismissing Complaint on
10 insufficient disclaimer because the advertisements contained information indicating that the
11 candidate authorized the communications).

12 **B. Tractor Trailer Advertisement**

13 The Complainant alleges that Estep failed to include a disclaimer on a communication
14 hand-painted on the side of his tractor trailer advocating the election of Moon; that Estep
15 potentially made an excessive in-kind contribution to the Committee in connection with the
16 communication; and that the costs associated with the use of Estep's tractor trailer were not
17 reported as an in-kind contribution by the Committee. Compl. at 3, Exs. E1-E2. The tractor
18 trailer has an advertisement that covers the entire length of one side and reads "Mike Moon for
19 U.S. Congress 7th District" and "MikeMoonforCongress.com." Compl., Exs. E1-E2.

20 Moon responds that the trailer, owned by Estep, was hand-painted with a "disclaimer
21 added"; that Estep purchased the paint and supplies and hired an individual to paint the trailer;
22 and that Estep provided the Committee with the costs, which the Committee reported. Moon
23 Resp. at 2.

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1 The Committee disclosed the receipt of an in-kind contribution totaling \$285 from Estep
2 on its October 2012 Quarterly Report that appears to be in connection with this communication.
3 See October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15, 2012).

4 Estep responds that, acting on advice from an unnamed individual, a disclaimer was affixed to
5 the tractor trailer with a "wide tipped marker." Estep Resp. at 1. Estep's response indicates that
6 the communication was not affixed to the communication at the outset but added at a later date.

7 *Id.*

8 In light of the addition of the hand painted disclaimer, the Commission decided to
9 exercise prosecutorial discretion and dismiss the allegation as to Estep pursuant to *Heckler v.*
10 *Chaney*. See MUR 6252 (Otjen).

11 As to the allegation of Estep making an excessive in-kind contribution, the Committee's
12 disclosure reports indicate that Estep made three contributions to the Committee: one for \$1,532,
13 one for \$200, and a third for \$285, aggregating to \$2,017. See July Quarterly Report (Itemized
14 Receipts) at p. 1, 3; October 2012 Quarterly Report (Itemized Receipts) at p. 1. (filed on Jul. 14,
15 2012 and Oct. 15, 2012). Therefore, the Commission found no reason to believe that Estep
16 made and the Committee received an excessive in-kind contribution in violation of
17 2 U.S.C. § 441a.

18 As to the allegation that the value of the use of the tractor trailer was not reported by the
19 Committee as an in-kind contribution, the available information indicates that the Committee
20 reported the contribution. Therefore, the Commission found no reason to believe that the
21 Committee failed to report the value of the use of Estep's tractor trailer in violation of 2 U.S.C.
22 § 434(b).

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

MUR 6627

RESPONDENTS:

Matthew Canovi

Canovi & Associates.

Journal Broadcast Group

I. INTRODUCTION

This matter was generated by a complaint filed by Thomas Shane Stilson. *See*

2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in the Missouri seventh congressional district. His principal campaign committee is Mike Moon for Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Matthew Canovi produces and hosts a weekly two-hour radio program ("The Gun Show") broadcast on 104.1 KSGF-FM. Moon regularly appeared as a political commentator on "The Gun Show" prior to, during, and after his candidacy. Journal Broadcast Group ("Journal Broadcast") owns the radio station which sells airtime to Canovi to broadcast "The Gun Show." Canovi & Associates, LLC is a limited liability company owned by Canovi.

The Complaint alleges that Respondents violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations in connection with Moon's acceptance of excessive or prohibited in-kind corporate contributions resulting from his appearances on "The Gun Show."

Separate responses were filed by Moon, the Committee, Canovi, and Journal Broadcast. *See* Moon Resp. (Sept. 10, 2012), Committee Resp. (Sept. 10, 2012), Canovi Resp. (Sept. 27, 2012), and Journal Broadcast Resp. (Oct. 1, 2012). As detailed below, the Commission found no

1 reason to believe that Respondents violated the Act by making or accepting excessive or
2 prohibited in-kind corporate contributions.

