



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 18 2017

Mitchell W. Berger

Fort Lauderdale, FL 33301

RE: MUR 7110

Dear Mr. Berger:

The Federal Election Commission reviewed the allegations in your complaint received on July 21, 2016. On May 11, 2017, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations and close its file in this matter. Accordingly, the Commission closed its file in this matter on May 11, 2017.

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). A copy of the dispositive General Counsel's Response is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
General Counsel's Report

1704741-0010

BEFORE THE FEDERAL ELECTION COMMISSION

**ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT**

MUR: 7110

Complaint Receipt Date: July 21, 2016

Response Date(s): August 16, 2016

Respondents: Tim Canova for Congress,
and Yates Edison Fulbright, as treasurer
(collectively the "Committee")
Timothy A. Canova

EPS Rating:

**Alleged Statutory/
Regulatory Violations:**

**52 U.S.C. §§ 30120(a)(1), (d)(1)(B)(ii)
11 C.F.R. §§ 110.11(b)(1), (c)(3)(iii)**

The Complaint alleges that Canova and the Committee violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by airing two television ads critical of Canova's opponent in the primary election, which failed to include a required four-second written disclaimer at the end of the ad identifying the candidate and stating that the candidate approved the ad.¹

The Committee acknowledges that the ads lacked these written disclaimers, but states that the ads did include Canova's on-camera statements that he approved and paid for the ad. In addition, the Committee argues that the ads had appropriate disclaimers because there is insufficient evidence that the ads were broadcast on television. The Response repeatedly refers to the ads as "web videos" and "web ads." The available information, however, suggests that the ads were to be broadcast on television.²

¹ According to the Complaint, the two advertisements aired on television stations throughout Florida's 23rd Congressional District from July 9, 2016, through July 19, 2016. The Complaint includes an internet link to a short POLITICO piece about the ads, as well as links to the ads themselves. See Elena Schneider, *UP ON THE AIRWAVES — In FL-23* (July 11, 2016), <http://www.politico.com/tipsheets/morning-score/2016/07/gardner-tillis-plot-nrsc-co-chairmanship-215245> ("The ads will run on MSNBC, CNN and BET, per a statement from the campaign. The ads will also air on broadcast stations in Miami from July 9 to July 17"). See also <https://www.youtube.com/watch?v=LNBI90yHqfo>; <https://www.youtube.com/watch?v=lHk9XaLYibk>.

² See n. 1. The Complaint also makes allegations outside of the Commission's jurisdiction, including the Committee's failure to meet the requirements for eligibility for the lowest unit charge under the Communications Act of 1934 and use of footage from the House of Representatives.

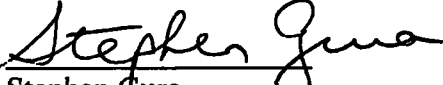
Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the 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 and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the technical nature of the violations, and the likelihood that the general public would have not have been confused as to who sponsored and paid for the ads, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

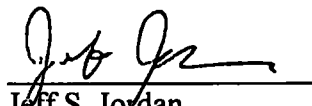
Lisa J. Stevenson
Acting General Counsel


Kathleen M. Guith
Associate General Counsel

4.26.17

Date

BY: 
Stephen Gura
Deputy Associate General Counsel


Jeff S. Jordan
Assistant General Counsel


Donald E. Campbell
Attorney