



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FIRST CLASS MAIL

JUN 19 2009

Lyle Larson
P.O. Box 171148
San Antonio, TX 78217

RE: MUR 6070

Dear Mr. Larson:

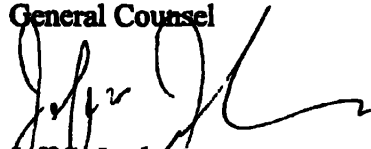
On September 22, 2008, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 28, 2009, based upon the information contained in the complaint, and information provided to the Commission, the Commission decided to dismiss the complaint and 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). A copy of the dispositive General Counsel's Report is enclosed for your information.

If you have any questions, please contact Frankie D. Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel

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

Enclosure
General Counsel's Report

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THIS IS THE END OF MUR # 6070

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 MUR 6070) CASE CLOSURE UNDER THE
 LYLE LARSON FOR CONGRESS AND) ENFORCEMENT PRIORITY
 ERNESTO ANCIRA AS TREASURER) SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated [redacted]

[redacted] are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6070 as a low-rated matter.

In this matter, the complainant, Brian Wolff representing the Democratic Congressional Campaign Committee, alleges that the Lyle Larson for Congress Committee, candidate Lyle Larson, and Ernesto Ancira, in his official capacity as treasurer (collectively, the "Committee"), violated the disclaimer provisions for televised communications under 2 U.S.C. § 441d(d)(1)(B)(ii). Specifically, the Committee allegedly failed to include a written disclaimer in its televised commercial indicating that the candidate approved the communication.

The Committee responded by noting that it had contacted Commission staff prior to running its commercial and was informed that the written disclaimer "Paid for by Lyle Larson for Congress" was acceptable. Thus, the Committee ran the commercial without using the written phrase "approved by" the candidate. Immediately following the commercial, the Committee learned from the press that its written disclaimer was inadequate.

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1 The Committee claims that it again contacted Commission staff concerning the requirements
2 for its disclaimer and was then informed that the information it previously received was
3 incorrect. Thereafter, the Committee took corrective action within 24 hours of its contact
4 with the Commission.

5 Given the Committee's expeditious corrective action, it appears that the impact on the
6 process, if any, was *de minimus*. Accordingly, in considering the Commission's priorities
7 and resources relative to other matters pending on the Enforcement docket, the Office of
8 General Counsel believes that the Commission should exercise its prosecutorial discretion
9 and dismiss this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

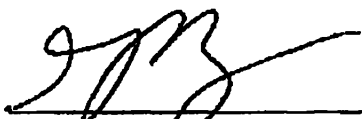
10 **RECOMMENDATIONS**

11 The Office of General Counsel recommends that the Commission dismiss
12 MUR 6070, close the file, and approve the appropriate letters.

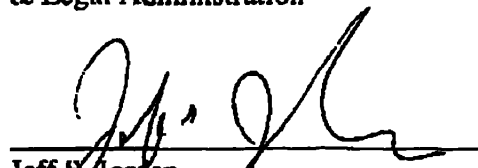
14 Thomasenia P. Duncan
15 General Counsel

17
18 5/19/09
19 Date

20 BY:



21 Gregory R. Baker
22 Special Counsel
23 Complaints Examination
24 & Legal Administration



25 Jeff S. Jordan
26 Supervisory Attorney
27 Complaints Examination
28 & Legal Administration

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Lyle Larson for Congress, *et al.*

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MUR 6070

**STATEMENT OF REASONS OF VICE CHAIRMAN MATTHEW S. PETERSEN
AND COMMISSIONERS CAROLINE C. HUNTER AND DONALD F. McGAHN**

We agreed with the Office of General Counsel's recommendation to exercise our prosecutorial discretion to dismiss this matter.¹ The Respondent substantially complied with the disclaimer requirements imposed by the Federal Election Campaign Act, as amended ("the Act") and Commission regulations, for television advertisements paid for and approved by a candidate committee. Moreover, the Respondent took corrective action within 24 hours of discovering its misstep—a quick turnaround for a television advertisement airing in the midst of a general election campaign.

It also appears the Respondent contacted Commission staff in an attempt to clarify the written disclaimer requirement prior to airing the advertisement, and then called again after questions were raised regarding its disclaimers. While there is no way to confirm the substance of the conversation, there is a record that Respondent contacted the Commission in an attempt to comply with the disclaimer requirements.

In situations such as this, where there is some documentation or evidence that a Respondent relied on Commission staff advice in an attempt to comply with the law, we find such evidence both probative and significant. After all, the Act itself states that a central goal of the Commission is "to encourage voluntary compliance" with the law.² Thus, for these and our previously stated reasons, we agreed with the recommendation of the Office of General Counsel and voted to dismiss the matter.

¹ Certification dated May 28, 2009.

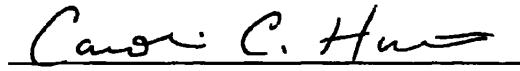
² 2 U.S.C. § 437d(a)(9).

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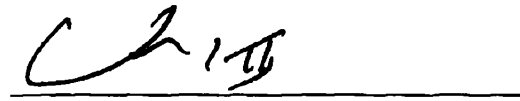
6/11/2009
Date


MATTHEW S. PETERSEN
Vice Chairman

6/11/2009
Date


CAROLINE C. HUNTER
Commissioner

6/11/09
Date


DONALD F. MCGAHN II
Commissioner

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