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FEDERAL ELECTION  
COMMISSION

2011 AUG 12 AM 10: 32

BEFORE THE FEDERAL ELECTION COMMISSION

**CELA**

In the Matter of	)	
	)	
American Hospital Association;	)	MUR 6381
American Hospital Association PAC and	)	
Melinda Hatton, as Treasurer; Herrick	)	
Medical Center; Schauer for Congress	)	
and Brad J. Neidhardt, as Treasurer (Case	)	
Closure: EPS)	)	

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on August 10, 2011, the Commission decided by a vote of 5-0 to take the following actions in MUR 6381:

1. Find no reason to believe that American Hospital Association, Herrick Medical Center, Schauer for Congress and Brad Neidhardt, in his official capacity as treasurer, or American Hospital Association PAC and Melinda Hatton, in her official capacity as treasurer, violated the Act.
2. Close the file and send the appropriate letters.

Commissioners Bauerly, Hunter, McGahn II, Walther and Weintraub voted affirmatively for the decision. Commissioner Petersen did not vote.

Attest:

August 11, 2011  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

11044301131



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AUG 17 2011

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Richard L. Blank

Tecumseh, MI 49265

RE: MUR 6381  
Herrick Hospital

Dear Mr. Blank:

The Federal Election Commission reviewed the allegations in your complaint received on September 20, 2010. On August 10, 2011, based upon the information provided in the complaint, and information provided by the respondents, the Commission determined that there was no reason to believe the respondents violated the Federal Election Campaign Act of 1971, as amended. Therefore, the Commission decided to close its file in this matter on August 10, 2011.

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).* A copy of the dispositive General Counsel's Report 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 2 U.S.C. § 437g (a)(8).*

Sincerely,

Christopher Hughey  
Acting General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

11044301133



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

AUG 17 2011

**VIA FIRST CLASS MAIL**

Judy Corley  
Perkins Coie  
700 Thirteenth Street, Suite 600, NW  
Washington, DC 20005

RE: MUR 6381  
American Hospital Association  
American Hospital Association PAC  
Melinda Hatton, Treasurer

Dear Ms. Corley:

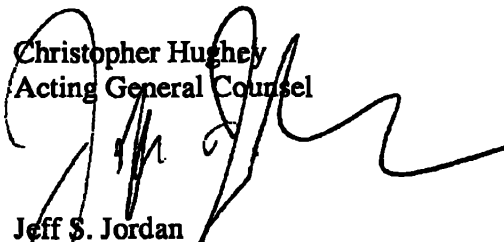
On September 23, 2010, the Federal Election Commission notified your clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On August 10, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe American Hospital Association, American Hospital Association PAC and Melinda Hatton, as treasurer, violated any provisions of the Act. Accordingly, the Commission closed its file in this 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).

If you have any questions, please contact Kim Collins, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel  


BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

11044301135



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**AUG 17 2011**

**VIA FIRST CLASS MAIL**

Marshal A. Bennett, Jr.  
Marshall & Melhorn LLC  
Four SeaGate, Eight Floor  
Toledo, OH 43604

RE: MUR 6381  
Herrick Memorial Hospital

Dear Mr. Bennett:

On September 23, 2010, the Federal Election Commission notified your client of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On August 10, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Herrick Memorial Hospital, violated any provisions of the Act. Accordingly, the Commission closed its file in this 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).

If you have any questions, please contact Kim Collins, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

11044301137



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FIRST CLASS MAIL**

**AUG 17 2011**

Brad J. Neidhardt, Treasurer  
Schauer for Congress  
PO Box 100  
Battle Creek, MI 49016

RE: MUR 6381

Dear Mr. Neidhardt:

On September 23, 2010, the Federal Election Commission notified Schauer for Congress and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

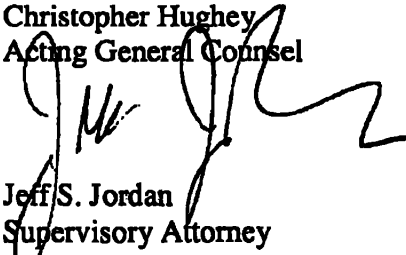
On August 10, 2011, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe Schauer for Congress and you, as treasurer, violated any provisions of the Act. Accordingly, the Commission closed its file in this matter.

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).

If you have any questions, please contact Kim Collins, the staff member assigned to this matter at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

BY:   
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

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**SENSITIVE**

**BEFORE THE FEDERAL ELECTION COMMISSION**

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In the Matter of	)	
	)	
MUR 6381	)	CASE CLOSURE UNDER THE
AMERICAN HOSPITAL ASSOCIATION	)	ENFORCEMENT PRIORITY
AMERICAN HOSPITAL ASSOCIATION PAC	)	SYSTEM
AND MELINDA HATTON, AS TREASURER	)	
HERRICK MEDICAL CENTER	)	
SCHAUER FOR CONGRESS AND	)	
BRAD J. NEIDHARDT, AS TREASURER	)	

**GENERAL COUNSEL'S REPORT**

14 Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring  
 15 criteria to allocate its resources and decide which cases to pursue. These criteria include, but are  
 16 not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the  
 17 type of activity and the amount in violation, (2) the apparent impact the alleged violation may  
 18 have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent  
 19 trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("Act"),  
 20 and (5) development of the law with respect to certain subject matters. It is the Commission's  
 21 policy that pursuing low-rated matters, compared to other higher-rated matters on the  
 22 Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases,  
 23 or in certain cases where there are no facts to support the allegations, to make no reason to  
 24 believe findings. For the reasons set forth below, this Office recommends that the Commission  
 25 make no reason to believe findings in MUR 6381.

