

BEFORE THE FEDERAL ELECTION COMMISSION

**ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT**

MUR: 7538

Respondents: Unknown

Complaint Receipt Date: November 7, 2018

Response Date: N/A

EPS Rating:

**Alleged Statutory
Regulatory Violations:**

**52 U.S.C. § 30120(a)
11 C.F.R. §§ 110.11(a), (b), (c)(2)**

The Complaint alleges that a mailer criticizing Juan Figueroa, a candidate for Sheriff of Ulster County, NY, lacked required disclaimers.¹ The Complaint includes a copy of the mailer, which contains images of Figueroa and President Donald Trump, and allegations that Figueroa was a Republican “for years,” and supported President George W. Bush’s policies.² The Complaint does not contain information as to the cost or number of the mailers distributed.

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

¹ Compl. at 1-3. Figueroa won the election.

² *Id.* The mailer reads “JUAN FIGUEROA PLAYS THE PART OF A PROGRESSIVE [sic] DEMOCRAT...BUT FIGUEROA HAS BEEN A REPUBLICAN FOR YEARS.” The mailer further reads: “FIGUEROA REGISTERED AS A REPUBLICAN EVERY YEAR FROM 2000 TO 2015 — WHEN REPUBLICANS STOOD AGAINST BARACK OBAMA & STOOD ALONGSIDE GEORGE W. BUSH’S WARS. FIGUEROA SWITCHED PARTIES RECENTLY TO RUN FOR OFFICE. DON’T BE FOOLED BY A WOLF IN SHEEP’S CLOTHING.” *Id.* at 2. The mailer contains no text regarding President Trump, the only federal candidate in the mailer, only his picture.

Commission action after application of these pre-established criteria. Given that low rating, and the fact that the mailer appears to relate to a non-federal election, 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.³ We also recommend that the Commission close the file and send the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Acting Associate General Counsel

06.28.19
Date

BY: Stephen Gura
Stephen Gura
Deputy Associate General Counsel

Jeff S. Jordan
Jeff S. Jordan
Assistant General Counsel

Donald E. Campbell
Donald E. Campbell
Attorney

³ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).