

BEFORE THE FEDERAL ELECTION COMMISSION

**ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT**

MUR: 7505

Respondents: End Citizens United and
Kimberly Coleman, as Treasurer,¹
Beto for Texas and
Gwendolyn Pulido, as Treasurer²

Complaint Receipt Date: September 26, 2018

Last Response Date: November 30, 2018

EPS Rating:

Alleged Statutory

52 U.S.C. §§ 30101(17); 30104(b)(2), (4)

Regulatory Violations:

11 C.F.R. §§ 100.16; 100.22; 104.3(a)(3); 109.10; 109.21

The Complaint alleges that End Citizens United paid for a Facebook solicitation advertisement supporting Beto for Texas, but failed to report the expenditure as either an in-kind contribution to Beto for Texas or an independent expenditure on behalf of Beto for Texas.³

Respondents deny that the advertisement was a coordinated communication, and End Citizens United asserts that the advertisement was not an independent expenditure because it did not contain express advocacy.⁴

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

¹ End Citizens United filed an Amended Statement of Organization on April 2, 2019, notifying the Commission that its treasurer had changed from Deanna Nesburg to Kimberly Coleman.

² Beto for Texas is the authorized committee for Robert Beto O'Rourke, who was a 2018 candidate for United States Senate from the state of Texas.

³ Compl. at 1 (September 26, 2018).

⁴ Beto Resp. at 1 (November 30, 2018); ECU Resp. at 4-5 (November 23, 2018).

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 relatively modest cost of the advertisement,⁵ 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. *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

April 19, 2019
Date

BY: Charles Kitcher by JJK
Charles Kitcher
Acting Associate General Counsel

J. S. Jordan
Jeff S. Jordan
Assistant General Counsel

Kristina Portner
Kristina M. Portner
Attorney

⁵ At the time the Complaint was submitted, Facebook metrics reflected that there were between 10,000 to 50,000 people who viewed the advertisement and it cost less than \$999 to post. See Compl. at 2, Ex. A.