3 **I. FACTUAL AND LEGAL ANALYSIS**

4 Beginning in May 2011 (several months prior to Moon becoming a candidate), and
5 continuing after his loss in the August 2012 Republican primary, Moon regularly appeared as a
6 political commentator on "The Gun Show," a weekly two-hour radio program hosted by Canovi.
7 Moon Resp. at 1; Canovi Resp. at 1. The show is broadcast on 104.1 KSGF-FM ("KSGF"), a
8 Springfield, Missouri radio station owned by Journal Broadcast. Journal Broadcast Resp. at 1.
9 Moon's participation on "The Gun Show" typically was limited to approximately five minutes of
10 airtime in the second hour of the show, with the last two or three minutes allotted for political
11 commentary.¹ Moon Resp. at 1.

12 The Complaint alleges that the radio show appearances constitute unreported in-kind
13 contributions because Canovi and Moon advocated Moon's election and solicited contributions
14 for his campaign. Compl. at 1. Moon acknowledges that his commentary was political in nature
15 and that, although he periodically mentioned his candidacy, he did not do so in every appearance.
16 Moon Resp. at 1. Moon further states that he did not provide his usual commentary on June 9,
17 2012, when he hosted "The Gun Show" in Canovi's absence. *Id.* According to Moon, there was
18 one mention of his Committee's website and one mention of an upcoming campaign rally. *Id.*
19 He denies soliciting contributions during his appearances on "The Gun Show." *Id.* Canovi

¹ Moon states that the first hour of the Show involved discussions of the latest advances in firearms (or the specific topic of the day) and the second hour involved a discussion of Second Amendment issues. *Id.*

1 confirms that Moon was a political commentator during the second hour of "The Gun Show"
2 before, during, and after Moon's candidacy.² Canovi Resp. at 1.

3 Journal Broadcast states that it is the licensee of KSGF and that "The Gun Show" is
4 independently produced and hosted on airtime sold to Canovi, an unrelated third party.³ Journal
5 Broadcast Resp. at 2. Journal Broadcast further states that Canovi is not an employee of either
6 KSGF or Journal Broadcast and that he purchases two hours of airtime on KSGF at the same
7 market rate that the station sells time for more traditional advertisements.⁴ *Id.* Journal Broadcast
8 provides a staff person to operate the radio control board during the broadcast of "The Gun
9 Show," which is included in the cost of the airtime, but Journal Broadcast has no involvement
10 with the show's content.⁵ *Id.*

11 The Complainant supplemented the initial allegation with information relating to
12 archived podcasts of 38 airings of "The Gun Show" between October 16, 2011, and August 4,
13 2012.⁶ *See* Compl. Suppl. (Sept. 11, 2012). Our review of the available podcasts indicates that
14 Moon appeared on 28 of the 34 shows aired during his candidacy and that Moon and Canovi
15 either referred listeners to the Committee's website or encouraged listeners to support Moon's

² The available information indicates that Canovi is the sole owner of Canovi & Associates. There is no information to indicate that Moon receives any type of compensation from Canovi or Journal Broadcast for his hosting duties.

³ The sole shareholder of Journal Broadcast Group is Journal Broadcast Corporation which operates as a subsidiary of Journal Communications, Inc. Journal Broadcast Resp. at 1.

⁴ Complainant asserts that Canovi pays \$250 per hour for the airtime, or \$2,000 per month. Compl. at 2.

⁵ Journal Broadcast further responds that the Complaint does not allege a violation on its part and further denies that it has made any contributions to Moon's campaign or that it has any materials relevant to the Complaint. Journal Broadcast Resp. at 3. It requests that the Commission dismiss it as a Respondent in the matter. *Id.*

⁶ Although Complainant refers to Moon as Canovi's co-host, the podcasts indicate that Moon generally provided political commentary during the last five minutes of the show rather than being present and involved in the discussions during the remainder of the show. However, there are a few instances when Moon appeared on the show and participated in the general discussion. *See generally* Compl. Suppl.

