



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY 15 2009

VIA FIRST CLASS MAIL

Thomas J. Spargo, Esq
363 Joslyn School Road
East Berne, New York 12059

RE: MUR 6098
Richard Hanna for Congress, Richard
Hanna, and Donald J. Robertello as
Treasurer

Dear Mr. Spargo:

On October 20, 2008, the Federal Election Commission notified your clients, Richard Hanna, Richard Hanna for Congress ("Committee") and Donald J. Robertello, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On May 7, 2009, based upon the information contained in the complaint, and information provided by your clients, the Commission decided to dismiss the complaint and closed its file in this matter.

Based on the information before the Commission, it appears that the Committee and Mr. Robertello failed to include appropriate disclaimers on its campaign materials. Specifically, the use of certain door hangers used by the Committee failed to include a printed box around its disclaimer language, as required by 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11 (c)(2)(ii). The Commission cautions the Committee and its treasurer to take steps to ensure that its conduct is in compliance with the Act and Commission regulations.

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.

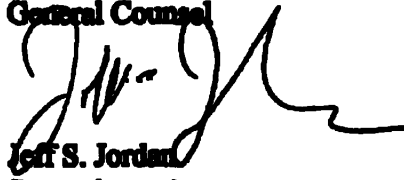
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For further information on policies and procedures involving the regulation of the Federal Election Campaign Act please refer to the Commission's website at www.fec.gov or contact the Commission's Public Information Division at (202) 694-1100.

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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BEFORE THE FEDERAL ELECTION COMMISSION

1
2
3 In the Matter of)
4)
5 MUR 6098) CASE CLOSURE UNDER THE
6 RICHARD HANNA FOR CONGRESS,) ENFORCEMENT PRIORITY
7 RICHARD HANNA, AND DONALD J.) SYSTEM
8 ROBERTELLO, AS TREASURER)
9

GENERAL COUNSEL'S REPORT

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11 Under the Enforcement Priority System, matters that are low-rated _____
12 _____ are

13 forwarded to the Commission with a recommendation for dismissal. The Commission has
14 determined that pursuing low-rated matters compared to other higher-rated matters on the
15 Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.
16 The Office of General Counsel scored MUR 6098 as a low-rated matter.

17 The complainant, Mitchell Ford, alleges that the Richard Hanna for Congress
18 Committee and Daniel J. Robertello, as treasurer, ("the Committee") failed to include
19 appropriate disclaimers on its campaign materials.¹ Specifically, the complainant alleges that
20 certain door hangers used by the Committee failed to include a printed box around its
21 disclaimer language, as required by 2 U.S.C. § 441d(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii).

22 Both the candidate and Committee responded by acknowledging the disclaimer error.
23 Mr. Hanna noted in his response that he was aware of the "box around the disclaimer"
24 regulatory requirement and attempted to ensure that his campaign complied with the FEC's
25 disclaimer provisions. Mr. Hanna recalled that toward the end of his campaign he contracted
26 with several printing companies to provide additional door hangers, and he believes, at that

¹ This is the second complaint involving the alleged failure by the Richard Hanna for Congress Committee to include FEC-compliant disclaimers on its campaign materials. In the first matter, MUR 6041, the Committee acknowledged its errors and corrected them; thereafter, the Commission voted to dismiss the matter and send a cautionary notification to the Committee.

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1 point, there was a communications breakdown, which resulted in some of his Committee's
2 door hangers excluding the requisite printed box surrounding the Committee's disclaimer.

3 The Committee stated in its response that it had hired a firm specializing in FEC
4 compliance matters (*i.e.*, Capital Effects LLC) following a prior FEC complaint. Moreover,
5 the Committee supported the candidate's explanation, that when the initial printing of door
6 hangers proved to be insufficient, its last-minute order for additional hangers mistakenly failed
7 to include the requisite "disclaimer" box.

8 Although there is no printed box set out from the remainder of the material on the door
9 hangers at issue, the Committee's disclaimers are printed in light yellow against a dark blue
10 background and are easily distinguishable from the remaining language on the door hangers.
11 Further, there is no indication that the Committee's failure to include boxes around its
12 disclaimers was wide-spread. We also note that the Committee appears to have made efforts
13 to avoid compliance problems by hiring an FEC compliance consulting firm. Thus, in light of
14 the Committee's efforts, as well as the apparent isolated nature of the violation, and
15 furtherance of the Commission's priorities and resources, relative to other matters pending on
16 the Enforcement docket, the Office of General Counsel believes that the Commission should
17 exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S.
18 821 (1985). Additionally, this Office recommends that the Committee and its treasurer, in his
19 official capacity, be cautioned that the failure to include a printed box around the disclaimer on
20 campaign door hangers may have violated 2 U.S.C. § 441d(c)(2) and 11 C.F.R.
21 § 110.11(c)(2)(ii).


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RECOMMENDATION

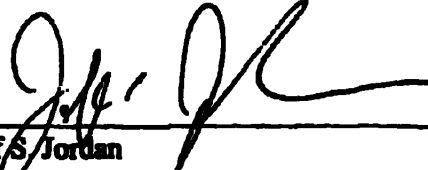
The Office of General Counsel recommends that the Commission dismiss MUR 6098, send a cautionary notification to Richard Hanna for Congress and Donald J. Robertello, in his official capacity as treasurer, close the file, and approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

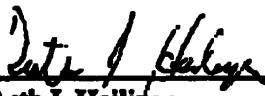
4/20/09
Date

BY: 

Gregory R. Baker
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Supervisory Attorney
Complaints Examination
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Ruth I. Heilizer
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