



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Regina Ballinger

MAY - 9 2019

Needham, MA 02492

RE: MUR 7489

Dear Ms. Ballinger:

The Federal Election Commission reviewed the allegations in your complaint and supplementary complaint received on August 27, 2018, and August 30, 2018. On May 1, 2019, based upon the information provided in the complaint and supplementary complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations as to Diehl for U.S. Senate, and Gregory Eaton, in his official capacity as treasurer, and close its file in this matter. Accordingly, the Commission closed its file in this matter on May 1, 2019. A copy of the General Counsel's Report, which more fully explains the basis for the Commission's decision, is enclosed.

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 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

A handwritten signature in black ink, appearing to read "Jeff S. Jordan".

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
General Counsel's Report

10004740001-9

BEFORE THE FEDERAL ELECTION COMMISSION

ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7489

Respondents: Diehl for U.S. Senate
and Gregory Eaton,
as treasurer (the "Committee")¹

Complaint Receipt Date: August 27, 2018

Complaint Suppl. Receipt Date: August 30, 2018

Response Date: September 27, 2018

Alleged Statutory
Regulatory Violations:

52 U.S.C. § 30120(a), (c);
11 C.F.R. § 110.11(a), (b), (c)

The Complaint alleges that the Committee distributed yard signs lacking a proper disclaimer.² The Complaint also alleges that the Committee operated a campaign tour bus with the likeness and slogan of the candidate without a proper disclaimer, and that the Committee distributed a flyer in March/April 2018 that included a solicitation without a required disclaimer.³ Respondents acknowledge that the yard signs and bus did not contain proper disclaimers, but state that this oversight was inadvertent and unintentional.⁴ The Committee asserts that it purchased stickers with a proper disclaimer as soon as it became aware of its mistake and affixed them to over 1,000 yard signs, and that all subsequent yard signs were printed with a proper disclaimer.⁵ The Committee

¹ Geoff Diehl was a candidate for U.S. Senate from Massachusetts, and lost in the November 6, 2018, general election with 36.2% of the vote. Susan Scholl was the Committee treasurer at the time of the Complaint and Response.

² Compl. at 1-3 (August 27, 2018).

³ *Id.* at 10-13. *See also* Supp. Compl. at 1-3 (August 30, 2018). The Complaint includes photographs indicating that the yard signs and tour bus do not contain the required disclaimer language. *See* Compl. at 4-6, 14-23. The Complaint includes a photograph of what is presumed to be the alleged flyer: an image of the campaign bus alongside the phrases "Gas Up the RV!" and "Chip in \$35 or more." *Id.* at 14. The flyer image included in the Complaint does not contain a postmark, address, or any other mailing indicia. *Id.*

⁴ Resp. at 2 (September 27, 2018). The Response states that the alleged flyer was not a published item, but was an image from a fundraising email dated November 28, 2017, and asserts that the original fundraising email contained a proper disclaimer. *Id.* at 3. *See also Id.* at Ex. D.

⁵ *Id.* at 2.

further states that it affixed a disclaimer to the front door of the bus as soon as it became aware that the bus did not contain the required disclaimer.⁶

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 and the remedial actions taken by the Committee, we recommend that the Commission dismiss the Complaint consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources.⁷ We also recommend that the Commission close the file as to all the respondents and send the appropriate letters.

4/19/19
Date

Lisa J. Stevenson
Acting General Counsel
BY: Charles Kitcher by *JK*
Charles Kitcher
Acting Associate General Counsel
Jeff S. Jordan
Jeff S. Jordan
Assistant General Counsel
Donald E. Campbell
Donald E. Campbell
Attorney

⁶ *Id.* at 2-3.

⁷ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).