1 candidacy during 19 of those 28 shows. *Id.* During three of those 19 shows that referenced
2 Moon's candidacy, Moon and Canovi also solicited financial support for Moon's campaign or
3 Canovi encouraged listeners to contribute to Moon's campaign by asking listeners to support
4 "like-minded" candidates. *Id.* (claiming that solicitations took place on February 25, April 28,
5 and June 23, 2012). The Supplement also asserts that, from the inception of the campaign, Moon
6 placed campaign material, at no charge, in every one of the electronic newsletters distributed by
7 Canovi; the Complaint alleges that the Committee failed to report the receipt of an in-kind
8 contribution from Canovi and failed to place a proper disclaimer on the advertisement.⁷ *Id.* at 3.

9 The Act prohibits corporations from making contributions to federal candidates or their
10 committees. 2 U.S.C. § 441b(a). The Act also prohibits an individual from making a
11 contribution to a candidate or authorized political committee in any calendar year which
12 aggregates in excess of \$2,500. 11 C.F.R. § 100.52(a) (2012 cycle). "Anything of value"
13 includes an in-kind contribution. 11 C.F.R. §§ 100.52(d)(1), 100.111(a). All political
14 committees are required to file reports of their receipts and disbursements. 2 U.S.C. § 434(a).

15 Contributions do not include "any cost[s] incurred in covering a news story, commentary
16 or editorial by any broadcasting station (including a cable television operator, programmer or
17 producer), Web site, newspaper, magazine or other periodical publication . . . unless the facility
18 is owned or controlled by any political party, political committee, or candidate[.] 11 C.F.R.

⁷ Moon did not specifically respond to the allegation regarding the newsletter and Canovi responded that he was unclear as to how to respond to the information contained in the Supplement to the Complaint as it cited to no particular statutory provision. See Moon Resp. at 1-2; Canovi Resp. at 1. It appears that Complainant is alleging that the Committee received an in-kind contribution from Canovi since Canovi sells advertising and sponsorships for the newsletter and failed to place the proper disclaimers on the advertisements. We reviewed the archived newsletters available on Canovi's website, but could not locate any editions that contained any type of Moon advertisements. See <http://www.maticanovi.com> (last accessed on Jan. 23, 2013). Based on the lack of available information supporting Complainant's allegation, the Commission found no reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441f by failing to report the receipt of a potentially prohibited in-kind corporate contribution and by failing to place the appropriate disclaimer on the alleged advertisements.

1 § 100.73; *see also* 2 U.S.C. § 431(9)(B)(i) (exempting certain news stories, commentaries, or
2 editorials from the definition of expenditure); 2 U.S.C. § 434(f)(3)(B)(i) (exempting
3 communications within certain new stories, commentaries, or editorials from the definition of
4 electioneering communication). This exclusion is known as the "press exemption."

5 If the press exemption applies to Canovi, there is no resulting in-kind contribution to
6 Moon or the Committee. On the other hand, if the press exemption does not apply to Canovi,
7 Moon's appearances could constitute a prohibited corporate or excessive in-kind contribution to
8 the Committee.⁸

9 The Commission conducts a two-step analysis to determine whether the press exemption
10 applies. First, the Commission asks whether the entity engaging in the activity is a press entity.
11 *See* Advisory Op. 2005-16 (Fired Up!). Second, in determining the scope of the exemption, the
12 Commission considers (1) whether the press entity is owned or controlled by a political party,
13 political committee, or candidate, and if not, (2) whether the press entity is acting as a press
14 entity in conducting the activity at issue (*i.e.*, whether the entity is acting in its "legitimate press
15 function"). *See Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981).
16 If the press entity is not owned or controlled by any political party, political committee, or
17 candidate, and if it is acting as a press entity with respect to the conduct in question, the press
18 exemption applies and immunizes the activity at issue.