26 In this matter, complainant Richard L. Blank ("Complainant") alleges that the American  
 27 Hospital Association ("the AHA"),<sup>1</sup> Herrick Medical Center ("Herrick"), and Schauer for  
 28 Congress and Brad J. Neidhardt, in his official capacity as treasurer ("the Committee"), violated  
 29 the Act when the AHA ran several advertisements in April 2010 thanking Congressman Mark

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<sup>1</sup> The AHA is organized as a nonprofit corporation under section 501(c)(6) of the Internal Revenue Code.

1 Schauer<sup>2</sup> for voting for a health care bill, which the Complainant alleges was a political  
2 endorsement of the congressman and the bill.<sup>3</sup> The Complainant asserts that he has made  
3 payments to Herrick for medical services, and because Herrick pays membership dues to the  
4 AHA, Herrick and/or the AHA "misappropriated funds" because the Complainant's payments  
5 were likely used to fund the advertisements without the Complainant's knowledge.

6 The AHA's response, which includes an affidavit from Melinda Hatton, the AHA's  
7 general counsel, argues that the complaint does not state a violation of the Act. The AHA admits  
8 that it used general treasury funds to run advertisements in April 2010 that mentioned  
9 Congressman Schauer with respect to his vote on a health care reform bill, but insists the  
10 advertisements did not mention Mr. Schauer's candidacy or advocate his election or his  
11 opponent's defeat. Further, the AHA claims that the advertisements did not contain express  
12 advocacy, and were not coordinated with Congressman Schauer's campaign. In the aftermath of  
13 the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. 50 (2010), the AHA maintains  
14 that it was lawfully permitted to use treasury funds to pay for communications such as those at  
15 issue, as long as they were not coordinated with Congressman Schauer or the Committee.<sup>4</sup>

16 Herrick submitted a response which includes an affidavit from Herrick's President,  
17 Timothy J. Jakacki. In his affidavit, Mr. Jakacki asserts that while Herrick is a dues-paying  
18 general member of the AHA, Herrick was not involved with any aspect of the advertisements in

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<sup>2</sup> On November 2, 2010, Mr. Schauer was defeated in the general election for Michigan's 7<sup>th</sup> Congressional District.

<sup>3</sup> While video of the advertisements are no longer publicly accessible, the AHA issued a press release announcing its advertising campaign. See Press Release, American Hospital Association, New Ad Campaign Applauds Key Members of Congress for Protecting Patients and Communities (April 5, 2010), available at <http://goo.gl/2pLP6>.

<sup>4</sup> AHA PAC did not file a separate response.

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1 question. Mr. Jakacki maintains that Herrick did not authorize the advertisements, was not  
2 involved with their production, and did not arrange or pay for their broadcast.

3 The Committee's response, filed by Treasurer Brad Neidhardt, asserts that the AHA's  
4 advertisements were not authorized, solicited, funded, or approved by the Committee, and the  
5 Committee had no part in the development of the advertisements.

6 The respondents do not appear to have violated any provisions of the Act. Although the  
7 complainant asserts that the advertisements served as an endorsement of the candidate, the AHA  
8 states that its advertisements did not mention Mr. Schauer's candidacy or advocate his election or  
9 his opponent's defeat. As the advertisements do not appear to have contained express advocacy,  
10 it would have been permissible for the AHA to run them even prior to the *Citizens United*  
11 decision which, as the respondents point out, allows corporations to use their general treasury  
12 funds for independent expenditures. Moreover, the advertisements ran in April 2010, which was  
13 several months before the August 3, 2010 primary election, and, as such, did not constitute  
14 electioneering communications. See 2 U.S.C. § 434(f)(3)(A)(i) (electioneering communications  
15 are broadcast, cable, or satellite communications that, *inter alia*, refer to a clearly identified  
16 candidate for Federal office and are distributed thirty days before a primary election). Finally,  
17 both the AHA and the Committee maintain that there was no coordination, and we have been  
18 provided no information to the contrary. Therefore, based on the speculative nature of the  
19 complaint and the declarations and statements made in the responses and affidavits, we  
20 recommend that the Commission find no reason to believe that the American Hospital  
21 Association, Herrick Medical Center, Schauer for Congress and Brad Neidhardt, in his official  
22 capacity as treasurer, or American Hospital Association PAC and Melinda Hatton, in her official  
23 capacity as treasurer, violated the Act, and close the file.

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**RECOMMENDATIONS**


1. Find no reason to believe that American Hospital Association, Herrick Medical Center, Schauer for Congress and Brad Neidhardt, in his official capacity as treasurer, or American Hospital Association PAC and Melinda Hatton, in her official capacity as treasurer, violated the Act.
2. Close the file and send the appropriate letters.

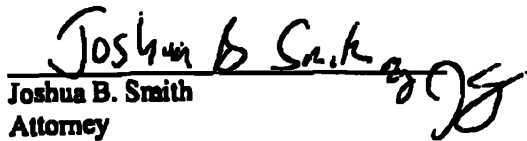
Christopher Hughey  
Acting General Counsel

7/12/11  
Date

BY:

  
\_\_\_\_\_  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
\_\_\_\_\_  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

  
\_\_\_\_\_  
Joshua B. Smith  
Attorney

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