19 In determining whether Canovi & Associates qualifies for the press exemption, we first
20 consider whether it is a press entity. When conducting that analysis, the Commission "has
21 focused on whether the entity in question produces on a regular basis a program that

⁸ Canovi & Associates is Canovi's limited liability company. Commission regulations provide that, so long as a limited liability company does not opt to be treated like a corporation for tax purposes, a contribution from a limited liability company is treated as a contribution from a partnership. *See* 11 C.F.R. § 110.1(g)(3).

1 disseminates news stories, commentary, and/or editorials.” Advisory Opinions 2010-08
2 (Citizens United), 2007-20 (XM Satellite Radio, Inc.), 2005-19 (Inside Track).⁹ The available
3 information indicates that Canovi & Associates is in the business of producing on a regular,
4 weekly basis a talk radio program discussing issues related to the Second Amendment. It is
5 therefore a press entity. See Advisory Opinions 2007-20 (XM Satellite Radio, Inc.) and 2005-19
6 (Inside Track) (applying the press exemption to a radio program where the host operated a
7 corporation that produced a show and purchased airtime to broadcast her show). That Canovi
8 has supported Moon’s candidacy is irrelevant because the Commission has determined that “an
9 entity otherwise eligible for the press exemption does not lose its eligibility merely because of a
10 lack of objectivity in a news story, commentary, or editorial.” Advisory Opinions 2010-08
11 (Citizens United), 2005-19 (Inside Track), 2005-16 (Fired Up!).

12 We next consider whether the press entity is owned or controlled by a political party,
13 political committee, or candidate. Available information indicates that Canovi & Associates is
14 not owned or controlled by a political committee, political party or candidate. Although Moon
15 regularly appears on “The Gun Show” as a guest, there is no information suggesting that he (or
16 any other candidate, committee or political party) has any ownership interest in the entity. All
17 available information indicates that Canovi controls the content of the entire show.

18 We also consider whether the press entity is acting in its legitimate press function with
19 respect to the activity at issue, paying particular attention to whether the materials under
20 consideration are available to the general public and whether they are comparable in form to
21 those ordinarily issued by the entity. Advisory Opinions 2010-08 (Citizens United), 2005-16

⁹ The Commission has also noted that the analysis of whether an entity qualifies as a press entity does not necessarily turn on the presence or absence of any one particular fact. Advisory Opinions 2010-08 (Citizens United), 2007-20 (XM Satellite Radio, Inc.), 2005-19 (Inside Track).

1 (Fired Up!). "The Gun Show" is available to the general public residing in or near Springfield,
2 Missouri, which includes potential voters within Missouri's seventh congressional district. *See*
3 <http://www.ksgf.com> (last accessed January 22, 2013). Podcasts of "The Gun Show" are also
4 available for download through the radio station's website. *See*
5 <http://www.ksgf.com/podcasts/thegunshow/> (last accessed February 2, 2013). In addition, a
6 review of the podcasts provided by Complainant indicates that "The Gun Show's" format was
7 similar to those shows ordinarily produced by and paid for by a press entity.

8 Complainant takes issue with the frequency with which Moon appeared on "The Gun
9 Show" and the fact that he and Canovi expressly advocated Moon's candidacy. Compl. at 1;
10 Compl. Suppl. at 1. The Commission, however, has held that intermittent requests for
11 contributions to a candidate's campaign do not foreclose application of the press exemption, as
12 long as the entity is not owned or controlled by a political committee, political party, or a
13 candidate and the entity is not serving as an intermediary for the receipt of the contributions. *See*
14 Advisory Op. 1980-109 (Ruff Times); *see also* Advisory Opinion 2008-14 (distinguishing
15 between "regular" and "intermittent" express advocacy and solicitations). It further appears that
16 "The Gun Show", for the most part, has consistently followed the same format, which did not
17 include expressly advocating for Moon's candidacy or soliciting contributions to his
18 Committee.¹⁰ *See generally* Compl. Suppl. Since the three solicitations of funds for Moon's

¹⁰ We note, however, that there was at least one show, and possibly two, that aired during Moon's candidacy where he hosted the entire show. *See* <http://www.ksgf.com/podcasts/thegunshow/158302525.html> (last accessed Jan. 22, 2013). While Complainant alleges that Moon also hosted the June 3, 2012, show in Canovi's absence, we were unable to locate a podcast for this particular show. In addition, there were some shows during his candidacy where Moon's appearance lasted longer than the customary five minutes allotted at the end of the second hour. *See, e.g.,* <http://www.ksgf.com/podcasts/thegunshow/164125606.html> (June 28, 2012) (last accessed Jan. 22, 2013).

In previous MURs, the Commission has held that the press exemption applies in instances where the program format does not change after the individual becomes a candidate. *See* MUR 5555 (Ross) (radio talk show host who became a candidate was eligible for the press exemption where program format did not change after he

1 candidacy are not a regular, fixed part of "The Gun Show," it does not prevent "The Gun Show"
2 from satisfying the press exemption requirements. Therefore, we conclude that "The Gun Show"
3 was acting in its legitimate press function with regard to Moon's appearances.

4 We thus conclude that Moon's appearances on "The Gun Show" do not constitute
5 excessive or prohibited in-kind corporate contributions to the Committee in violation of 2 U.S.C.
6 §§ 441a or 441b.

7 As to Journal Broadcast, the available information indicates that, because Canovi
8 produces "The Gun Show" and maintains control over its content, Journal Broadcast was acting
9 as an entrepreneur and not a press entity exercising its "unfettered right... to cover and comment
10 on political campaigns" when it sold airtime to Canovi & Associates to broadcast "The Gun
11 Show." See Advisory Op. 1982-44 (DNC/RNC), citing H.R. Report No. 93-1239, 93d Congress,
12 2d Sess. 4 (1974); see also MUR 6089 (Hart) (citing to MUR 5297 (Wolfe) (concluding that the
13 station acted as an entrepreneur, not press entity, when it aired a show hosted by Wolfe because
14 Wolfe paid for the airtime and maintained complete control over the content of the show)).
15 Therefore, we conclude that Journal Broadcast Group and KSGF have not made any prohibited
16 or excessive in-kind corporate contributions to the Committee in violation of 2 U.S.C. §§ 441a or
17 441b.

18 Accordingly, the Commission found no reason to believe that Journal Broadcast Group,
19 Canovi, and Canovi & Associates made and the Committee accepted a prohibited or excessive
20 in-kind corporate contribution based on Moon's appearances on "The Gun Show" during his
21 candidacy in violation of 2 U.S.C. §§ 441a and 441b.

began to consider candidacy) and MUR 4689 (Dorman) (radio guest-host who later became a candidate was eligible for the press exemption for commentary critical of eventual opponent where there was "no indication that the formats, distribution, or other aspects of production" were any different when the candidate hosted than they were when the regular host was present).

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2 **FEDERAL ELECTION COMMISSION**
3
4 **FACTUAL AND LEGAL ANALYSIS**
5

6
7 MUR 6627
8

9 RESPONDENT: Eric Wilber
10

11
12 **I. INTRODUCTION**
13

14 This matter was generated by a complaint filed by Thomas Shane Stilson. *See*
15 2 U.S.C. § 437(g)(a)(1). C. Michael Moon was a candidate in the 2012 Republican primary in
16 the Missouri seventh congressional district. His principal campaign committee is Mike Moon for
17 Congress and Craig Comstock in his official capacity as treasurer (the "Committee"). Eric
18 Wilber is a Committee volunteer who paid for the placement of a pro-Moon newspaper
19 advertisement in the *Community Free Press*.

20 The Complaint alleges that Wilber violated the Federal Election Campaign Act of 1971,
21 as amended (the "Act"), and Commission regulations in connection with Wilber's failure to
22 report the costs of a pro-Moon newspaper advertisement and the failure to include a disclaimer
23 on the advertisement.

24 Wilber filed a response. *See* Wilber Resp. (Sept. 17, 2012). As detailed below, the
25 Commission found no reason to believe that Wilber violated 11 C.F.R. § 109.10 by failing to file
26 an independent expenditure in connection with the newspaper advertisement. Further, the
27 Commission decided to exercise prosecutorial discretion, and dismiss the allegation that Wilber
28 violated the disclaimer provisions pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).
29
30

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 Complainant alleges that Eric Wilber paid for a newspaper advertisement placed in
3 Springfield, Missouri's *Community Free Press* from July 25-August 7, 2012, advocating Moon's
4 candidacy, failed to report it as an independent expenditure, and failed to provide the proper
5 disclaimer information. Compl. at 4, Ex. H.

6 Wilber responds that he was a volunteer for the Moon Committee and received two calls
7 from Gregg Hansen, a *Community Free Press* representative, inquiring whether Moon was
8 interested in placing an advertisement. Wilber Resp. at 1. Moon informed Wilber that the
9 Committee did not have sufficient funds to pay for an advertisement. *Id.* When Hansen called
10 again regarding a less expensive advertisement, Wilber subsequently called Hansen back and
11 responded that the Committee did not have the funds to pay for the ad and asked if he could pay
12 for the advertisement himself. *Id.* Upon learning that he could do so, Wilber agreed to place the
13 advertisement with the understanding that it would be his expenditure. *Id.* Wilber does not
14 indicate whether Moon had any knowledge that Wilber was planning to place an advertisement.

15 The newspaper advertisement reads "Moon for Congress" and states in the upper left-
16 hand corner, "Paid for by Citizen Eric Wilber."¹ See Compl., Ex. H. According to Wilber, he
17 inquired as to the type of disclosure information required, but Hansen was unable to provide any
18 guidance. Pointing to his status as a political novice, Wilber says he was unaware that any
19 contact information needed to be placed on the advertisement. *Id.* The newspaper invoiced the
20 Committee for the advertisement, but Wilber paid it. *Id.* at Attachment (copy of invoice).
21 Wilber states that he did not report the expenditure because it was below the Commission's \$250
22 threshold and, even if it were not, the report would not have been due at the time of the

¹ See also <http://www.cfpmidweek.com/weeks/IssuePDFs/va10i15web.pdf> (last accessed on Jan. 22, 2013).

1 Complaint. *Id.* at 2. Moon responded that the advertisement was paid for on July 25, 2012, and
2 would be reported in the next quarterly report. The Committee, on its October 2012 Quarterly
3 Report, disclosed its receipt of a \$232 in-kind contribution for "advertising" from Wilber on July
4 25, 2012. *See* October 2012 Quarterly Report (Itemized Disbursements) at p. 2 (filed on Oct. 15,
5 2012).

6 The Committee properly reported newspaper advertisement as an in-kind contribution.
7 We therefore recommend that the Commission find no reason to believe that Wilber violated
8 11 C.F.R. § 109.10 by failing to file an independent expenditure in connection with the
9 newspaper advertisement.

10 The advertisement did not contain an adequate disclaimer. The advertisement constitutes
11 a public communication because it was distributed in the newspaper. 11 C.F.R. §§ 100.26,
12 110.11. It required a disclaimer because it said "Moon for Congress" and therefore was express
13 advocacy under 11 C.F.R. § 100.22(a). The advertisement contained language indicating that
14 Wilber paid for it but did not contain language providing Wilber's permanent street address,
15 telephone number or language indicating that it was not authorized by a candidate, committee or
16 political party as required by the regulations. 11 C.F.R. § 110.11(c)(3).

17 But the disclaimer information in the advertisement provided the public with notice as to
18 who was responsible for the advertisement and the amount of money involved (\$232) was *de*
19 *minimis*. Therefore, the Commission decided to exercise prosecutorial discretion, and dismiss
20 the allegation that Wilber violated the disclaimer provisions pursuant to *Heckler v. Chaney*.